



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO 85 555 / 17

In the matter between:

| | |
|--|-----------------------|
| THE HELEN SUZMAN FOUNDATION | First Applicant |
| MAGDALENA FRANCISZKA WIERZYCKA | Second Applicant |
| and | |
| ESKOM HOLDINGS SOC LIMITED | First Respondent |
| THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA | Second Respondent |
| AJAY KUMAR GUPTA | Third Respondent |
| ATUL KUMAR GUPTA | Fourth Respondent |
| RAJESH KUMAR GUPTA | Fifth Respondent |
| DUDUZANE ZUMA | Sixth Respondent |
| TEGETA EXPLORATION AND RESOURCES (PTY) LTD | Seventh Respondent |
| MINISTER OF MINERAL RESOURCES | Eighth Respondent |
| MINISTER OF PUBLIC ENTERPRISES | Ninth Respondent |
| MINISTER OF FINANCE | Tenth Respondent |
| MINISTER OF WATER AND SANITATION | Eleventh Respondent |
| NATIONAL TREASURY | Twelfth Respondent |
| DEPARTMENT OF PUBLIC ENTERPRISES | Thirteenth Respondent |
| DEPARTMENT OF MINERAL RESOURCES | Fourteenth Respondent |

| | |
|--|---------------------------|
| DEPARTMENT OF WATER AND SANITATION | Fifteenth Respondent |
| BRIAN MOLEFE | Sixteenth Respondent |
| MARK PAMENSKY | Seventeenth Respondent |
| ANOJ SINGH | Eighteenth Respondent |
| SALIM AZIZ ESSA | Nineteenth Respondent |
| NAZEEM HOWA | Twentieth Respondent |
| RONICA RAGAVAN | Twenty First Respondent |
| GOLDRIDGE TRADING (PTY) LTD | Twenty Second Respondent |
| CHETALI GUPTA | Twenty Third Respondent |
| ARTI GUPTA | Twenty Fourth Respondent |
| ASHU CHAWLA | Twenty Fifth Respondent |
| MATSHELA MOSES KOKO | Twenty Sixth Respondent |
| BALDWIN NGUBANE | Twenty Seventh Respondent |
| NAZIA CARRIM | Twenty Eighth Respondent |
| ROMEO KHUMALO | Twenty Ninth Respondent |
| DEVAPUSHPUM VIROSHINI NAIDOO | Thirtieth Respondent |
| MARIAM CASSIM | Thirty First Respondent |
| CHWAYITA MABUDE | Thirty Second Respondent |
| MABENGELA INVESTMENTS (PTY) LTD | Thirty Third Respondent |
| ELGASOLVE (PTY) LTD | Thirty Fourth Respondent |
| OAKBAY INVESTMENTS (PTY) LTD | Thirty Fifth Respondent |
| OAKBAY RESOURCES AND ENERGY LIMITED | Thirty Sixth Respondent |
| ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD | Thirty Seventh Respondent |
| SHIVA URANIUM (PTY) LTD | Thirty Eighth Respondent |
| TRILLIAN HOLDINGS (PTY) LTD | Thirty Ninth Respondent |

| | |
|---|--------------------------|
| TRILLIAN FINANCIAL ADVISORY (PTY) LTD | Fortieth Respondent |
| TRILLIAN CAPITAL PARTNERS (PTY) LTD | Forty First Respondent |
| TRILLIAN MANAGEMENT CONSULTING (PTY) LTD | Forty Second Respondent |
| OPTIMUM COAL HOLDINGS (PTY) LTD | Forty Third Respondent |
| WESTDAWN INVESTMENTS (PTY) LTD | Forty Fourth Respondent |
| MFAZI INVESTMENTS (PTY) LTD | Forty Fifth Respondent |
| CENTAUR DE ROODEPOORT (PTY) LTD | Forty Sixth Respondent |
| TNA MEDIA (PTY) LTD | Forty Seventh Respondent |
| INFINITY MEDIA NETWORKS (PTY) LTD | Forty Eighth Respondent |
| OLIVE GREEN TRADERS (PTY) LTD | Forty Ninth Respondent |
| ACTION INVESTMENTS (PTY) LTD | Fiftieth Respondent |
| REGIMENTS CAPITAL (PTY) LTD | Fifty First Respondent |
| ISLANDSITE INVESTMENTS 254 (PTY) LTD | Fifty Second Respondent |
| CONFIDENT CONCEPT (CC) | Fifty Third Respondent |
| ALBATIME (PTY) LTD | Fifty Fourth Respondent |
| AEROHAVEN TRADING (PTY) LTD | Fifty Fifth Respondent |
| DIXIE INVESTMENTS (PTY) LTD | Fifty Sixth Respondent |
| MOSEBENZI ZWANE | Fifty Seventh Respondent |
| LYNNE BROWN | Fifty Eighth Respondent |
| THE DIRECTOR-GENERAL, DEPARTMENT OF MINERAL RESOURCES | Fifty Ninth Respondent |
| THE REGIONAL MANAGER, MPUMALANGA REGION OF THE DEPARTMENT OF MINERAL RESOURCES | Sixtieth Respondent |
| GLENCORE OPERATIONS SOUTH AFRICA (PTY) LTD | Sixty First Respondent |

| | |
|---|---------------------------|
| JACOB GEDLEYIHLEKISA ZUMA | Sixty Second Respondent |
| OPTIMUM COAL MINE (PTY) LTD | Sixty Third Respondent |
| KOORNFONTEIN MINES (PTY) LTD | Sixty Fourth Respondent |
| OPTIMUM COAL TERMINAL (PTY) LTD | Sixty Fifth Respondent |
| OPTIMUM VLAKFONTEIN MINING AND EXPLORATION (PTY) LTD | Sixty Sixth Respondent |
| OPTIMUM OVERVAAL MINING AND EXPLORATION (PTY) LTD | Sixty Seventh Respondent |
| ZETHEMBE WILFRED KHOZA | Sixty Eighth Respondent |
| VENETE JARLENE KLEIN | Sixty Ninth Respondent |
| GIOVANNI MICHELE LEONARDI | Seventieth Respondent |
| PATHMANATHAN NAIDOO | Seventy First Respondent |
| DIRECTOR GENERAL OF THE DEPARTMENT OF PUBLIC ENTERPRISES | Seventy Second Respondent |
| MOGOKARE SELEKE | Seventy Third Respondent |
| COLLIN MATJILA | Seventy Fourth Respondent |



NOTICE OF MOTION

TAKE NOTICE THAT the applicants intend to make application to this Honourable Court on a date to be determined for an order in the following terms:

1. Declaring each of the impugned decisions (as that term is defined in paragraph 332 of the founding affidavit of Francis Antonie dated 14 December 2017 ("**the founding affidavit**")), listed in paragraphs 332.1 to 332.25, read with paragraph 333, of the founding affidavit ("**the impugned**

decisions"), unlawful, unconstitutional, irrational, unreasonable and invalid, reviewing them and setting them aside.

2. Declaring that each of the impugned decisions constitutes, alternatively is a product of, corrupt conduct.
3. Declaring that each of the relevant respondents (as that term is defined in paragraph 352 of the founding affidavit) ("**the relevant respondents**") has breached his/her duty to report under section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004 ("**PRECCA**").
4. Directing the relevant respondents to make reports under section 34(1) of PRECCA.
5. Referring the matter to the Directorate for Priority Crime Investigation and the National Prosecuting Authority for the purposes of conducting a criminal investigation into the circumstances set forth in the founding affidavit, including any corrupt activity related to the impugned decisions and any breaches of section 34(2) of PRECCA.
6. Ordering that the following amounts be paid (together with interest at the prescribed rate from the date of payment of the aforesaid amounts by the first respondent, *alternatively, a tempore morae*) by the persons mentioned below, jointly and severally, within 20 days of this order:
 - 6.1 R43,200,000 to be paid to the first respondent by the third to sixth, twentieth, twenty third, twenty fourth, twenty fifth, thirty fifth, thirty seventh, forty seventh and seventy fourth respondents in respect of the amounts paid under the TNA agreement (as that term is defined in the founding affidavit);

- 6.2 R3.7 billion, *alternatively*, all amounts paid out under the March 2015 Brakfontein CSA, as that term is defined in the founding affidavit, to be paid to the first respondent by the third to seventh, seventeenth, nineteenth, twenty second, twenty third to thirty fifth, thirty seventh, fifty third, fifty fifth and fifty eighth respondents;
- 6.3 R1.68 billion, *alternatively*, all amounts paid out under the December 2015 guarantee, as that term is defined in the founding affidavit, to be paid to the first respondent by the third to seventh, sixteenth to nineteenth, twenty second, twenty third to thirty fifth, thirty seventh, fifty fifth, fifty seventh, fifty eighth and seventy third respondents;
- 6.4 R117.5 million, *alternatively*, all amounts paid out under the January 2016 Arnot contract, as that term is defined in the founding affidavit, to be paid to the first respondent by the third to seventh, sixteenth to nineteenth, twenty second, twenty third to thirty fifth, thirty seventh, fifty fifth, fifty seventh, fifty eighth and seventy third respondents;
- 6.5 R325,500,000, *alternatively*, all amounts paid out under the February 2016 CSA, as that term is defined in the founding affidavit, to be paid to the first respondent by the third to seventh, sixteenth to nineteenth, twenty second, twenty third to thirty fifth, thirty seventh, fifty fifth, fifty seventh, fifty eighth and seventy third respondents;
- 6.6 R659,558,079 to be paid to the first respondent by the third to seventh, sixteenth to nineteenth, twenty second, twenty third to thirty fifth, thirty seventh, fifty fifth, fifty seventh, fifty eighth and seventy third respondents, in respect of the amounts paid under the April 2016

Prepayment agreement and the April 2016 supply contract (as those terms are defined in the founding affidavit).

7. Ordering the respondents (other than the tenth to twelfth, fifteenth and sixty first respondents) ("**the accounting respondents**"), within 14 days of the date of this order, to deliver to the applicants a full and proper account (including full statements of account supported by all relevant vouchers) setting forth all payments (including revenue and profits) or other benefits of whatsoever nature which they or any other party received as a result of or in relation to the impugned decisions or any of the other unlawful or corrupt conduct set forth in the founding affidavit ("**the respondents' accounts**"). The respondents' accounts must include the full fund flow and the ultimate beneficiary of the payments or other benefits, and all intermediaries.
8. Directing that there be a debate of the respondents' accounts, and payment by the accounting respondents of all amounts or the full value of the benefits unlawfully and/or corruptly obtained pursuant to the impugned decisions or fraudulent or corrupt conduct set forth in the founding affidavit to:
 - 8.1 the state entity from which the funds or other benefits were obtained;
 - 8.2 *alternatively*, any entity or person who has suffered the pecuniary loss to which such amount or benefit relates, unless such entity or person was itself involved in the decisions or the conduct;
 - 8.3 if the entities or persons set forth in 8.1 or 8.2 cannot be identified or do not exist, the National Revenue Fund.
9. Directing that the aforesaid debate of the respondents' accounts be conducted before this Honourable Court on a date and at a time directed by

the Judge President of this Honourable Court. Rules 35, 36 and 38 of the Uniform Rules shall apply to such a debate.

10. Ordering any of the respondents who opposes this application, jointly and severally along with any other respondent who opposes the relief sought by the applicants, the one paying the others to be absolved, to pay the costs of this application on an attorney and own client scale, including the costs of two counsel;
11. Granting the applicants further and / or alternative relief.

TAKE NOTICE FURTHER THAT the attached affidavits of **FRANCIS ANTONIE** and **MICHAEL-JOHN SPARGO**, together with the annexes thereto, will be used in support of the relief sought in this notice of motion.

TAKE NOTICE FURTHER that, under Rule 53(1)(a) of the Uniform Rules of Court, the respondents are called upon to show cause why the impugned decisions (set out in paragraph 1 above) should not be reviewed and corrected or set aside.

TAKE NOTICE FURTHER that, under Rule 53(1)(b) of the Uniform Rules of Court, the first, second, eighth, ninth, tenth, twelfth, fourteenth, sixteenth to eighteenth, twenty sixth to thirty second, fifty ninth, sixtieth, sixty eighth and seventy fourth respondents are required within 15 days after receipt hereof to dispatch to the Registrar of this Honourable Court the record of the proceedings sought to be reviewed and set aside (including all plans, correspondence, reports, memoranda, documents, evidence and other information which were before the respondents at the time when the decisions in question were made), together with such reasons

as the relevant respondents are by law required to give or desires to make, and to notify the applicants that this has been done.

TAKE NOTICE FURTHER that within 10 days of receipt of the record from the Registrar, the applicants may, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of their notice of motion and supplement their founding affidavit in terms of Rule 53(4) of the Uniform Rules of Court.

TAKE NOTICE FURTHER THAT the applicants have appointed Webber Wentzel of 90 Rivonia Road, Sandton, 2196 as their attorneys of record.

TAKE NOTICE FURTHER THAT the address at which the applicants will accept service of notices and other process in these proceedings is Webber Wentzel, care of Hills Incorporated Attorneys at 835 Jan Shoba Street (Duncan), Brooklyn, Pretoria; *alternatively*: vlad.movshovich@webberwentzel.com.

TAKE NOTICE FURTHER that if any of the respondents intend to oppose this application, they are required, under Rule 53(5):

- (a) within 15 days after the receipt of this notice of motion or any amendment thereof, to deliver notice to the applicants that they intend to oppose and in such notice to appoint an address within fifteen kilometres of the office of the Registrar at which they will accept notice and service of all process in these proceedings; and
- (b) within 30 days after the expiry of the time referred to in Rule 53(4), to deliver any affidavit they may desire in answer to the allegations made by the applicants.

TAKE NOTICE FURTHER that if no such notice of intention to oppose is given, application will be made to this Honourable Court for an order in terms the notice of motion on _____ at 10h00 or so soon thereafter as counsel may be heard.

DATED AT JOHANNESBURG ON 14 DECEMBER 2017


WEBBER WENTZEL
Applicants' Attorneys
90 Rivonia Road
Sandton
2196
Tel: (011) 530 5000
Fax: (011) 530 6867
Ref: V Movshovich / D Rafferty /
K Eksteen / M Spargo /
D Sive
3021351

**c/o HILLS INCORPORATED
ATTORNEYS**
835 Jan Shoba Street
Brooklyn
Pretoria
0075
Tel: 087 230 7314
Ref: A Engelbrecht

TO: THE REGISTRAR
High Court
PRETORIA

AND TO: ESKOM SOC LIMITED
First Respondent
Megawatt Park
Maxwell Drive, Sunninghill Sandton
Johannesburg
By hand and email:
GovendD5@eskom.co.za and
dean.govender@eskom.co.za

**AND TO: PRESIDENT OF THE REPUBLIC
OF SOUTH AFRICA**
Second Respondent

Union Buildings
Government Avenue
Pretoria
By hand and email:
president@po.gov.za

AND TO: **AJAY KUMAR GUPTA**
Third Respondent
5 Saxonwold Drive
Saxonwold
2196
By hand and email:
AjayG@sahara.co.za

AND TO: **ATUL KUMAR GUPTA**
Fourth Respondent
5 Saxonwold Drive
Saxonwold
2196
By hand and email:
atul@sahara.co.za

AND TO: **RAJESH KUMAR GUPTA**
Fifth Respondent
5 Saxonwold Drive
Saxonwold
2196
By hand and email:
tony@sahara.co.za

AND TO: **DUDUZANE ZUMA**
Sixth Respondent
No 1 8 Griswold Road
Saxonwold
2196
By hand and email:
duduzani.zuma@gmail.com

AND TO: **TEGETA EXPLORATION AND
RESOURCES (PTY) LTD**
Seventh Respondent
Graystone Ridge Office Park
144 Katherine Street
Sandown
Sandton
2146
By hand

AND TO: **MINISTER OF MINERAL
RESOURCES**
Eighth Respondent
Trevenna Campus
Cnr Meintjes and Francis Baard

Street, Sunnyside
Pretoria
By hand and email:
seipati.dlamini@dmr.gov.za

AND TO: **MINISTER OF PUBLIC
ENTERPRISES**
Ninth Respondent
Infotech Building
1090 Arcadia Street
Hatfield
Pretoria
By hand and email:
Mziwonke.Jacobs@dpe.gov.za

AND TO: **MINISTER OF FINANCE**
Tenth Respondent
40 Church Street
Old Reserve Bank Building
2nd Floor
Pretoria
By hand and email:
Vuyiswa.Monye@treasury.gov.za

AND TO: **MINISTER OF WATER AND
SANITATION**
Eleventh Respondent
Sedibeng Building
185 Frances Baard Street
Pretoria
By hand and email:
thomass@dws.gov.za

AND TO: **NATIONAL TREASURY**
Twelfth Respondent
40 WF Nkomo Street
Pretoria
By hand and email:
DGRegistry@treasury.gov.za

AND TO: **DEPARTMENT OF PUBLIC
ENTERPRISES**
Thirteenth Respondent
Infotech Building
1090 Arcadia Street
Hatfield
Pretoria
By hand and email:
DGOffice@dpe.gov.za

AND TO: **DEPARTMENT OF MINERAL
RESOURCES**
Fourteenth Respondent

Trevenna Campus, Building 2C
Cnr Meintjes and
Francis Baard Street
Sunnyside
Pretoria

By hand and email:
david.msiza@dmr.gov.za

AND TO: **DEPARTMENT OF WATER AND
SANITATION**

Fifteenth Respondent
Sedibeng Building
185 Frances Baard Street
Pretoria

By hand and email:
centralp@dws.gov.za

AND TO: **BRIAN MOLEFE**
Sixteenth Respondent
759 Camelford Road
Cornwall Hill Estate
Irene
0157
By hand

AND TO: **MARK VIVIAN PAMENSKY**
Seventeenth Respondent
11 West Road Estate
Farringdon Road
Morningside
Sandton
2196
By hand and email:
markpam14@gmail.com

AND TO: **ANOJ SINGH**
Eighteenth Respondent
21 Silversands Avenue Wendywood
Sandton
2146
By hand and email:
dnojsigh@eskom.com.za

AND TO: **SALIM AZIZ ESSA**
Nineteenth Respondent
39 First Avenue
Houghton
2041
By hand and email:
salimessa@gmail.com

AND TO: **NAZEEM HOWA**
Twentieth Respondent

24 Greenfield Road
Greenside
Johannesburg
2193
By hand and email:
nazeemh@tnamedia.co.za

AND TO: **RONICA RAGAVAN**
Twenty First Respondent
129B Bishop Bird Street
Rooihuiskraal North
Centurion
0154
By hand and email:
ronica@oakbay.co.za

AND TO: **GOLDRIDGE TRADING (PTY) LTD**
Twenty Second Respondent
Block A Lower Ground Floor
Grayston Ridge
144 Katherine Street
Sandown
2146
By hand

AND TO: **CHETALI GUPTA**
Twenty Third Respondent
5 Saxonwold Drive
Saxonwold
2196
By hand

AND TO: **ARTI GUPTA**
Twenty Fourth Respondent
5 Saxonwold Drive
Saxonwold
2196
By hand

AND TO: **ASHU CHAWLA**
Twenty Fifth Respondent
3 Saxonwold Drive
Saxonwold
2196
By hand and email:
ashu@sahara.co.za

AND TO: **MATSHELA MOSES KOKO**
Twenty Sixth Respondent
25 Xanada Estate
Hartbeespoort Dam
0000
By hand and email:

KokoMM@eskom.co.za

AND TO: **BALDWIN NGUBANE**
Twenty Seventh Respondent
32 Bond Place
Midstream Estate
Midrand
1698
By hand

AND TO: **NAZIA CARRIM**
Twenty Eighth Respondent
191 Ganges Avenue
Nirvana
Polokwane
Limpopo
By hand

AND TO: **ROMEO KHUMALO**
Twenty Ninth Respondent
83 Epson Chase
Saddlebrook Estate
Rose Road
Kyalami
1684
By hand

AND TO: **DEVAPUSHPUM VIROSHINI
NAIDOO**
Thirtieth Respondent
22 Robert Crescent
Morningside
Sandton
2196
By hand

AND TO: **MARIAM CASSIM**
Thirty First Respondent
6 North Road
Riveria
Johannesburg
2001
By hand

AND TO: **CHWAYITA MABUDE**
Thirty Second Respondent
04 Jubille Drive
Blackheath
Johannesburg
Gauteng
2000
By hand

- AND TO: **MABENGELA INVESTMENTS (PTY) LTD**
Thirty Third Respondent
JIC House
106 16th Street
Midrand
1685
By hand
- AND TO: **ELGASOLVE (PTY) LTD**
Thirty Fourth Respondent
Unit 20
No 1 Melrose Boulevard
Melrose Arch
Melrose
2198
By hand
- AND TO: **OAKBAY INVESTMENTS (PTY) LTD**
Thirty Fifth Respondent
Grayston Ridge Office Park
144 Katherine Street
Sandton
2196
By hand and email:
info@oakbay.co.za
- AND TO: **OAKBAY RESOURCES AND ENERGY LIMITED**
Thirty Sixth Respondent
94 Regency Drive
Route 21
Corporate Park
Irene
0181
By hand
- AND TO: **ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD**
Thirty Seventh Respondent
89 Gazelle Avenue
Corporate Park South
1685
By hand
- AND TO: **SHIVA URANIUM (PTY) LTD**
Thirty Eighth Respondent
1A Berg Street
Hartbeesfontein
2600
By hand

AND TO: **TRILLIAN HOLDINGS (PTY) LTD**
Thirty Ninth Respondent
4th Floor
23 Melrose Boulevard
Melrose Arch
2076
By hand

AND TO: **TRILLIAN FINANCIAL ADVISORY
(PTY) LTD**
Fortieth Respondent
4th Floor
23 Melrose Boulevard
Melrose Arch
2076
By hand

AND TO: **TRILLIAN CAPITAL PARTNERS
(PTY) LTD**
Forty First Respondent
4th Floor
23 Melrose Boulevard
Melrose Arch
2076
By hand and email:
info@tcp.co.za

AND TO: **TRILLIAN MANAGEMENT
CONSULTING (PTY) LTD**
Forty Second Respondent
4th Floor
23 Melrose Boulevard
Melrose Arch
2076
By hand

AND TO: **OPTIMUM COAL HOLDINGS
(PTY) LTD**
Forty Third Respondent
36 Fricker Road
Illovo
Johannesburg
2196
By hand

AND TO: **WESTDAWN INVESTMENTS
(PTY) LTD**
Forty Fourth Respondent
JIC House
106 16th Street
Midrand
1685

By hand**AND TO: MFAZI INVESTMENTS (PTY) LTD**

Forty Fifth Respondent
1st Floor Saley House
81 Crown Road
Fordsburg
2092

By hand**AND TO: CENTAUR DE ROODEPOORT
(PTY) LTD**

Forty Sixth Respondent
3 Roux Avenue
Vandia Grove
Bryanston
2194

By hand**AND TO: TNA MEDIA (PTY) LTD**

Forty Seventh Respondent
52 Lechwe Street
Corporate Park South
Old Pretoria Main Road
Midrand
1685

By hand and email:

info@thenewage.co.za

**AND TO: INFINITY MEDIA NETWORKS
(PTY) LTD**

Forty Eighth Respondent
52 Lechwe Street
Corporate Park South
Old Pretoria Main Road
Midrand
1685

By hand**AND TO: OLIVE GREEN TRADERS (PTY)
LTD**

Forty Ninth Respondent
308 First Avenue
Westdene
Johannesburg
2092

By hand**AND TO: ACTION INVESTMENTS (PTY)
LTD**

Fiftieth Respondent
302 Protea Place
4 2nd Street

Orange Grove
2192
By hand

AND TO: **REGIMENTS CAPITAL (PTY) LTD**
Fifty First Respondent
35 Ferguson Road
Illovo
Johannesburg
2196
By hand and email:
info@regiments.co.za

AND TO: **ISLANDSITE INVESTMENTS 254
(PTY) LTD**
Fifty Second Respondent
Graystone Ridge Office Park
144 Katherine Street
Sandown
Sandton
2146
By hand

AND TO: **CONFIDENT CONCEPT (CC)**
Fifty Third Respondent
89 Gazelle Avenue
Corporate Park South
Midrand
1685
By hand

AND TO: **ALBATIME PTY LTD**
Fifty Fourth Respondent
J Block, 805 1st Floor
Hammetts Crossing
No 2 Selbourne Avenue
Fourways
2196
By hand

AND TO: **AEROHAVEN TRADING (PTY)
LTD**
Fifty Fifth Respondent
106A 16th Road
Midrand
1685
By hand

AND TO: **DIXIE INVESTMENTS (PTY) LTD**
Fifty Sixth Respondent
JIC House
106 16th Street
Midrand

1685

By hand

AND TO: **MOSEBENZI ZWANE**
Fifty Seventh Respondent
Trevenna Campus
Cnr Meintjes and Francis Baard
Street
Sunnyside
Pretoria
By hand and email:
mosebenziz.mail@gmail.com

AND TO: **LYNNE BROWN**
Fifty Eighth Respondent
Infotech Building
1090 Arcadia Street
Hatfield
Pretoria
By hand and email:
Mziwonke.Jacobs@dpe.gov.za

AND TO: **DIRECTOR GENERAL OF THE
DEPARTMENT OF MINERAL
RESOURCES**
Fifty Ninth Respondent
Trevenna Campus
Cnr Meintjes and Francis Baard
Street
Sunnyside
Pretoria
By hand and email:
david.msiza@dmr.gov.za

AND TO: **REGIONAL MANAGER,
MPUMALANGA REGION,
DEPARTMENT OF MINERAL
RESOURCES**
Sixtieth Respondent
Saveways Crescent Centre
Mandela Drive
Emalahleni
1035
By hand and email:
Aubrey.Tshivhandekano@dmr.gov.za

AND TO: **GLENCORE OPERATIONS
SOUTH AFRICA (PTY) LTD**
Sixty First Respondent
39 Melrose Boulevard
3rd Floor Melrose Arch
Melrose North
Gauteng

2196
By hand

AND TO: **JACOB GEDLEYIHLEKISA ZUMA**
Sixty Second Respondent
Union Buildings
Government Avenue
Pretoria
By hand and email:
president@po.gov.za

AND TO: **OPTIMUM COAL MINE (PTY) LTD**
Sixty Third Respondent
Graystone Ridge Office Park
Block A Lower Ground
Lower Floor
144 Katherine Street
Sandton
2196
By hand

AND TO: **KOORNFONTEIN MINES (PTY)
LTD**
Sixty Fourth Respondent
Graystone Ridge Office Park
Block A Lower Ground
Lower Floor
144 Katherine Street
Sandton
2196
By hand

AND TO: **OPTIMUM COAL TERMINAL (PTY)
LTD**
Sixty Fifth Respondent
Graystone Ridge Office Park
Block A Lower Ground
Lower Floor
144 Katherine Street
Sandton
2196
By hand

AND TO: **OPTIMUM VLAKFONTEIN MINING
AND EXPLORATION (PTY) LTD**
Sixty Sixth Respondent
Graystone Ridge Office Park
Block A Lower Ground
Lower Floor
144 Katherine Street
Sandton
2196
By hand

- AND TO: **OPTIMUM OVERVAAL MINING
AND EXPLORATION (PTY) LTD**
Sixty Seventh Respondent
Graystone Ridge Office Park
Block A Lower Ground
Lower Floor
144 Katherine Street
Sandton
2196
By hand
- AND TO: **THE CHAIRMAN OF ESKOM SOC
LTD, ZETHEMBE WILFRED
KHOZA**
Sixty Eighth Respondent
Megawatt Park, Maxwell Drive
Sunninghill
Sandton
Johannesburg
By hand and email:
mbilasn@eskom.co.za
- AND TO: **VENETE JARLENE KLEIN**
Sixty Ninth Respondent
11 Numeral Street
Mooikloof Estates
Pretoria
Gauteng
0059
By hand
- AND TO: **GIOVANNI MICHELE LEONARDI**
Seventieth Respondent
Megawatt Park, Maxwell Drive
Sunninghill
Sandton
Johannesburg
By hand
- AND TO: **PATHMANATHAN NAIDOO**
Seventy First Respondent
Megawatt Park, Maxwell Drive
Sunninghill
Sandton
Johannesburg
By hand
- AND TO: **DIRECTOR GENERAL OF THE
DEPARTMENT OF PUBLIC
ENTERPRISES**
Seventy Second Respondent
Infotech Building

1090 Arcadia Street
Hatfield
Pretoria
By hand and email:
DGOffice@dpe.gov.za

AND TO: **MOGOKARE SELEKE**
Seventy Third Respondent
Infotech Building
1090 Arcadia Street
Hatfield
Pretoria
By hand and email:
Lebohang.ruele@dpe.gov.za

AND TO: **COLLIN MATJILA**
Seventy Fourth Respondent
13 Fraca Villa
Willow Road
Craigavon
Gauteng
2196
By hand

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO

In the matter between:

THE HELEN SUZMAN FOUNDATION First Applicant

MAGDALENA FRANCISZKA WIERZYCKA Second Applicant

and

ESKOM HOLDINGS SOC LIMITED First Respondent

**THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA** Second Respondent

AJAY KUMAR GUPTA Third Respondent

ATUL KUMAR GUPTA Fourth Respondent

RAJESH KUMAR GUPTA Fifth Respondent

DUDUZANE ZUMA Sixth Respondent

TEGETA EXPLORATION AND RESOURCES (PTY) Seventh Respondent

LTD

MINISTER OF MINERAL RESOURCES Eighth Respondent

MINISTER OF PUBLIC ENTERPRISES Ninth Respondent

MINISTER OF FINANCE Tenth Respondent

MINISTER OF WATER AND SANITATION Eleventh Respondent

NATIONAL TREASURY Twelfth Respondent

DEPARTMENT OF PUBLIC ENTERPRISES Thirteenth Respondent

DEPARTMENT OF MINERAL RESOURCES Fourteenth Respondent



DEPARTMENT OF WATER AND SANITATION

Fifteenth Respondent

BRIAN MOLEFE

Sixteenth Respondent

MARK PAMENSKY

Seventeenth Respondent

ANOJ SINGH

Eighteenth Respondent

SALIM AZIZ ESSA

Nineteenth Respondent

NAZEEM HOWA

Twentieth Respondent

RONICA RAGAVAN

Twenty First Respondent

THE PERSONS LISTED IN ANNEX "FA1"

Twenty Second to Seventy

Third Respondents

FOUNDING AFFIDAVIT

I, the undersigned,

FRANCIS ANTONIE

do hereby make oath and say:

1. I am an adult male of full legal capacity and a director of the Helen Suzman Foundation ("**HSF**"), the first applicant, holding office as such at 2 Sherborne Road, Parktown, Johannesburg.
2. I am duly authorised to depose to this affidavit on behalf of the applicants.
3. Save as appears from the context, the facts in this affidavit are within my own personal knowledge and are, to the best of my knowledge and belief, both true and correct.



4. Where I rely upon the advice of others, I verily believe such advice to be true and correct. Where I rely upon legal advice, this has been furnished to me by my legal representatives.
5. The purpose of this application, which is brought in the public interest, is to set aside various unlawful, improper and/or corrupt exercises of public power and to recover the proceeds thereof for the benefit of the South African fiscus. In bringing the application, the applicants exercise their constitutional rights, including the right to administrative justice and the right to ensure that exercises of powers by persons entrusted with public power comport with the rule of law, the Promotion of Administrative Justice Act, 2000 ("**PAJA**") and the principle of legality.

PARTIES

The applicants

6. The first applicant is the HSF. The HSF was established in 1993 and is a non-governmental organisation whose objectives are to "*defend the values that underpin our liberal constitutional democracy and to promote respect for human rights*".
7. The second applicant is Magdalena Franciszka Wierzycka ("**Magdalena Wierzycka**"), an adult female and the chief executive officer of Sygnia Limited, a public company listed on the Johannesburg Stock Exchange. Magdalena Wierzycka was just 12 years old when she fled with her family from communist Poland, crossing the border illegally in the dead of the night. Magdalena Wierzycka is passionate about fighting for a free and fair South Africa, and has been at the forefront of the corporate fight against corruption



and maladministration in the public sector. She has been vocal in criticising corruption in both the public and private sector, and has publicly called on South African government, businesses and citizens to root out corruption and to support press freedom and civil rights organisations.

8. The applicants approach this Court, firstly, in their own interest. They are primarily concerned with the principles of democracy and constitutionalism, as well as the rule of law. These are all implicated by the unlawful and corrupt decisions and conduct, as set forth in this affidavit.
9. The applicants also approach this Court in the public interest. All South Africans have an interest in the rule of law, the requirements of a properly functioning constitutional democracy, and, in particular, the urgent steps necessary to root out corruption and maladministration in our nascent democracy and recover public funds from those who are benefitting from misuse of public coffers.
10. As the Constitutional Court has held in *Glenister v the President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC) at paragraph [166]: "*corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law and the foundational values of our nascent constitutional project. It fuels maladministration and public fraudulence and imperils the capacity of the state to fulfil its obligations to respect, protect, promote and fulfil the rights enshrined in the Bill of Rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk.*"



11. The emerging evidence in the public domain suggests that state-owned enterprises ("**SOEs**") have been and are being repurposed to serve the private accumulation interests, particularly those of a small powerful elite identified as the Gupta family and their associates. As set out below, the respondents have conducted themselves with a view illegitimately to advance self, relational or sectoral interests, to the prejudice of the interests of others, including of the public.

12. By its very nature, this mode of governance is counter development. The corrupt rent-seeking behaviour and extortion set out below have undermined South Africa's development agenda by diverting state resources into the hands of unproductive and corrupt elites. State resources are vital to the constitutional project of redressing the wrongs of the past and creating a transformed and prosperous South Africa. The deepening corrosive culture of corruption within the state, and the opening of spaces for grafting a shadow state onto the existing constitutional state, has substantially impaired our constitutional project and, without urgent intervention, seems destined to refocus state energies on private wealth accumulation. When public powers are exercised for ulterior purposes and state resources are squandered or embezzled, the citizens of South Africa are directly affected. An example is provided by the widely publicised situation at Eskom Holdings SOC Limited, which shows clear evidence of a serious lack of corporate governance and a variety of corrupt practices, together with a very weak financial condition. Eskom's tariff increase application, which is currently being considered by the National Energy Regulator, requests an average tariff increase of 19.9% (but 27.5% to municipalities), at a time when Eskom's sales have not increased for the last five years and Eskom has surplus generating capacity.



13. This application is of particular significance given the lack of action by those state authorities who are mandated to combat criminal activities. In relation to ostensible criminal activity in commercial dealings involving organs of state and public enterprises, the relevant state authorities are the South African Police Service (in particular the Directorate for Priority Crime Investigation ("DPCI")) and the National Prosecuting Authority. The lack of action on the part of these state authorities is alarming, in spite of the substantial body of evidence of ostensible criminal activity which has been available publicly for some time and which forms the basis of this affidavit.
14. As a consequence of these authorities' inability and/or unwillingness to take any form of action, civil society is compelled to bring applications such as the present one to the Courts. Civil society is, in doing so, attempting to ensure that the rule of law is upheld and that what appear to be extensive criminal conspiracies are not allowed to continue untrammelled. The facts set forth in this affidavit are an affront to democracy and imperil the future of our constitutional order. Corruption and maladministration strike at the very heart of the State's constitutional duties, including under sections 7 and 195(2) of the Constitution.

The respondents

15. The first respondent is Eskom. Section 3 of the Eskom Act, 1987 states that the objects of Eskom are to provide the system by which the electricity needs of the consumer may be satisfied in the most cost-effective manner, subject to resource constraints and the national interest, and to perform such other functions as may be assigned to it. On 1 July 2002, Eskom was converted from a statutory body to a public company by the Eskom Conversion



Act, 2001, subject to the provisions of the Companies Act, 1973 and subsequently the Companies Act, 2008. This in no way affected its public character. The Government of the Republic of South Africa is the sole shareholder of Eskom. The shareholder representative is the Minister of Public Enterprises. It is thus an organ of state, as contemplated in the Constitution and its decisions are subject to review under PAJA, *alternatively*, the principle of legality.

16. Eskom's role in overseeing the supply of a crucial commodity to the country as a whole requires it to perform its functions in the national interest. Eskom's vital function helps South Africa achieve its broader developmental objectives of rural electrification, free basic electricity, job creation, and skills and supplier development.
17. Eskom is subject to the Public Finance Management Act, 1999 ("**PFMA**") and the Treasury Regulations. It has the power to raise money from the public and the duty to spend its income on the supply of essential services in the public interest. Eskom must ensure that it is financially viable to continue to operate and to raise debt to fund its business operations and capital expansions. Section 217 of the Constitution provides that when an organ of state contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Eskom's address for the purposes of legal proceedings is Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg.
18. The second respondent is the President of the Republic of South Africa, currently Jacob Gedleyihlekisa Zuma ("**President Zuma**"). President Zuma is the Head of State and Head of the National Executive. As held by the



Constitutional Court in *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* 2016 (3) SA 580 (CC) at paragraph [20] "[h]e is the first citizen of this country and occupies a position indispensable for the effective governance of our democratic country. Only upon him has the constitutional obligation to uphold, defend and respect the Constitution as the supreme law of the Republic been expressly imposed." As set out below, President Zuma has close ties to the Gupta family and has used his significant power and influence unduly to interfere with various state functionaries in order to benefit the Gupta family. This application seeks *inter alia* the setting aside of the unconstitutional and unlawful decision by President Zuma to appoint Mosebenzi Zwane as the Minister of Resources.

19. The third respondent is Mr Ajay Kumar Gupta ("**Ajay Gupta**"), an adult male former director of Vusizwe Media (Pty) Ltd ("**Vusizwe Media**"), with his residence at 5 Saxonwold Drive, Saxonwold Drive, Saxonwold, 2196. Ajay Gupta is cited in his personal capacity. During an interview on 4 October 2016 with the Public Protector in terms of section 7 of the Public Protector Act, 1994 ("**Public Protector Act**"), Ajay Gupta admitted to being friends with President Zuma.

20. The fourth respondent is Mr Atul Kumar Gupta ("**Atul Gupta**"), an adult male, with his residence at 5 Saxonwold Drive, Saxonwold Drive, Saxonwold, 2196.

Atul Gupta is:

20.1 the former director of:

20.1.1 Confident Concept (CC) ("**Confident Concept**")

- 20.1.2 Shiva Uranium (Pty) Ltd ("**Shiva Uranium**");
- 20.1.3 Islandsite Investments One Hundred and Eighty (Pty) Ltd ("**Islandsite Investments One Hundred and Eighty**");
- 20.1.4 Islandsite Investments 254 (Pty) Ltd ("**Islandsite Investments 254**");
- 20.1.5 Oakbay Resources and Energy Limited ("**ORE**");
- 20.1.6 Infinity Media Networks (Pty) Ltd ("**Infinity Media**");
- 20.1.7 TNA Media (Pty) Ltd ("**TNA**"); and
- 20.1.8 Annex Distribution (Pty) Ltd ("**Annex Distribution**");
- 20.2 a shareholder of:
 - 20.2.1 Islandsite Investments One Hundred and Eighty;
 - 20.2.2 Oakbay Investments (Pty) Ltd ("**Oakbay Investments**"); and
 - 20.2.3 Confident Concept.
- 21. The fifth respondent is Mr Rajesh Kumar Gupta ("**Rajesh Gupta**"), an adult male, with his residence at 5 Saxonwold Drive, Saxonwold Drive, Saxonwold, 2196. Rajesh Gupta is:
 - 21.1 a director of Confident Concept;
 - 21.2 a former director of:
 - 21.2.1 Islandsite Investments One Hundred and Eighty;
 - 21.2.2 Westdawn Investments (Pty) Ltd ("**Westdawn Investments**");



21.2.3 Mabengela Investments (Pty) Ltd ("**Mabengela Investments**");
and

21.2.4 Islandsite Investments 254; and

21.3 a shareholder of:

21.3.1 Mabengela Investments;

21.3.2 Islandsite Investments One Hundred and Eighty; and

21.3.3 Confident Concept.

22. The sixth respondent is Mr Duduzane Zuma ("**Duduzane Zuma**"), an adult male, with his residence at No 18 Griswold, Saxonwold, 2196. Duduzane Zuma is cited in his personal capacity, and in his capacity as:

22.1 the former director of:

22.1.1 Shiva Uranium;

22.1.2 Westdawn Investments;

22.1.3 Mabengela Investments;

22.1.4 Islandsite Investments 254; and

22.1.5 Dixie Investments (Pty) Ltd ("**Dixie**"); and

22.2 a shareholder of Mabengela Investments.

23. The seventh respondent is Tegeta Exploration and Resources (Pty) Ltd ("**Tegeta**"), a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number:



2006/014492/07) having its registered place of business at Graystone Ridge Office Park, 144 Katherine Street, Sandown, Sandton, 2146.

24. The eighth respondent is the Minister of Mineral Resources, currently Mr Mosebenzi Zwane, who is a member of Cabinet cited herein in his official capacity as set forth under the Mineral and Petroleum Resources Development Act, 2002 ("**MPRDA**"). The Minister is cited by virtue of his responsibility for the administration and implementation of the MPRDA and the actions of the Department of Mineral Resources. He is also cited because some of the decisions sought to be reviewed and set aside are his, or decisions for which he has official responsibility. The Minister of Mineral Resources' address for the purposes of legal proceedings is Trevenna Campus, Cnr Meintjes and Francis Baard Street, Sunnyside, Pretoria.
25. The ninth respondent is the Minister of Public Enterprises, currently Ms Lynne Brown, who is cited in her official capacity as the executive authority of the Department of Public Enterprises. Executive authority over SOEs, including over Eskom, is vested in the Minister of Public Enterprises, whose address for the purposes of legal proceedings is Infotech Building, 1090 Arcadia Street, Hatfield, Pretoria.
26. The tenth respondent is the Minister of Finance, currently Malusi Gigaba, who is cited in his official capacity as the head of the National Treasury. The Minister of Finance is responsible for a range of government decisions in terms of the PFMA. The Minister of Finance's address for the purposes of legal proceedings is 40 Church Street, Old Reserve Bank Building, 2nd Floor, Pretoria.



27. The eleventh respondent is the Minister of Water and Sanitation, currently Nomvula Mokonyane, who is cited in her official capacity as the executive authority of the Department of Water and Sanitation. The Minister of Water and Sanitation is responsible for South Africa's water resources and is entrusted with executive authority over the granting of water use licences by the Department of Water and Sanitation under the National Water Act, 1998. The Minister of Water and Sanitation's address for the purposes of legal proceedings is Sedibeng Building, 185 Frances Baard Street, Pretoria.
28. The twelfth respondent is the National Treasury. Section 216 of the Constitution provides that national legislation must establish a National Treasury. The National Treasury was accordingly established by section 5 of the PFMA. The National Treasury is required to monitor and assess the implementation of the PFMA, including its prescribed norms and standards. The National Treasury's address for the purposes of legal proceedings is 40 WF Nkomo Street, Pretoria.
29. The thirteenth respondent is the Department of Public Enterprises, a national department as set out in section 7 of and schedule 1 to the Public Service Act (Proclamation 103 of 1994). The Department of Public Enterprises is the shareholder representative for government with oversight responsibility for Eskom, with its offices at Infotech Building, Suite 301, 1090 Arcadia Street, Hatfield, Pretoria.
30. The fourteenth respondent is the Department of Mineral Resources ("**DMR**"), a national department as set out in section 7 of and schedule 1 to the Public Service Act (Proclamation 103 of 1994) and defined in section 1 of the



MPRDA with its offices at Trevenna Campus, Building 2C, Cnr Meintjes and Francis Baard Street, Sunnyside, Pretoria.

31. The fifteenth respondent is the Department of Water and Sanitation, which is the custodian of South Africa's water resources. The Department of Water and Sanitation is responsible for the approval of water use licence and integrated water use licence applications under the National Water Act, 1998. The Department of Water and Sanitation's address for the purposes of legal proceedings is Sedibeng Building, 185 Francis Baard Street, Pretoria.

32. The sixteenth respondent is Mr Brian Molefe ("**Brian Molefe**"), an adult male former CEO of Eskom and Transnet SOC Limited ("**Transnet**"), with his residence at 759 Camelford Road, Cornwall Hill Estate, Irene, 0157. After the release of the Public Protector's report titled "The State of Capture Report" ("**the State of Capture Report**"), by way of a Court order on 2 November 2016, criminal charges were laid against Brian Molefe on 17 November 2016. To avoid prolixity, I do not attach the entire State of Capture Report to this affidavit (I only attach extracts), but shall make the entire Report available upon request.

33. The seventeenth respondent is Mr Mark Vivian Pamensky ("**Mark Pamensky**"), an adult male and former Eskom Board member, with his residence at 11 West Road Estate, Farringdon Road, Morningside, Sandton, 2196. Mark Pamensky is:

33.1 a former director of:

33.1.1 Eskom;

33.1.2 Shiva Uranium; and

33.1.3 ORE.

34. The eighteenth respondent is Mr Anoj Singh ("**Anoj Singh**" / "**Mr Singh**"), an adult male, with his residence at 21 Silversands Avenue, Wendywood, Sandton, 2146. Anoj Singh is cited in his personal capacity, and in his capacity as the suspended Eskom Chief Financial Officer ("**CFO**"). As Eskom's CFO, Anoj Singh is responsible for Eskom's financial and risk management. On Friday 28 July 2017, criminal charges were laid against Mr Singh in relation to a range of corruption scandals at Eskom in which he has been implicated. On 29 September 2017, Eskom suspended Anoj Singh, pending a disciplinary hearing.

35. The nineteenth respondent is Mr Salim Aziz Essa ("**Salim Essa**" / "**Mr Essa**"), an adult male, with his residence at 39 First Avenue, Houghton, 2041. Salim Essa is:

35.1 a director of:

35.1.1 Elgasolve (Pty) Ltd ("**Elgasolve**"); and

35.1.2 Trillian Holdings (Pty) Ltd ("**Trillian Holdings**"); and

35.2 a shareholder of:

35.2.1 Elgasolve; and

35.2.2 Trillian Holdings.

36. The twentieth respondent is Mr Nazeem Howa ("**Nazeem Howa**" / "**Mr Howa**"), an adult male, with his residence at 24 Greenfield Road, Greenside, Johannesburg, 2193. Nazeem Howa is:



36.1 a former CEO of Oakbay Investments; and

36.2 a former director of:

36.2.1 Shiva Uranium;

36.2.2 Tegeta;

36.2.3 Optimum Coal Mine (Pty) Ltd ("**OCM**");

36.2.4 Optimum Coal Terminal (Pty) Ltd ("**OCT**");

36.2.5 ORE;

36.2.6 TNA;

36.2.7 Infinity Media; and

36.2.8 Richards Bay Coal Terminal (Pty) Ltd ("**RBCT**").

37. The twenty first respondent is Ms Ronica Ragavan ("**Ronica Ragavan**" / "**Ms Ragavan**"), an adult female, with her residence at 129B Bishop Bird Street, Rooihuiskraal North, Centurion, 0154. Ronica Ragavan is:

37.1 a director of:

37.1.1 Tegeta;

37.1.2 Oakbay Investments;

37.1.3 Islandsite Investments One Hundred and Eighty;

37.1.4 Westdawn Investments;

37.1.5 Annex Distribution;



- 37.1.6 Koornfontein Mines (Pty) Ltd ("**Koornfontein Mines**");
- 37.1.7 Mfazi Investments (Pty) Ltd ("**Mfazi**");
- 37.1.8 Tegeta Resources (Pty) Ltd ("**Tegeta Resources**");
- 37.1.9 ORE;
- 37.1.10 Aerohaven Trading (Pty) Ltd ("**Aerohaven**"); and
- 37.2 a shareholder of Aerohaven.
38. The twenty second respondent Goldridge Trading (Pty) Ltd ("**Goldridge**"), a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2009/006116/07) having its registered place of business at Block A Lower Ground Floor, Grayston Ridge, 144 Katherine Street, Sandown, 2146.
39. The twenty third respondent is Ms Chetali Gupta ("**Chetali Gupta**"), an adult female, with her residence at 5 Saxonwold Drive, Saxonwold Drive, Saxonwold, 2196. Chetali Gupta is:
- 39.1 a director of Confident Concept;
- 39.2 a former director of:
- 39.2.1 Islandsite Investments One Hundred and Eighty; and
- 39.2.2 Annex Distribution; and
- 39.3 a shareholder of:
- 39.3.1 Oakbay Investments;
- 39.3.2 Islandsite Investments One Hundred and Eighty; and



39.3.3 Confident Concept.

40. The twenty fourth respondent is Ms Arti Gupta ("**Arti Gupta**"), an adult female, with her residence at 5 Saxonwold Drive, Saxonwold Drive, Saxonwold, 2196. Arti Gupta is:

40.1 a director of Confident Concept;

40.2 a former director of Islandsite Investments One Hundred and Eighty;
and

40.3 a shareholder of:

40.3.1 Islandsite Investments One Hundred and Eighty; and

40.3.2 Confident Concept.

41. The twenty fifth respondent is Mr Ashu Chawla ("**Ashu Chawla**" / "**Mr Chawla**"), an adult male, with his residence at 3 Saxonwold Drive, Saxonwold Drive, Saxonwold, 2196. Ashu Chawla is:

41.1 a director of:

41.1.1 Tegeta;

41.1.2 Oakbay Investments;

41.1.3 Islandsite Investments One Hundred and Eighty;

41.1.4 Confident Concept; and

41.1.5 Tegeta Resources;

41.2 a former director of ORE; and



- 41.3 a shareholder of Mabengela Investments.
42. The twenty sixth respondent is Mr Matshela Moses Koko ("**Matshela Koko**" "**Mr Koko**"), an adult male, with his residence at 25 Xanada Estate, Hartbeespoort Dam, 0000. Matshela Koko is cited in his personal capacity, and in his capacity as the former Acting CEO of Eskom and as a suspended Eskom Board member. Eskom suspended Matshela Koko in May 2017. Criminal charges were laid against Matshela Koko on 5 October 2016 regarding a series of irregularities, corruption and fraud at Eskom in which he has been implicated.
43. The twenty seventh respondent is Mr Baldwin Ngubane ("**Baldwin Ngubane**" / "**Mr Ngubane**"), an adult male, with his residence at 32 Bond Place, Midstream Estate, Midrand, 1698. Baldwin Ngubane is a former chairperson of the Eskom Board.
44. The twenty eighth respondent is Ms Nazia Carrim ("**Nazia Carrim**" / "**Ms Carrim**"), an adult female, with her residence at 191 Ganges Avenue, Nirvana, Polokwane, Limpopo. Nazia Carrim is a former member of the Eskom Board.
45. The twenty ninth respondent is Mr Romeo Khumalo ("**Romeo Khumalo**" / "**Mr Khumalo**"), an adult male, with his residence at 83 Epton Chase, Saddlebrook Estate, Rose Road, Kyalami, 1684. Romeo Khumalo is a former member of the Eskom Board.
46. The thirtieth respondent is Ms Devapushpum Viroshini Naidoo ("**Devapushpum Naidoo**" / "**Ms Naidoo**"), an adult female, with her residence at 22 Robert Crescent, Morningside, Sandton, 2196.



Devapushpum Naidoo is a former member of the Eskom Board and an employee of Albatime Pty Ltd ("**Albatime**").

47. The thirty first respondent is Ms Mariam Cassim ("**Mariam Cassim**" / "**Ms Cassim**"), an adult female, with her residence at 6 North Road, Riveria, Johannesburg, 2001. Mariam Cassim is a former member of the Eskom Board and a former employee of Sahara Computers (Pty) Ltd ("**Sahara Computers**").
48. The thirty second respondent is Ms Chwayita Mabude ("**Chwayita Mabude**" / "**Ms Mabude**"), an adult female, with her residence at 6 North Road, Riveria, Johannesburg, 2001. Chwayita Mabude is a former member of the Eskom Board.
49. The thirty third respondent is Mabengela Investments, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2008/014606/07) having its registered place of business at JIC House, 106 16th Street, Midrand, 1685.
50. The thirty fourth respondent is Elgasolve, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2010/017836/07) having its registered place of business at Unit 20, No 1 Melrose Boulevard, Melrose Arch, Melrose, 2198.
51. The thirty fifth respondent is Oakbay Investments, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2006/017975/07) having its registered place of business at Grayston Ridge Office Park, 144 Katherine Street, Sandton, 2196.



52. The thirty sixth respondent is ORE, a public company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2016/279254/07) having its registered place of business at 94 Regency Drive, Route 21, Corporate Park, Irene, 0181.
53. The thirty seventh respondent is Islandsite Investments One Hundred and Eighty, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2002/004934/07) having its registered place of business at 89 Gazelle Avenue, Corporate Park South, 1685.
54. The thirty eighth respondent is Shiva Uranium, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 1921/006955/07) having its registered place of business at 1A Berg Street, Hartbeesfontein, 2600.
55. The thirty ninth respondent is Trillian Holdings, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2015/168302/07) having its registered place of business at 4th Floor, 23 Melrose Boulevard, Melrose Arch, 2076.
56. The fortieth respondent is Trillian Financial Advisory (Pty) Ltd ("**Trillian Advisory**"), a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2014/122082/07) having its registered place of business at 4th Floor, 23 Melrose Boulevard, Melrose Arch, 2076.
57. The forty first respondent is Trillian Capital Partners (Pty) Ltd ("**Trillian Capital**"), a private company, duly registered and incorporated according to



the company laws of the Republic of South Africa (registration number: 2015/111759/07) having its registered place of business at 4th Floor, 23 Melrose Boulevard, Melrose Arch, 2076.

58. The forty second respondent is Trillian Management Consulting (Pty) Ltd, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2015/111709/07) having its registered place of business at 4th Floor, 23 Melrose Boulevard, Melrose Arch, 2076.

59. The forty third respondent is Optimum Coal Holdings (Pty) Ltd ("**OCH**"), a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2006/007799/06) having its registered place of business at 36 Fricker Road, Illovo, Johannesburg, 2196. OCH has a 100% shareholding in:

59.1 OCM;

59.2 Koorfontein;

59.3 OCT;

59.4 Vlakfontein;

59.5 Optimum Overvaal

59.6 Optimum Nekel Mining and Exploration (Pty) Ltd ("**Optimum Nekel**");
and

59.7 Optimum Mpefu Mining and Exploration (Pty) Ltd ("**Optimum Mpefu**")
 ("**the OCH entities**").



60. The forty fourth respondent is Westdawn Investments, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2006/020386/07) having its registered place of business at JIC House, 106 16th Street, Midrand, 1685.
61. The forty fifth respondent is Mfazi, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2007/011822/07) having its registered place of business at 1st Floor Saley House, 81 Crown Road, Fordsburg, 2092.
62. The forty sixth respondent is Centaur De Roodepoort (Pty) Ltd ("**Centaur South Africa**"), a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2014/061843/07) having its registered place of business at 3 Roux Avenue, Vandia Grove, Bryanston Ext, 2194.
63. The forty seventh respondent is TNA, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2010/006569/07) having its registered place of business at 52 Lechwe Street, Corporate Park South, Old Pretoria Main Road Midrand, 1685.
64. The forty eighth respondent is Infinity Media, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2011/003219/07) having its registered place of business at 52 Lechwe Street, Corporate Park South, Old Pretoria Main Road Midrand, 1685.



65. The forty ninth respondent is Olive Green Traders (Pty) Ltd, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2014/052475/07) having its registered place of business at 30B First Avenue, Westdene, Johannesburg, 2092.
66. The fiftieth respondent is Action Investments (Pty) Ltd, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 1968/000526/07) having its registered place of business at 302 Protea Place, 4 2nd Street, Orange Grove, 2192.
67. The fifty first respondent is Regiments Capital (Pty) Ltd, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2004/023761/07) having its registered place of business at 35 Ferguson Road, Illovo, Johannesburg, 2196.
68. The fifty second respondent is Islandsite Investments 254, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2007/035464/07) having its registered place of business at Graystone Ridge Office Park, 144 Katherine Street, Sandown, Sandton, 2146.
69. The fifty third respondent is Confident Concept, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2006/023982/07) having its registered place of business at 89 Gazelle Avenue, Corporate Park South, Midrand, 1685.



70. The fifty fourth respondent is Albatime, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2009/021474/07) having its registered place of business at J Block 805 1st Floor Hammets Crossing, No 2 Selbourne Avenue, Fourways, 2196
71. The fifty fifth respondent is Aerohaven, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2008/014743/07) having its registered place of business at 106A 16th Road, Midrand, 1685.
72. The fifty sixth respondent is Dixie, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2008/026821/07) having its registered place of business at JIC House, 106 16th Street, Midrand, 1685.
73. The fifty seventh respondent is Mr Mosebenzi Zwane, an adult male, with his place of work at Trevenna Campus, Cnr Meintjes and Francis Baard Street, Sunnyside, Pretoria.
74. The fifty eighth respondent is Ms Lynne Brown, an adult female, with her place of work at Infotech Building, 1090 Arcadia Street, Hatfield, Pretoria.
75. The fifty ninth respondent is the Director General of the DMR ("**Director-General of the DMR**"), in his official capacity, and whose address is Trevenna Campus, Cnr Meintjes and Francis Baard Street, Sunnyside, Pretoria. The Director-General of the DMR is cited by virtue of being the departmental official responsible for the day-to-day operations of the DMR.



76. The sixtieth respondent is the Regional Manager, Mpumalanga Region of the DMR ("**Mpumalanga Regional Manager**"), in his official capacity, and whose address is Saveways Crescent Centre, Mandela Drive, Emalahleni, 1035. The Mpumalanga Regional Manager is cited by virtue of his responsibilities under the MPRDA and his role in the impugned decisions set forth below.
77. The sixty first respondent is Glencore Operations South Africa (Pty) Ltd ("**Glencore**"), a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 1997/017998/07) having its registered place of business at 39 Melrose Boulevard, 3rd Floor Melrose Arch, Melrose North, Gauteng, 2196.
78. The sixty second respondent is Jacob Gedleyihlekisa Zuma (President Zuma as aforesaid), cited in his personal capacity and with his place of business at the Union Buildings, Government Avenue, Pretoria.
79. The sixty third respondent is OCM, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2007/005308/07) having its registered place of business at Graystone Ridge Office Park, Block A Lower Ground Lower Floor, 144 Katherine Street, Sandton, 2196.
80. The sixty fourth respondent is Koornfontein Mines (Pty) Ltd ("**Koornfontein**"), a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2006/013073/07) having its registered place of business at Graystone Ridge Office Park, Block A Lower Ground Lower Floor, 144 Katherine Street, Sandton, 2196.



81. The sixty fifth respondent is OCT, a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2007/005379/07) having its registered place of business at Graystone Ridge Office Park, Block A Lower Ground Lower Floor, 144 Katherine Street, Sandton, 2196.
82. The sixty sixth respondent is Optimum Vlakfontein Mining and Exploration (Pty) Ltd ("**Vlakfontein**"), a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2005/024619/07) having its registered place of business at Graystone Ridge Office Park, Block A Lower Ground Lower Floor, 144 Katherine Street, Sandton, 2196.
83. The sixty seventh respondent is Optimum Overvaal Mining and Exploration (Pty) Ltd ("**Optimum Overvaal**"), a private company, duly registered and incorporated according to the company laws of the Republic of South Africa (registration number: 2002/031293/07) having its registered place of business at Graystone Ridge Office Park, Block A Lower Ground Lower Floor, 144 Katherine Street, Sandton, 2196.
84. The sixty eighth respondent is the Chairman of Eskom, Zethembe Wilfred Khoza ("**Zethembe Khoza**"), an adult male, who is cited herein in his personal capacity and his official capacity as the Chairman of Eskom. Zethembe Khoza's address for the purposes of legal proceedings is Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg.
85. The sixty-ninth respondent is Venete Jarlene Klein ("**Venete Klein**"), an adult female former non-executive member and director of the Eskom Board.



Venete Klein's address for the purposes of legal proceedings is 11 Numeral Street, Mooikloof Estates, Pretoria, Gauteng, 0059.

86. The seventieth respondent Giovanni Michele Leonardi ("**Giovanni Leonardi**"), an adult male non-executive member and director of the Eskom Board, who is cited in his personal capacity and his official capacity as a director of the Eskom Board. Giovanni Leonardi's address for the purposes of legal proceedings is Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg.
87. The seventy first respondent Pathmanathan Naidoo ("**Pathmanathan Naidoo**"), an adult male non-executive member and director of the Eskom Board, who is cited in his personal capacity and his official capacity as a director of the Eskom Board. Pathmanathan Naidoo's address for the purposes of legal proceedings is Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg.
88. The seventy second respondent is the Director General of the Department of Public Enterprises, currently Mr Mogokare Seleke ("**Mogokare Seleke**"), who is cited in his representative capacity as an official of the Department of Public Enterprises. By virtue of the delegated authority vested in the Director General of Public Enterprises by the Minister of Public Enterprises, Mogokare Seleke also exercises executive authority over SOEs, including Eskom. His address for the purposes of legal proceedings is Infotech Building, 1090 Arcadia Street, Hatfield, Pretoria.
89. The seventy third respondent is Mogokare Seleke, an adult male, cited in his personal capacity. His address for the purposes of legal proceedings is Infotech Building, 1090 Arcadia Street, Hatfield, Pretoria.



ESKOM'S PLACE IN THE SOUTH AFRICAN ECONOMY AND THE PURPOSE/OVERVIEW OF THIS APPLICATION

SOEs and Eskom

90. Unlike government departments, SOEs are not required to table their budgets and expenditure plans in Parliament. As a result, it is easier to conceal details of SOE expenditure from public scrutiny.
91. Eskom is by far South Africa's largest SOE with annual revenues three times that of Transnet, and six times that of South African Airways SOC Limited ("**SAA**"). Eskom generates approximately 95% of South Africa's electricity supply and 45% of the electricity used in other parts of the African continent. Eskom controls the entire national high voltage transmission grid, and distributes electricity directly to consumers and to municipalities. During the 2016/17 financial year, Eskom's assets were valued at R710 billion, its capital expenditure was R67 billion, its revenue was R177 billion, its net operating expenses were R140 billion, its coal purchases were R50 billion, and staffing costs were R33 billion. An extract from Eskom's 2016/17 financial statements is annexed as "**FA2**".
92. Coal production in South Africa comprises almost entirely of thermal coal used for electricity generation. South Africa produces approximately 250 million to 258 million tonnes of thermal coal per annum and it exports approximately 22% of its annual production of thermal coal. South Africa is ranked as the 7th largest worldwide producer and exporter of thermal coal. Eskom and Sasol consume approximately 66% of all thermal coal produced in South Africa, utilising lower grades of coal for electricity generation and gas production, respectively. The majority of coal exported from South Africa



is exported through the RBCT, although certain volumes of coal are also exported from ports in Durban and Mozambique. I annex the Market and Competition Analysis submitted by Tegeta to the Competition Commission on 20 December 2015 ("**Market and Competition Analysis**") as "**FA3**".


93. Eskom's Integrated Report 2017 states that the decline in the global coal price over recent years has resulted in reduced private investment in the coal mining industry. Eskom's average coal costs are, however, now close to R400 per ton, up 211% since 2011. Burgeoning coal procurement costs, propelled by rent-seeking and corruption, have resulted in electricity tariffs increasing by more than 400% over the past decade, while Eskom's electricity services have deteriorated. The catastrophic effects of this on the South African economy and prospects for economic development and transformation are manifest.

The purpose and content of this application

94. What has recently come to light is evidence of widespread corruption and other unlawfulness in Eskom's operating expenditure. Eskom's operating budget includes maintenance, refurbishment, staffing costs, consulting and service contracts. The largest component, however, is for primary energy purchases - specifically coal, which is used to generate the bulk of Eskom's power. The most blatant acts of corruption and maladministration appear to have been perpetrated in relation to Eskom's coal procurement - through the awarding of over-priced coal contracts, the squeezing out of incumbent coal producers, and the unlawful acquisition of coal mines by the Gupta family, financed by Eskom.



95. The facts set forth in this affidavit illustrate that, over the course of several years, officials at the highest echelons of the South African State have been doing the bidding of a powerful family and their business associates, in disregard for their constitutional and other legal duties. During the period 2010 to 2015, key officers of state were, systematically, unlawfully removed from their positions and their critical government roles were, under undue influence, unlawfully and corruptly, filled with persons who were beholden to or were biased in favour of the Gupta family and their business interests.
96. By 2015, the Gupta family and their business associates had developed extensive links with President Zuma and several of his family members. At all relevant times, the President's children were direct beneficiaries of the Gupta family's businesses. Those businesses, the Gupta family and President Zuma's family members shortly after the President's assumption of office benefited unduly and improperly from State contracts and resources. Moreover, by 2015, as the facts below illustrate, the Gupta family and their business associates, improperly, unlawfully and corruptly:
- 96.1 sought to, and did, influence the appointment of members of the Cabinet and national government, including the appointment of Mosebenzi Zwane in September 2015 to the all-important portfolio of the Minister of Mineral Resources, and the appointment of Mr Seleke to the position of the Director General of the Department of Public Enterprises in December 2015;
- 96.2 influenced the appointment of Collin Matjila as the acting CEO of Eskom in March 2014;



96.3 deployed, with the assistance of the newly appointed Minister of Public Enterprises, Lynne Brown and otherwise, their foot soldiers *en masse* to Eskom, with the result that the majority of Eskom Board members had substantial Gupta connections by late 2014, the CEO who sought to uphold good governance within Eskom was removed in early 2015, and a new CEO, Brian Molefe, and CFO, Anoj Singh, were parachuted from another SOE, Transnet, to do the Guptas' bidding within Eskom. There is not only substantial evidence of insidious and constant contact between the new CEO and CFO on the one hand and the Gupta family on the other, but there is also direct evidence of multiple pecuniary and other benefits bestowed on relevant Eskom officials by the Guptas, including direct payments, lavish trips, and appointment to prominent official roles; and

96.4 influenced the appointment of other officers within Eskom.

97. The Gupta family and their businesses then sought to exercise State power through their proxies. Ministers Zwane and Brown, the President, the Eskom Board and its officials on multiple occasions unlawfully intervened in the proper functioning of the State and Eskom to benefit the Gupta family, their businesses and their business associates, and to facilitate the fleecing of State assets. They did so despite the fact that they were clearly conflicted in interfering, given their intimate connection to the Gupta family and its businesses and business associates.

98. So pervasive and pernicious was the Gupta family and associates' influence within the South African State and Eskom that, from 2014, they brazenly:

98.1 drafted Eskom press releases and letters; and



- 98.2 ensured that the Ministries of Mineral Resources and Public Enterprises as well as Eskom were used for their personal aggrandisement.
99. From 2014 to date, Minister Zwane and/or Eskom officials, unlawfully and corruptly:
- 99.1 conducted widespread persecution of Glencore Operations South Africa (Pty) Ltd ("**Glencore**") and its businesses, and forced it unlawfully to sell the OCH entities, as that term is defined in paragraph 201, to the Gupta family and their businesses for a price which suited the Gupta family and at a time of the Gupta family's choosing. As soon as the Guptas were in charge, the persecution of the OCH entities ceased and the OCH entities, now under the ownership of Gupta's Tegeta, was unduly benefitted. This included the reduction of a coal quality penalty to the value of some R 1.5 billion on which Eskom insisted prior to the acquisition of the OCH entities by Tegeta;
- 99.2 granted various statutory approvals to the Gupta family and its businesses where there was no lawful basis for doing so;
- 99.3 terminated coal supply agreements with other providers, while approving, without following any of the requisite tender processes and at excessive rates, billions of Rand worth of coal supply and emergency coal supply agreements in favour of the Gupta family and their businesses, including in relation to the Arnot and Majuba Power Stations, and at rates which were clearly unduly favourable to the Guptas and their businesses;



- 99.4 facilitated the Guptas' acquisition of the OCH entities in every conceivable way, *inter alia*, by concluding unlawful coal supply and other agreements, making hundreds of millions of Rand in prepayments for the purpose of bankrolling the purchase price and approving the issue of a bank guarantee in the order of R 1.68 billion;
- 99.5 concluded, again without following any requisite tender processes, financial, marketing and sponsorship contracts with Gupta-owned businesses worth tens of millions of Rand;
- 99.6 exercised influence at the highest levels to attain their illicit, self-aggrandising objectives.
100. The result of the above blatantly illicit conduct and decisions has been corrupt and otherwise unlawful wealth accumulation by the Gupta family, their businesses, their business associates and State officials ("**the Gupta group**") on a mesmerising scale. Billions of Rand have unlawfully been paid out to the Gupta group from 2014 to date.
101. The purpose of this application is to hold all those responsible for the illegality and corruption to account, and to recover all filched or otherwise misappropriated State funds in the public interest.
102. This affidavit first sets forth the organisation of the Gupta family and its business interests and associates. Thereafter, it explains how the Guptas interfered in the dismissal and appointment of State office bearers from 2010 to 2015, and how those office bearers then facilitated the capture of Eskom and parts of the National Executive. The affidavit then sets forth the various illicit contracts, guarantees and undertakings which were approved in favour



of the Gupta family and its business interests, and what payments or other benefits accrued on the Gupta group as a result.

103. I conclude by setting out the decisions sought to be reviewed or declared unlawful, and the legal basis therefor, and then dealing with applicable remedies.

NECESSARY BACKGROUND

The Gupta Family

104. An organogram of the Gupta family's business interests and entities is annexed marked "**FA4**".

105. Between 1993 and 1997, the three Gupta brothers Ajay, Atul and Rajesh (known as Tony), their sister Achla, and their families ("**the Gupta family**") immigrated to South Africa from India. The Gupta family were best known as the owners of an information technology distributor Sahara Holdings (Pty) Ltd ("**Sahara**").

106. In 2006, Ajay Gupta, on the recommendation of the Minister in the Presidency at the time Essop Pahad, was appointed to serve on South Africa's International Marketing Council of South Africa (later named BrandSA). Essop Pahad was appointed as a director of Sahara in 2009 and as a director of the Gupta family owned TNA in 2010. Ajay Gupta and Varun Gupta were appointed directors of Vusizwe Media which published a journal edited and founded by Essop Pahad entitled "The Thinker". Copies of the relevant reports from the Companies and Intellectual Property Commission ("**CIPC reports**") are annexed, marked "**FA5**" and "**FA6**" respectively.



107. Following President Zuma's election as the President of the African National Congress ("**ANC**") in December 2007, the Gupta family took steps to strengthen their relationship with President Zuma and his family.

108. On 23 June 2008, President Zuma's 26-year-old daughter Duduzile Zuma was appointed as a director of Sahara Computers, a 90% owned subsidiary of Sahara. President Zuma's son, Duduzane Zuma, was appointed as a director of:

108.1 Mabengela Investments on 8 July 2008. Duduzane Zuma is also the beneficial shareholder of 45% of Mabengela Investments' ordinary shares. A copy of ABSA Bank Limited's ("**ABSA's**") records for Mabengela Investments is annexed as "**FA7**". According to page 8 of the Market and Competition Analysis, Mabengela *"is a broad-based black economic empowerment holding company and consulting agent for various mining companies. Mabengela engages in prospecting on behalf of other mining companies and on its own behalf"*. 21.5% of Mabengela's equity is owned by Elgasolve (Pty) Ltd, the sole director of which is Salim Essa, a close Gupta business associate. The State of Capture Report is replete with examples of business connections and common investments between Mr Essa and the Gupta family. Rajesh Gupta, holds 25% of Mabengela Investments' equity;

108.2 Westdawn Investments on 30 September 2008. Westdawn Investments is majority owned by Oakbay Investments, the Gupta family's private investment vehicle, with smaller stakes being indirectly owned by Atul Gupta and Duduzane Zuma. The following persons own shares in Oakbay:



- 108.2.1 Islandsite Investments One Hundred and Eighty: 40%;
- 108.2.2 Atul Gupta: 30%; and
- 108.2.3 Chetali Gupta (Atul Gupta's spouse): 30%;
- 108.3 Gemini Moon Trading 254 (Pty) Ltd on 3 February 2009;
- 108.4 Islandsite Investments 254 on 1 November 2009. The following persons own shares in Islandsite Investments 254:
- 108.4.1 Atul Gupta: 25%;
- 108.4.2 Rajesh Gupta: 25%;
- 108.4.3 Chetali Gupta: 25%;and
- 108.4.4 Arti Gupta (Rajesh Gupta's spouse): 25%; and
- 108.5 Sahara on 10 July 2010.
109. I annex copies of the CIPC reports hereto, respectively marked "**FA8**" and "**FA9**", and a copy of an organogram that was emailed by a KPMG Services (Pty) Ltd's ("**KPMG Services**") employee Jaco du Toit to the Acting CEO of Oakbay Investments, Ronica Ragavan, and Ajay Gupta as "**FA10**".
110. In June 2009, the Gupta family founded a media company TNA, which publishes a newspaper called The New Age ("**the New Age**") and owns a television channel called ANN7. See page 85 of the State of Capture Report, annexed as "**FA11**".
111. Between 2009 to 2013, State Atomic Energy Corporation, Rosatom, a Russian state corporation ("**Rosatom**"), acquired 100% ownership of



Uranium One Incorporated, a public company that was listed on the Johannesburg Stock Exchange and on the Toronto Stock Exchange in Canada ("**Uranium One**"). A copy of a news release by Uranium One dated 18 October 2013 is annexed as "**FA12**".

112. In April 2010, Uranium One announced that it had sold Uranium One Africa (Pty) Ltd ("**Uranium Mine**"), which owned the Dominion Uranium Project, for USD 37.3 million (approximately R265 million at the time), a press report of which is annexed hereto as "**FA13**". This equated to 13,08% of the Uranium Mine's reported value in Uranium One's 2009 financial results, an extract of which is annexed hereto as "**FA14**".

113. The Uranium Mine was purchased by ORE and was renamed Shiva Uranium. In April 2010, the Industrial Development Corporation of South Africa Limited ("**IDC**") advanced ORE a loan of R250 million ("**IDC Shiva loan**"), allegedly after the Gupta family had lobbied President Zuma for his assistance to fund their purchase of the Uranium Mine. A copy of a written reply to Parliament by the Minister of Economic Development of 22 November 2017 ("**the 22 November 2017 written reply to Parliament**") is annexed as "**FA15**". Duduzane Zuma was appointed as a director of Shiva Uranium on 14 April 2010.

114. Between 18 and 19 February 2014, meetings were held between Suresh Tuteja (at the time the Senior General Manager of Finance at Westdown), Satish Mudaliar (at the time the Assistant General Manager of Commercial at Goldridge), Pieter Van Der Merwe (a legal representative of the Gupta family), Daniel McGowan and Simon Hoyle ("**2014 Centaur meetings**"). The 2014 Centaur meetings were held to provide an opportunity for Daniel

McGowan and Simon Hoyle to explain a business conducted by an ostensible international asset manager and investment adviser which they owned called Centaur Asset Management ("**CAM**"). CAM is a division of Centaur Holdings Limited ("**Centaur Holdings**"), a company organised and existing under the laws of Bermuda, with registration number 48886. At the 2014 Centaur meetings, Daniel McGowan and Simon Hoyle explained how they had set up various corporate vehicles through which investment funds are channelled. I annex an email from Suresh Tuteja to Rajesh (Tony) Gupta and Salim Essa dated 19 February 2014 as "**FA16**".

115. Centaur Holdings was registered in the Bahamas on 20 February 1996, and was struck off the roll of companies in the Bahamas on 1 February 2007. Its status is identified as "*Defaulted*".

116. On 10 July 2014, Aakash Jahajgarhia (who in 2013 married Vega Garg, the daughter of Achla Gupta and Anil Gupta, during a ceremony at Sun City) sent scanned documents to Tony Gupta and Salim Essa "*for their consideration*," annexed as "**FA17**". The scanned documents contain an agreement dated 8 July 2014 that was entered into between Centaur Holdings and Aakash Jahajgarhia ("**2014 Centaur agreement**"). In terms of the 2014 Centaur agreement, the parties held preliminary discussions regarding the possibility of establishing a joint venture ("**JV**") to invest in and operate a mine located on the farm De Roodepoort in Mpumalanga and invest in mining and agricultural opportunities in South Africa. The parties intended to establish Centaur Ventures Ltd in Bermuda as the JV holding company ("**the JV Holdco**") in which the parties will participate on a 50:50 basis. Centaur South Africa would be established in connection with De Roodepoort in which the JV Holdco would hold 74% of the shares, with the remainder to be held by a



BEE shareholder. The 2014 Centaur agreement expressly provided that Aakash Jahajgarhia would use his best endeavours to "*fast track*" the requisite mining, prospecting, exploratory, surface and water use regulatory approvals. Centaur Holdings would further cause the transfer to the JV Holdco of all of the issued shares in a company in the British Virgin Islands called Mallard Trading Group Limited ("**Mallard**"). Mallard is the ultimate owner of a Utah based company called Haymaker LLC through a network of intermediary shareholdings. Centaur Holdings and/or the JV Holdco would seek to increase the shareholding in Haymaker. The CEO of Centaur Group Daniel McGowan signed the 2014 Centaur agreement on behalf of Centaur Holdings.

117. In an interview, annexed as "**FA18**", Daniel McGowan described how "*[i]t's very political [in South Africa] and it's about getting coal to the right places, and into the power stations.*"

118. On 28 November 2014, ORE listed on the Johannesburg Stock Exchange. Oakbay owns 80% of ORE's ordinary shares. ORE's main asset, and the main driver of its value, was Shiva Uranium. The IDC Shiva loan was restructured, as a result of which the IDC's interest claim, which at that stage was approximately R256 million, was converted into equity in ORE at the price of R10 per share, less a 10% discount ("**restructuring agreement**"). ORE listed at R10 a share, which was nearly double the underlying asset value of R5.74, as set forth in ORE's own financials. Effectively, the IDC gave ORE a discount of R119 million (essentially cash in hand to clear their debt). See page 30 of the interdisciplinary and interuniversity report by the State Capacity Research Project entitled "*Betrayal of the Promise How South Africa is being Stolen*", annexed as "**FA19**".



119. In the 22 November 2017 written reply to Parliament, the Minister of Economic Development, Mr Ebrahim Patel, announced that the IDC had appointed a legal team to investigate allegations that *"a Singaporean entity, allegedly associated with the Gupta family, bought shares in [ORE], just prior to its listing, using money lent to them by the Gupta family. It is alleged that Oakbay and persons and entities associated with it, engaged in unlawful manipulation of the share price."* I refer to annex **"FA15"**. As a result of the investigation, the IDC has now rescinded, alternatively cancelled, the restructuring agreement. The Minister of Economic Development further announced that the *"IDC has tendered the return of its shares in [ORE], and has demanded repayment of the outstanding capital and interest due to it, totalling approximately R293 million."*

120. The intimacy of Zuma family's connections with the Gupta family is underscored by the following. On 30 November 2015, the Acting CEO of Oakbay Investments, Ronica Ragavan, paid the Hawksford Trustees Jersey Limited AED 500,000 (approximately R2 million at the time) for a deposit on an apartment in the Burj Khalifa skyscraper in Dubai ("**Burj Khalifa deposit**"). According to correspondence between Ronica Ragavan and Gregory Lewis (a senior negotiator at Knight Frank, which is a real estate consultancy based in the United Arab Emirates) the apartment would be transferred to Duduzane Zuma or to *"his new company."* I annex the relevant email correspondence as **"FA19A"** and a cheque signed by Ronica Ragavan in relation to the Burj Khalifa deposit as **"FA19B"**.

121. President Zuma has openly acknowledged his friendship with the Gupta family, most notably during a discussion in the National Assembly on 19 June 2013 where he admitted that members of the Gupta family were his friends.

The Capture of Eskom and the DMR by a powerful elite identified as the Gupta family and associated persons

122. During September 2010, Eskom's procurement was centralised by the creation of a group commercial division to consolidate the divisional procurement and supply chain departments into a single procurement entity ("**the Eskom commercial division**").

123. Former Minister of Public Enterprises Barbara Hogan was dismissed by President Zuma from her position on 31 October 2010 after resisting the emerging undue interference on her authority over board and executive appointments at SOEs. During an interview with the Public Protector in terms of section 7 of the Public Protector Act, former Minister Hogan confirmed that:

123.1 President Zuma took an interest in the appointment of board members at Eskom and Transnet and made it very difficult for her to perform her job; and

123.2 during a State visit to India in June 2010, she noticed that members of the Gupta family had taken over control of the proceedings and appeared to be directing the programme. See pages 89 and 91 of the State of Capture Report, annexed as "**FA20**".

124. During an interview with the Public Protector in terms of section 7 of the Public Protector Act, Vytjie Mentor, a member of Parliament, confirmed that she was asked to attend a meeting with President Zuma a week prior to the dismissal of Former Minister of Public Enterprises Barbara Hogan. She confirmed that she was offered the position of Minister of Public Enterprises

by members of the Gupta family at their Saxonwold home in Johannesburg and that President Zuma was present in the house at the time. See pages 88 to 89 of the State of Capture Report, annexed as "FA21".

125. Minister Malusi Gigaba was appointed as the Minister of Public Enterprises on 1 November 2010. Throughout his tenure until 2014 as Public Enterprises Minister, Minister Gigaba was engaged in the restructuring of SOE boards. A significant majority of Eskom's respected executives left during this period.

126. On 7 December 2010, the New Age reported that it had it "*on good authority that [Brian] Molefe will be appointed CEO by the [Transnet] board.*" Former Public Enterprises Minister Malusi Gigaba announced the appointment of Mr Brian Molefe on 16 February 2011 as CEO of Transnet.

127. In June 2011, Minister Gigaba instituted the most far-reaching board change in Eskom's then recent history by replacing ten of the twelve non-executive board members. Zola Tsotsi was appointed as Chairman of the Eskom Board.

128. On 10 March 2012, Salim Essa's legal adviser and Sahara employee Ashok Narayan corresponded via email with the CEO of Sahara Computers, Ashu Chawla, about organising a visit to India for Mosebenzi Zwane. Mosebenzi Zwane emailed Ashok Narayan a "*rooming list*" containing a set of persons to be allocated to different rooms. I annex the email correspondence as "FA22". At the time, Mosebenzi Zwane was the MEC for Agriculture and Rural Development in the Free State Province ("**Free State MEC for Agriculture**").

129. In July 2012, Minister Gigaba appointed Mr Anoj Singh as CFO of Transnet.

130. Meetings between Rajesh Gupta and Mosebenzi Zwane were arranged on:

130.1 1 February 2013 from 16h00 to 18h00;

130.2 15 March 2013 from 16h00 to 18h00;

130.3 6 April 2013 from 17h00 to 18h30;

130.4 18 July 2013 from 17h00 to 18h00;

130.5 27 August 2013 from 13h00 to 15h00;

130.6 17 September 2013 from 10h00 to 12h00; and

130.7 31 January 2014 from 11h00 to 11h30.

131. On 11 March 2013, Ashok Narayan sent an email to request the CEO of Sahara Computers Ashu Chawla to "*check if this is OK [sic] before I get it signed*", annexed as "**FA23**". Attached to the email was a draft letter to be sent by Mosebenzi Zwane in his capacity as Free State MEC for Agriculture to Shivapal Yadav, the State Minister for Public Works and Irrigation in Uttar Pradesh, India ("**Indian State Minister letter**"). A copy of the Indian State Minister letter signed on behalf of Mosebenzi Zwane was emailed by Inno Motaung of the Department for Agriculture and Rural Development in the Free State Province to Ashok Narayan on 11 March 2013. According to a letter sent by the CEO of Sahara Computers Ashu Chawla to the South African High Commission in India, the Indian State Minister was coming to South Africa to visit Sahara Computers in Johannesburg. I annex a copy of the relevant correspondence as "**FA24**".



132. A booking, a copy of which is annexed as "FA25", was made for Rajesh Gupta, Mosebenzi Zwane, Ashok Narayan and Duduzane Zuma to fly in a helicopter to visit Harrismith and Qwaqwa in the Free State on 22 July 2013.
133. In 2014, Eskom's commercial division merged with Eskom's technology group, with Matshela Koko appointed as Eskom's group executive responsible for the new entity ("**Eskom's Group Executive for Commercial**").
134. On 22 March 2014, Salim Essa sent an email, annexed hereto as "FA26", to Rajesh Gupta and Srikant Singhala (the son of Atul Gupta) with the CV of the Chairman of Eskom's Bid Tender Committee Collin Matjila attached. Collin Matjila's CV was then forwarded to an employee of the Guptas' Sahara Computers and Duduzane Zuma. On or about 27 March 2014, with effect from 1 April 2014, Mr Matjila was appointed by the Eskom Board as the acting CEO of Eskom. I refer to the press article annexed marked "FA27". It is plain that Salim Essa, Rajesh Gupta, the Gupta family business interests and Duduzane Zuma unduly, unlawfully and corruptly influenced that appointment. There could be no legitimate reason why the CV of Mr Matjila was circulated to the Gupta family, Duduzane Zuma and others at that time and in that fashion. Mr Matjila's appointment was gratification for him unlawfully and/or corruptly to promote within Eskom the interests of the Gupta family and their businesses and associates. This Mr Matjila subsequently did, as set forth in this affidavit.
135. On 16 May 2014, Duduzane Zuma sent a quotation for a Mercedes-Benz GL63 AMG (X166) ZA at the price of R1,737,100 to Rajesh Gupta. The quotation was forwarded by the CEO of Sahara Computers Ashu Chawla to



Atul Gupta on 20 May 2014. I annex a copy of the email correspondence between Duduzane Zuma, Rajesh Gupta, Ashu Chawla and Atul Gupta over this period as "**FA28**". It appears that the car was purchased by the Gupta family for Duduzane Zuma's use.

136. President Zuma appointed Lynne Brown as Minister of Public Enterprises on 25 May 2014, taking over from Minister Gigaba.

137. The CEO of Sahara Computers Ashu Chawla booked a luxury suite for Anoj Singh and a presidential suite for Rajesh Gupta at the Oberoi hotel in Dubai from 6 June 2014 to 9 June 2014. I annex an email from a sales executive at the Oberoi hotel in Dubai to Ashu Chawla as "**FA29**".

138. On 7 June 2014, a payment of 200,000 United Arab Emirates Dirhams (equivalent at the time to approximately R 570,000) was made by the Gupta family to "*A S Global*". I understand that A S Global is an entity or name connected with Anoj Singh and those funds were deposited for the benefit of him or persons affiliated or related to him. I annex a copy of the Gupta family's internal accounting records as "**FA30**".

139. On 6 July 2014, and after a request by Salim Essa, a travel consultant Sameera Sooliman at a business entity trading as Travel Excellence, with agency reference number N99J8K, sent an email to the CEO of Sahara Computers Ashu Chawla and Salim Essa, annexed as "**FA31**", with an attached travel itinerary ("**Anoj Singh 2014 itinerary**"). The Anoj Singh 2014 itinerary confirms a booking on flight SA7161, operated by Emirates Airways, for Anoj Singh on 8 July 2014.



140. The CEO of Sahara Computers Ashu Chawla booked a luxury suite at the Oberoi hotel in Dubai from 7 August 2014 to 12 August 2014 for Anoj Singh. In respect of the booking, Ashu Chawla instructed "*PLEASE SWIPE THE CARD FOR ALL CHARGES.*" I annex an email from Ashu Chawla dated 5 August 2014 as "**FA32**".
141. On 30 August 2014, a payment of 200,000 United Arab Emirates Dirhams (equivalent at the time to approximately R 582,000) was made by the Gupta family to "*Mr A Singh Atlanits 29.08.14*". Atlantis is the name of a resort and hotel in Dubai. I refer to the annex hereto marked "**FA30**".
142. On 13 September 2014, Mosebenzi Zwane flew first class from OR Tambo International Airport to Indira Ghandi International Airport in Delhi, India via Dubai International Airport. The boarding pass in respect of this trip was sent by Emirates Airlines to the CEO of Sahara Computers, Ashu Chawla, and it appears that this trip was financed by the Gupta family and their businesses. I annex a copy of the email as "**FA33**". Ashu Chawla also received email confirmation, annexed as "**FA34**", from the Oberoi Hotel in Dubai about a reservation for Mosebenzi Zwane on 16 September 2014. This booking was also clearly made and financed by the Gupta family and their businesses.
143. In December 2014, Minister Brown made sweeping changes to the Eskom Board. Six of the eight Board members Minister Brown appointed had unambiguous connections to the Gupta family, including:
- 143.1 Nazia Carrim, who is the wife of Muhammed Noor Hussain, a family member of Salim Essa;



- 143.2 Romeo Khumalo, a co-director with Salim Essa of Ujiri Technologies (Pty) Ltd;
- 143.3 Mark Pamensky, a director of ORE and Shiva Uranium;
- 143.4 Devapushpum Naidoo, who was an employee of Albatime - the involvement of which is further described below - and whose spouse Kuben Moodley was a co-director with Mark Pamensky of BIT Information Technology (Pty) Ltd. Kuben Moodley became employed by the DMR in 2016 as an adviser to the Minister of Mineral Resources Mosebenzi Zwane to *"assist Mr Zwane in his dealings with white monopoly capital, both in South Africa and abroad, in light of my experience in the corporate financial sector."* I annex a copy of an extract from a Press Council ruling as **"FA35"**. Kuben Moodley was also the sole director of Albatime;
- 143.5 Mariam Cassim, a former employee of Sahara Computers;
- 143.6 Baldwin Ngubane, a director of Gade Oil and Gas (Pty) Ltd. Salim Essa was a previous director of this company; and
- 143.7 Chwayita Mabude, whom members of the Gupta family suggested for appointment to the board of the Airports Company of South Africa SOC Ltd in a 2012 email to the former Minister of Transport Ben Martins.
144. The clear inference is that those appointments to the Eskom Board were as a result of undue influence being brought to bear on Minister Brown by the Gupta family and/or their businesses and associates, and those Board members were given their positions as gratification for them to do the bidding and promote the interests of the Gupta family and its businesses and



associates, which the appointees subsequently unlawfully and/or corruptly did as part of the Eskom Board, as set forth in this affidavit. In respect of the above information, I refer to pages 118 to 121 of the State of Capture Report, annexed as "FA36".

145. In a written statement by Eskom's chairman at the time, Zola Tsotsi, to the Parliamentary Committee for Public Enterprises on 21 November 2017, annexed as "FA37", ("**Tsotsi statement**"), Mr Tsotsi confirmed on oath that:

145.1 in February 2015, Minister Brown informed him in a meeting ("**Minister Brown meeting**") that she had received complaints from other board members and management that he was interfering with management. She instructed him to refrain from doing so *"because if you don't, I shall have to find someone else to do your job!"*;

145.2 he responded to Minister Brown that *"most board members hardly know what I look like, let alone not having worked with me yet. As for management, if scrutinising their decisions and behaviour and calling them to account constitutes interference with management, then I will happily continue doing so."*

145.3 later in the same day as the Minister Brown Meeting, Rajesh (Tony) Gupta approached him and said *"Chairman, you are not helping us with anything. We are the ones who put you in the position you are in. We are the ones who can take you out!"*;

145.4 on 25 February 2015, being the eve of first meeting of the new Eskom Board, he received a telephonic call from President Zuma to inform him that the board meeting would not be taking place and that the Acting



DG of the Department of Public Enterprises Matsietsi Mokholo would call him to request that he postpone it. Shortly thereafter, he received a call from the Acting Director General stating that the Minister had, without providing any reasons, cancelled the board meeting; and

145.5 a week thereafter, he was called by Dudu Myeni, the Chairperson of SAA at the time, to avail himself for a meeting with President Zuma at the Durban Presidential residence;

145.6 on or about 7 March 2015, he met President Zuma, Dudu Myeni, Dudu Myeni's son Thalete Myeni, and Nick Linnell, who was introduced as a lawyer. Dudu Myeni outlined the purpose of the meeting, namely, that the situation of Eskom's financial stress and poor technical performance warranted an inquiry and that three Eskom executives namely, Acting CEO Tsediso Matona, Group Executive for Group Capital Dan Marokane, and Group Executive for Commercial Matshela Koko, must be suspended. Dudu Myeni motivated that their suspension was necessary to allow space for the enquiry to proceed unencumbered by their presence. Dudu Myeni stated that Nick Linnell had assisted her with a similar situation at SAA and was available to assist. Nick Linnell then proposed that he draft a resolution for Zola Tsotsi to present to the Eskom Board setting out the rationale for the enquiry;

145.7 an Eskom Board meeting was convened by Zola Tsotsi on 9 March 2015, where he presented the resolution drafted by Nick Linnell. According to a written submission by Eskom's Board to the Parliamentary Portfolio Committee on Public Enterprises ("**the Eskom Board Parliamentary statement**"), an extract of which is annexed as



"FA38", Zola Tsotsi reported to the Eskom Board that the President had expressed concern that the impact of Eskom and the power outages on the country was being understated. The Eskom Board expressed its discomfort with this approach and instead proposed that Minister Brown be invited to engage on this matter;

145.8 on 11 March 2015, an Eskom Board meeting was held with Minister Brown ("**11 March Eskom Board meeting**"). Minister Brown gave her support for the inquiry as well as for the suspensions of the three executives. The board then resolved to proceed with both the inquiry and suspensions of the 3 executives; and

145.9 hardly an hour after the end of the 11 March Eskom Board meeting, at the Eskom Board People and Governance Committee meeting, Baldwin Ngubane stated that Eskom's Financial Director Tsholofelo Molefe must also be suspended on the basis of Minister Brown's instructions. Chwayita Mabude announced the names of the executives who were going to act in place of those who were suspended. Baldwin Ngubane stated that these names were based on instructions from Minister Brown. Nick Linnell assisted with the drafting of the suspension letters.

146. On 12 March 2015, the Eskom Board suspended Eskom's CEO Tshediso Matona, its CFO Tsholofelo Molefe, as well as Dan Marokane, and Matshela Koko ("**2015 Eskom Board suspensions**"). On 23 March 2015, the CCMA received a referral from Eskom CEO Tshediso Matona relating to his allegedly unfair suspension.

147. On 19 March 2015, Nazeem Howa, the CEO of ORE, sent Salim Essa an email, annexed as "FA39", containing a draft announcement for the Eskom



Board stating that it had decided to relieve Zola Tsotsi of his duties as chairperson. The Eskom Board meeting at which Mr Tsotsi resigned only took place on 30 March 2015.

148. According to the Tsotsi statement, a week after the 2015 Eskom Board suspensions, Zola Tsotsi was accused by several Eskom Board members of not consulting the Board in the preparatory work on the inquiry. On 23 March 2015, Zola Tsotsi was given an ultimatum by the Eskom Board to resign or be charged with lack of fitness to be a director. He resigned under duress.

149. At 11h16 on 31 March 2015, the day after Zola Tsotsi resigned (and was replaced by Baldwin Ngubane), Nazeem Howa sent Salim Essa an email, annexed as "**FA40**", containing an amended version of the statement for the incoming Eskom Chairperson Baldwin Ngubane, "*for your approval*" ("**Howa draft of the Eskom statement**"). In response to the Howa draft of the Eskom statement, Rajesh Gupta replied "*OK*".

150. The only inference to be drawn from the existence of these draft announcements and statements as aforesaid is that the Gupta family and their business associates were unlawfully and unduly influencing Eskom and State officials, and intended to do so. There could be no legitimate reason why they would have been drafted and they could only have been drafted for (illegitimate) use by Eskom, and as a result of undue influence and connections which Oakbay and the Gupta family had with Eskom.

151. On 31 March 2015, Eskom made an announcement titled "Eskom Board and Chairperson agree to part ways amicably" ("**Eskom statement**"), annexed as



"FA41". Some of the phrases and ideas contained in the Howa draft of the Eskom statement are repeated in the Eskom statement.

152. On 14 April 2015, Ashu Chawla the Chief Executive of Sahara Computers, sent an email to an employee of Gearhouse SA (Pty) Ltd, annexed as "FA42", in respect of drawings, venue liaison and marquee dimensions for the "*Duduzane Zuma Wedding*". Ashu Chawla advised that "*[p]ayment will be made by the weekend*".

153. On 17 April 2015, Brian Molefe was appointed acting CEO of Eskom by the Eskom Board. Mr Molefe had previously been CEO of Transnet.

154. On 18 May 2015, Eskom announced that "Eskom and its chief executive, Mr Tshediso Matona, have mutually agreed to part ways on an amicable basis. It is expressly noted that no misconduct or wrongdoing is alleged by Eskom against Mr Matona".

155. On 29 June 2015, Mogokare Seleke forwarded his curriculum vitae to Duduzane Zuma, apparently for consideration by others, for appointment to the then vacant position of Director General of Public Enterprises. There is no lawful or proper basis why such a document would have been sent to Duduzane Zuma, other than unduly to influence Minister Brown to make the appointment. In December 2015, Mogokare Seleke was appointed as the Director General of the Department of Public Enterprises ("**the Seleke appointment**"). It is clear that such an appointment was tainted by ulterior purposes and unlawful intervention of Duduzane Zuma. It appears that Mr Seleke was appointed as Director General of Public Enterprises after he unlawfully forwarded numerous confidential documents to the Gupta family and their businesses and corruptly and unlawfully facilitated their acquisition




of the OCH entities. His appointment was made for ulterior purposes. In addition, his conduct as set forth in this affidavit was directly relevant to his appointment, but was either deliberately overlooked or was material information which was not placed before Minister Brown. Given that default and the fact that the aforesaid information disqualifies Mr Seleke from the position to which he was appointed and probably every position of public trust, his appointment is plainly unlawful and irrational.

156. On 1 August 2015, France Mokoena sent an email to Rajesh Gupta with the CV of Mosebenzi Zwane attached "*for [his] attention*" ("**the Gupta copy of Minister Zwane's CV**"). I annex a copy of the email as "**FA43**". Rajesh Gupta sent an email to Duduzane Zuma on 1 August 2015, annexed hereto as "**FA44**", with the Gupta copy of Minister Zwane's CV attached. There could not be a legitimate reason for Mosebenzi Zwane's CV to be sent to Rajesh Gupta at that time, other than to influence President Zuma so as to appoint him as the Minister of Mineral Resources.

157. In August 2015, Anoj Singh was appointed CFO of Eskom by the Eskom Board. Anoj Singh had previously been CFO of Transnet.

158. On 22 September 2015, President Zuma announced that he would appoint the relatively unknown Mosebenzi Zwane to the critically important mineral resources portfolio. Minister Zwane had no experience in mining or in a national portfolio position. It is also unclear how President Zuma could lawfully appoint Mr Zwane to that role given President Zuma's, Zuma family's and Mr Zwane's own, very close connections to the Gupta family. Such an appointment gives rise to a reasonable apprehension of bias on the part of President Zuma and such appointment cannot stand. An Acting President



should have considered any appointment of Mr Zwane in those circumstances. Moreover, it is plain that Mr Zwane's appointment could not and should have been made given Mr Zwane's conduct in compromising his office in the Free State government in service of the Gupta family and businesses as set forth above. This is a relevant factor which should have been taken into account, but clearly was not. It would have disqualified Mr Zwane from the appointment. In any event, it appears that the appointment was made as a result of undue influence by the Gupta family and without consideration of Mr Zwane's objective suitability for the role.

159. In October 2015, Matshela Koko was appointed as Eskom's group executive responsible for generation and technology, a portfolio which now also included Eskom's generation division which is the custodian of Eskom's electricity generating assets and maintains and operates its power stations.
160. On 9 December 2015, President Zuma appointed Minister Desmond Van Rooyen as the new Finance Minister after dismissing Nhlanhla Nene. On 10 December 2015, Minister Van Rooyen arrived at Treasury with two advisers, Ian Whitley and Mohamad Bobat. On 12 December 2015, Ian Whitley allegedly sent an email to various Gupta family related persons stating "*Gents, finally...*" with strategic treasury documents attached. I annex an article by the Sunday Times as "**FA45**".

Eskom Payments to TNA

161. Though TNA neither publishes nor audits its circulation figures, it had been able to attract substantial income from government departments and SOEs through bulk subscriptions, advertising agreements, and TNA business breakfast sponsorships.

162. During Collin Matjila's tenure as the Chairperson of Eskom's Bid Tender Committee, Eskom spent R12 million on 10 TNA business breakfasts.

163. On 4 April 2014, just after Collin Matjila's appointment as Acting CEO of Eskom, an email containing a proposal for renewing and expanding Eskom's sponsorship of TNA's business breakfasts, was sent by Nazeem Howa to the CEO of Sahara Computers Ashu Chawla, a press report of which is annexed hereto as "**FA46**". The proposal, dated to the previous month and addressed to Chose Choeu, Eskom's executive for corporate affairs, states "*It is with pleasure that we submit the following proposal for the period 1 April 2014 to 31 March 2015 for sponsorship of 12 Business Briefings for a total investment of R14,400,000.00, excluding VAT and agency commission.*" Attached to the same email was an unsigned newspaper subscription agreement between Eskom and TNA Media, with an effective date 1 May 2014. The agreement committed Eskom to purchase 4000 daily copies of The New Age over a period of 36 months at an annual cost of over R4 million.

164. In April 2014, Collin Matjila proposed a one year R14 million sponsorship of TNA's business breakfasts ("**the Matjila TNA proposal**") to the Eskom executive committee. In a statement by Erica Johnson, Eskom's Group Executive for Enterprise Development, to the Parliamentary Committee for Public Enterprises on 7 November 2017, annexed as "**FA47**", she confirmed that:

164.1 Eskom attempted to accommodate the Matjila TNA proposal;

- 164.2 within the month of April 2014, the Matjila TNA proposal shifted from a proposed one year to a proposed three year contract. There was also a request to have the contract's termination clause removed;
- 164.3 the contract needed two signatories and Eskom's Financial Director refused to sign the contract but Collin Matjila signed the three year contract with TNA regardless ("**TNA agreement**"). The TNA agreement was entered into on 14 April 2015 and terminated on 30 April 2017.
165. The total "*sponsorship fee*" paid by Eskom under the TNA agreement was R43,200,000.
166. According to a written submission by Eskom's Board to the Parliamentary Portfolio Committee on Public Enterprises ("**Eskom Board Parliamentary statement**"), an extract of which is annexed as "**FA48**", Eskom's management raised its concerns about the TNA agreement due to Collin Matjila's lack of authority to conclude the TNA agreement and the absence of an Eskom budget from which to pay the "sponsorship fees". The Eskom Board concluded that Collin Matjila had acted *ultra vires* in signing the TNA agreement.
167. The Eskom Board initiated a forensic review into the TNA Agreement which was conducted by SizweNtsalubaGobodo Inc ("**SNG**") ("**the forensic review**"). The forensic review found that Collin Matjila had acted improperly and exceeded his powers by signing the contract, thereby infringing the provisions of the PFMA. The forensic review, further, found that the sponsorship agreement between Eskom and TNA Media did not have an exit clause for Eskom, despite the fact that the legal department of Eskom had



recommended that an exit clause be inserted to protect Eskom. SNG raised the TNA agreement as a reportable irregular expenditure in October 2014.

168. The forensic review recommended that Minister Brown remove, and lay criminal charges against, Collin Matjila. Allegedly troubled by the implications of the forensic review and Minister Brown's failure to make herself available to the Eskom Board and to take appropriate action, two Eskom Board members sitting on its Audit and Risk Committee, Yasmin Masithela and Bajabulile Luthuli, tendered their resignations. The new Eskom Board appointed by Minister Brown in December 2014 purported to ratify the TNA agreement and decided not to take any action against Collin Matjila because he was no longer an employee of Eskom.

169. There was no legal or commercial basis for signing or ratifying the TNA agreement. The agreement did not go out to public tender, as it was required to do in terms of procurement legislation, and the conclusion of the TNA agreement was irrational, unlawful and unreasonable. Its approval, signature and ratification was also not in the best interest of Eskom and was actuated by ulterior purposes and corruption on the part of Mr Matjila and the Eskom Board.

Brakfontein

170. Prior to February 2016, Tegeta was the registered holder of the new order mining rights in respect of the farms Brakfontein and Brakfontein Extension ("**the Brakfontein properties**") upon which the open cast Brakfontein coal mine is situated, ("**Brakfontein coal mine**") ("**Brakfontein mining right**").



171. The Brakfontein coal mine is located in the Delmas district of Mpumalanga and produced between 100,000 tonnes and 200,000 tonnes of coal per month as at December 2015. The Brakfontein properties have combined measured resources of approximately 32 million tonnes of coal and an estimated life of mine of approximately 13 to 14 years. See page 7 and 8 of the Market and Competition Analysis.
172. The economic activities in the area surrounding the Brakfontein properties include agriculture (crop irrigation and livestock watering) as well as subsistence farming. There are portions of the project site that are traversed by water resources which are tributaries of the Wilge River. According to the Mpumalanga Conservation Plan, the Wetlands associated with the upper reaches of the Wilge River are important and necessary. The conservation status of the grassland type within which the Brakfontein coal mine is situated is rated as endangered, with various threatened species, medicinal plant species, mammals, birds reptiles and amphibians having been identified. Any mining activities at the Brakfontein coal mine have a substantial environmental impact. I annex extracts from the final environmental scoping report that was prepared by Digby Wells & Associates (Pty) Ltd on 18 July 2012 as "FA49".
173. On 15 May 2012, a meeting was held among Eskom, Tegeta and Goldridge to explore the possibility of supplying coal from Brakfontein coal mine to Eskom. Tegeta's CEO Ravindra Nath is the sole active director of Goldridge and Goldridge is owned and/or controlled by members of the Gupta family. I refer to "write up" for Brakfontein coal mine contained in annex "FA50".



174. On 13 June 2012, an Eskom environmental team conducted a visit to the Brakfontein mine for inspection purposes. Documents were submitted to Eskom and a sample was collected. On 14 June 2012, the Eskom team reverted that the present stockpile of coal at the Brakfontein mine was not suitable for Eskom as the coal mined from seam 4 Lower of the Brakfontein mine ("**seam 4 Lower**") was mixed with coal mined from the seam 4 Upper of the Brakfontein mine ("**non-compliant seam 4 Upper**").

175. On 29 November 2013, the directors of Confident Concept resolved to issue a bank guarantee to purchase a property located at "*portion 22 of the Farm Brakfontein 264' Delmas for a consideration of R2,408,554*". I annex an email sent by a Tegeta employee on 8 January 2014 requesting that the resolution be signed by Rajesh Gupta hereto marked "**FA51**".

176. The following persons each own 25% of Confident Concept's ordinary shares:

176.1 Atul Gupta;

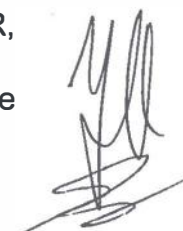
176.2 Rajesh Gupta;

176.3 Arthi Gupta; and

176.4 Chetali Gupta.

177. I annex a copy of Confident Concept's share register as "**FA52**".

178. The Brakfontein mining right, a copy of which is annexed hereto as "**FA53**", was granted by the Director General of the Department of Mineral Resources, *alternatively*, the Mpumalanga Regional Manager of the DMR, *further alternatively*, the DMR to Tegeta on or about 5 March 2014. The file



reference number of the mining right is 2010/10/19/001 and application number 488MR. The properties which are the subject of the Brakfontein mining right are portions 2, 3, 4, 5, 16, 22, 24, 25, 28 and remaining extent of portion 29 of the Farm Brakfontein 264IR in the administrative district of Delmas in Mpumalanga.

179. Tegeta's audited annual financial statements for the year ended 28 February 2014 ("**Tegeta's 2014 AFS**"), annexed hereto as "**FA54**", show that Tegeta sustained losses of over R23 million against total assets of just over R18 million. Tegeta was clearly in a precarious financial position. It is thus plain that no rational or reasonable decision maker could have taken the decision to grant the Brakfontein mining right to Tegeta. No rational or reasonable decision maker could ever conclude that Tegeta could meet any financial obligations or provide financial support or sustainably exploit the minerals as required under the MPRDA having regard to Tegeta's actual financial position.

180. In relation to Tegeta's environmental obligations, Tegeta's 2014 AFS state that:

"The environmental obligation includes estimated costs for the rehabilitation of coal mining sites. The amount provided is calculated based on currently available facts and applicable legislation. The determination of long-term provisions, in particular environmental provisions, remains a key area where management's judgement is required. Estimating the future cost of these obligations is complex and requires management to make estimates and judgements because most of the obligations will only be fulfilled in the future and contracts



*and laws are often not clear regarding what is required. The resulting provisions could also be influenced by changing technologies **and political**, environmental, safety, business and statutory considerations."*

(emphasis added)

181. Tegeta was granted a water use licence in terms of Chapter 4 of the NWA ("**Brakfontein water use licence**") only on 22 December 2014, some nine months after the Brakfontein mining right was granted by the DMR.

182. In light of the substantial environmental impact of the mining activities to be conducted at the Brakfontein coal mine and of Tegeta's precarious financial position, the granting of the Brakfontein mining right is patently unreasonable, irrational and/or otherwise unlawful.

183. According to a report from National Treasury signed 12 April 2016 by the Chief Procurement Officer Kenneth Brown entitled "*Report on the Verification of Compliance with Treasury Norms and Standards - Appointment of Tegeta Exploration and Resources (Pty) Ltd*":

183.1 on 9 May 2014, Eskom was approached by Goldridge to supply coal to Eskom from the Brakfontein and Vierfontein mines. Goldridge stated that they owned these mines through Tegeta. In a meeting with Goldridge, Eskom stated that it preferred dealing with companies that are 50% +1 share black owned;

183.2 on 10 July 2014, Tegeta confirmed in a meeting with Eskom that it had been fined for contravening environmental regulations ("**2014 environmental fine**") ("**10 July 2014 meeting**"). There was no evidence to suggest that Tegeta settled the 2014 environmental fine.



No mention is made of the 2014 environmental fine in Tegeta's annual financial statements. Eskom further stated that, in light of the test results of samples that were collected from the Brakfontein coal, that they were not interested in buying the non-compliant seam 4 Upper. I annex minutes from the 10 July 2014 meeting as "FA55";

183.3 Eskom conducted resampling of coal from the Brakfontein coal mine on 7 August 2014. On 26 August 2014, Tegeta's CEO Ravindra Nath emailed Rajesh Gupta and Salim Essa, annexed as "FA56", to inform them that "*we have been advised by **our source (Linos)** that the result of the test will be available by Friday 29th August 2014*" (emphasis added);

183.4 at a meeting between Eskom and Tegeta on 23 September 2014, Eskom confirmed that "*the power stations which could receive coal from Brakfontein have all their coal needs met for the financial year. As such an agreement between Eskom and Tegeta for the supply of coal can only be reached at the earliest on 1 April 2015.*" Eskom further stated that it would only be able to consider coal mined from seam 4 Lower as the non-compliant seam 4 Upper did not meet Eskom's coal quality requirements;

183.5 on 23 January 2015, Tegeta communicated in a meeting with Eskom that it would be difficult to mine only the seam 4 Lower. Eskom reiterated that only the seam 4 Lower would be suitable for use at Eskom power stations and requested that Tegeta revise their operations in order to mine only the seam 4 Lower. Eskom further



expressed concern at the prices offered by Tegeta. It was agreed that Tegeta would revise their price offer;

183.6 in a meeting held on 30 January 2015, Eskom stated that the price of coal offered by Tegeta was too high in comparison to the price of coal which is currently being supplied to Majuba power station. Tegeta revised their coal offer to R13.50/GJ for a five year contract at approximately 65000 tonnes per month. Eskom accepted the Tegeta offer and further stated that the coal must meet all technical and combustion requirements of the Majuba power station;

183.7 on 10 March 2015, Eskom entered into a coal supply agreement with Tegeta for the supply of coal from the Brakfontein coal mine initially valued at R3.7 billion, with the commencement date being 1 April 2015 ("**March 2015 Brakfontein CSA**"). The March 2015 Brakfontein CSA included coal from the non-compliant seam 4 Upper;

183.8 on 12 March 2015, a report by Eskom's chief adviser on coal quality Dr Chris van Alphen ("**Brakfontein coal quality report**") found that:

183.8.1 the mixed non-compliant seam 4 Upper and seam 4 Lower blend from the Brakfontein coal mine was not recommended for the Majuba power station as there was a high probability that the blend would frequently exceed the power station's rejection specification, and because of the poorer quality of the non-compliant seam 4 Upper which exceeds the Majuba power station's rejection specifications;



- 183.8.2 a geological review of the Brakfontein coal mine should be conducted to determine the prevalence of factors which influence coal quality; and
- 183.8.3 there is concern that the samples from different sources at the Brakfontein coal mine have unusually low hardgrove indices, which is a measure for the grindability of coal. The Brakfontein coal quality report noted that it might be co-incidental that all these coals genuinely have a low measure for grindability. It found, however, that there should be a review to determine if there had been any modifications prior to the testing and analysis.
184. No proper or lawful procurement process was followed in relation to the conclusion of the March 2015 Brakfontein CSA, and the goods and services to be supplied thereunder.
185. There was also no lawful basis for the inclusion of the non-compliant seam 4 Upper in light of the above.
186. Moreover, there was no basis laid out for the R13.50/GJ price that was ultimately agreed, the March 2015 Brakfontein CSA did not serve the interests of Eskom and in those additional respects the decision to award or approve the March 2015 Brakfontein CSA is unlawful and irrational.
187. On 31 August 2015, Eskom's Group Executive for Commercial Matshela Koko sent a letter to Tegeta to serve as notification that as a precautionary measure Eskom would suspend offtakes of coal from the Brakfontein coal mine by 16h00 on 31 August 2015 ("**quality suspension letter**"). According to the quality suspension letter:



- 187.1 Eskom noted a significant increase in the number of out-of-specification coal stockpiles from the Brakfontein mine from July to August 2015;
- 187.2 during August 2015, 50% of the stockpiles had *"been out of specification resulting in rejection. Further, Eskom notes the inconsistency in the laboratory results as the outcome of coal samples provided by the mine"*; and
- 187.3 this was of great concern to Eskom and called *"into question the exact nature and quality of the coal that Brakfontein Colliery and Brakfontein Colliery Extension supplies to Eskom in terms of the [March 2015 Brakfontein CSA]"*.
188. Eskom sent additional letters of suspension, signed 31 August 2015, to SGS Services South Africa Pty (Ltd) and Sibonisiwe Coal Laboratory Services CC. These parties had been involved in the testing of the coal samples from Brakfontein coal mine.
189. A letter signed on 5 September 2015 was sent to Tegeta from Matshela Koko entitled *"Upliftment of the Suspension of Coal Supply: Brakfontein Colliery and Brakfontein Colliery Extension"* ("**resumption letter**"), annexed hereto marked "**FA57**". In terms of the resumption letter, Eskom lifted the suspension of coal supplied from the Brakfontein mine immediately and stated that it would investigate the inconsistencies in the coal quality and management process ("**Eskom's decision to resume**").
190. In respect of the above facts, I refer this Court to, *inter alia*, pages 126 to 135 of the State of Capture Report, annexed as "**FA58**". I further annex a copy of

a briefing report by National Treasury to the Parliamentary Committee on Standing Accounts as "**FA59**".

191. With effect from 1 October 2015, Eskom and Tegeta concluded an agreement for Tegeta to supply an additional 100,000 tonnes per month of coal to the Majuba power station from the Brakfontein coal mine ("**October 2015 Brakfontein CSA**").

192. No proper or lawful procurement process was followed in relation to the conclusion of the October 2015 Brakfontein CSA, and the goods and services to be supplied thereunder. The October 2015 Brakfontein CSA also did not serve the interests of Eskom.

193. A review commissioned by Eskom of its coal quality management of the Brakfontein coal mine that was conducted by PriceWaterhouseCoopers Inc and issued on 10 November 2016 found that:

193.1 Tegeta was not referred for supplier pre-qualification and supplier registration as required by section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure;

193.2 Eskom's selected coal quality evaluation team ("**the evaluation team**") did not complete declaration of interest forms as required by Eskom's Procurement and Supply Chain Management Procedure;

193.3 there was no evidence that:

193.3.1 a financial modelling and evaluation process was followed, or a clear commercial motivation for entering into the March 2015 Brakfontein CSA on the commercial terms provided;



- 193.3.2 the evaluation team underwent the requisite training required in terms of Eskom's Conflict of Interest Policy, Eskom's Code of Ethics and/or Eskom's Cardinal Rule of Safety;
- 193.3.3 Brakfontein coal mine's closure cost assessment reports existed; and
- 193.3.4 Eskom's Commercial and Financial evaluation reports existed;
- 193.4 Eskom's Technical Report in relation to the Brakfontein coal mine was only finalised after the March 2015 Brakfontein CSA was signed;
- 193.5 the first health and safety evaluation of the Brakfontein coal mine was conducted 8 days after the contract was signed. The on-site inspection was conducted by Eskom two and a half month after the March 2015 Brakfontein CSA was signed. Eskom's Health Safety Report was only finalised two and a half months after the March 2015 Brakfontein CSA was signed;
- 193.6 two out of the three burn tests by Eskom of coal supplied from the Brakfontein coal mine were performed after the March 2015 Brakfontein CSA was signed;
- 193.7 there is a discrepancy in the dates of the Environment and Legal Report by Eskom. The first page shows the effective date as April 2014 while the second and third pages show the effective date as March 2014. The report was signed by the Environment Senior Adviser on 15 April 2014, supported by Eskom's Environment Senior Adviser who signed on 16 April 2015 and then wrote a number 4 over the 5 on the year 2015. This could indicate that the report was backdated;



- 193.8 Eskom's Health and Safety function was not represented at any of the three negotiation meetings which took place prior to the pre-qualification requirements purportedly being met; and
- 193.9 Eskom's Supplier Development and Localisation function were also not included at any of the three negotiation meetings, in direct violation of Eskom's Procurement and Supply Chain Management Procedure.
194. Approximately 80% of Tegeta's coal production from Brakfontein is committed to Eskom's Majuba power station in terms of a 10 year off-take agreement. See page 7 and 8 of the Market and Competition Analysis. Tegeta supplies the Majuba power station from the Brakfontein coal mine with 2.4 million tonnes of coal per year. I annex a draft response from Oakbay to Bloomberg News as "FA60".
195. The approval and conclusion of the March 2015 Brakfontein CSA and the October 2015 Brakfontein CSA was unlawful, unreasonable and irrational.
196. On 24 February 2016, Tegeta sold Brakfontein coal mine to Shiva in exchange for equity in Shiva. It is unclear why Eskom continued to purchase coal from the Brakfontein coal mine under the agreements Eskom had entered into with Tegeta, given that its change of control negatively impacted the coal supplier's designation in terms of the Broad-Based Black Economic Empowerment Act, 2003, the BBBEE Codes of Good Practice, the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry and the Mining Charter Scorecard.

Optimum Coal Mine



197. The Optimum Collieries consist of large coalfield complex in Mpumalanga consisting of the Kwagga, Pullenshope and Eikeboom opencast mines and the Boschmanspoort underground mine ("**Optimum Collieries**"). The Optimum Collieries are located in the Witbank Coalfield between Middelburg and Hendrina, directly adjacent to Eskom's Hendrina and Arnot power stations. The Optimum Collieries comprised coal resources of approximately 300 million tonnes with a reserve base in excess of 185 million tonnes of run-of-mine coal (of which approximately 114 million tonnes are classified as saleable) as at 31 December 2014. In addition, Optimum Collieries include the Schoonoord Project which is an opencast and underground coal development project classed as a brownfield development project - which involves the re-introduction of mining operations to areas of land which have already been excavated. See pages 8 to 9 of the Market and Competition Analysis.

198. On 4 January 1993, Eskom entered into an agreement with Trans-Natal Coal Corporation Limited and Trans-Natal Collieries Limited for the supply of coal from the Optimum Collieries to the Hendrina power station ("**Hendrina CSA**"). Trans-Natal Collieries Limited was subsequently renamed as Ingwe Collieries Limited and thereafter as BHP Billiton Energy Coal South Africa SA and BHP Billiton SA Holdings Limited ("**BHP Billiton**"). The Hendrina CSA:

198.1 prescribes a certain set minimum expected delivery tonnes per year at a fixed base price with producer price inflation and coal cost index related escalation;

198.2 requires that Eskom enjoy preference over other customers, including customers purchasing export quality coal. I annex extracts from a Due

Diligence Report conducted by KPMG titled "Project Dragline" dated 4 December 2015 ("**KPMG's Due Diligence Report**") as "**FA61**";

198.3 imposes various specification and quality requirements in relation to the coal supplied to Eskom ("**Hendrina quality specifications**");

198.4 clause 26 of the Hendrina CSA is a "*Hardship Clause*" which empowers either contracting party to place an obligation on the other party to enter into negotiations in order to agree new terms to the agreement to resolve the hardship being suffered;

198.5 is a fixed term contract with an initial period which terminated on 31 December 2008. In 2008, Eskom exercised its right to renew the Hendrina CSA to 31 December 2018. See pages 133 to 135 of the State of Capture Report, annexed as "**FA62**";

198.6 requires Eskom's prior written consent for the assignment of any rights and/or obligations to a third party, or for the disposal of any rights to the coal reserves ("**Eskom's assignment and disposal consent**"); and

198.7 obliges Eskom to pay OCM when the Hendrina CSA terminates a contribution of:

198.7.1 R17,689,500 in 1 Jan 1992 money values (escalated in accordance with the escalation factor) towards the costs of water management; and

198.7.2 R12,162,900 in 1 Jan 1992 money values (escalated in accordance with the escalation factor) towards the mine closure costs.



199. Eskom's Hendrina power station supplies 2000 megawatt base load of power to South Africa. OCM's supply of thermal coal to Hendrina supports Eskom's continued supply of uninterrupted electricity to the country. See page 17 of the Market and Competition Analysis.
200. The sale of Optimum Collieries to OCM and OCH was announced on 14 May 2008 ("**2008 Optimum sale**"). OCM and OCH took cession and delegation from BHP Billiton of all rights and obligations that had previously been held and owned under the Hendrina CSA. I refer to KPMG's Due Diligence Report, annexed marked "**FA61**".
201. OCH has a 100% shareholding in the OCH entities:
- 201.1 OCM, which has mining rights and large scale mining operations over the Optimum Collieries. Its assets include three processing plants, nine draglines and a rapid load out facility;
- 201.2 Koorfontein, which includes a number of underground mining sections, three processing plants, one railway siding for loading coal and one rapid coal loading facility. The mine also reprocesses surface coal discard dumps to produce a middling product, which is supplied to Eskom and other customers;
- 201.3 OCT, which has a 7.64% shareholding in RBCT. The majority of coal exported from South Africa is exported from the RBCT;
- 201.4 Vlakfontein, which is an opencast coal development project situated in the Ermelo area. On 4 March 2011, the regional manager (appointed under the MPRDA) issued a moratorium restricting the approval of any mineral rights in respect of the Chrissiesmeer Biodiversity Area.



Vlakfontein was the holder of a prospecting right over an area which forms part of the moratorium area, which expired on 26 November 2016 and was never registered. A mining right application for the Vlakfontein Project had been submitted to the DMR on 9 October 2009;

201.5 Optimum Overvaal, which owns the new order prospecting right over the Overvaal project in the Ermelo district, 8 km south of Camden power station; and

201.6 Optimum Nekel and Optimum Mpefu, whose mining rights have lapsed and there are accordingly no operations in these companies.

202. I annex a copy of an organogram extracted from KPMG's Due Diligence Report as "**FA63**".

203. In terms of the First Addendum to the Hendrina CSA ("**First Addendum**"), i) Eskom's assignment and disposal consent to the 2008 Optimum sale was provided; and ii) Eskom extended the Hendrina CSA to 31 December 2018. I refer this Honourable Court to annex "**FA61**". The First Addendum further contained a new "*Payment Rejection*" clause which provides that

*"in the event that any Quality Parameter shall fail to have been met for any seven day rolling period, the purchase price payable by Eskom to Optimum Colliery in respect of the coal (which shall not comply with the Quality Parameters) on the seventh day of such period and/or any subsequent consecutive day on which the Quality Parameters, or either of them, shall fail to have been met, shall be reduced to R1-00 per tonne." ("**forward looking Optimum coal quality penalty**")*



204. The Hendrina CSA provides for a wide range of penalties that can be enforced against OCM in the event that the coal does not meet the Hendrina quality specifications.
205. On 8 April 2008, OCH provided a guarantee to Eskom for the performance by OCM of its obligations in terms of the Hendrina CSA ("**Eskom OCH Guarantee**").
206. A second Addendum to the Hendrina CSA, which amended the price payable by Eskom to R115 per tonne on an escalation basis, commenced on 1 April 2011. See page 136 of the State of Capture Report, annexed as "**FA64**".
207. In 2012, a consortium consisting of Glencore International plc ("**Glencore**") and Cyril Ramaphosa acquired all of the issued share capital of OCH.
208. In July 2013, OCM wrote to Eskom invoking the hardship clause under clause 27 of the Hendrina CSA to trigger negotiations about a new contract because the fixed price of coal that was negotiated in 1993 meant that OCH was losing R100 million a month as a result of a depressed commodities environment. OCM claimed that circumstances outside of its control were resulting in a material disadvantage to OCM and a corresponding material advantage to Eskom. In terms of clause 27 of the CSA, if OCM is able to prove such hardship, the parties are required to renegotiate the purchase price for contract coal. The parties engaged in protracted negotiations and entered into a hardship cooperation agreement as a platform on which renegotiation discussions and interim supply would be concluded ("**hardship cooperation agreement**").



209. On 17 April 2014, a consortium of banks consisting of Firstrand Bank Limited, Investec Bank Limited and Nedbank Limited (**"the OCM banking consortium"**) amended a restated loan facility agreement with OCH pursuant to which an amount of R2.5 billion was made available to OCH. All of the immovable and movable assets of OCH and its subsidiaries were encumbered in favour of the OCM banking consortium (**"OCH preferential creditor rights"**). The final repayment date for the OCH preferential creditor rights was 20 February 2017. I annex extracts from KPMG's Due Diligence Report as **"FA65"**.
210. On 12 February 2015, the CEO of Tegeta, Ravindra Nath, submitted a *"BEE certificate"* to Eskom which stated that Tegeta had a 100% BEE procurement recognition level (**"the BEE certificate"**). The BEE certificate was issued on 10 February 2015. The BEE certificate stated that Tegeta was an exempted micro-enterprise in terms of the BEE Scorecards. At the time, an enterprise only qualified for BEE compliance exemption if it had an annual turnover of less than R10 million. Tegeta's turnover for the 9 month period ended on 30 November 2015 was R211 345 714. I annex Tegeta's management accounts for the period as **"FA66"**. The representations by Tegeta that it enjoyed the exemption, or that Tegeta has a 100% BEE procurement recognition level (**"Tegeta's BEE representations"**) were thus plainly and intentionally false and fraudulent.
211. On 25 March 2015, Eskom's Executive Procurement Committee approved a revised contract for OCM to supply Hendrina power station (**"revised Hendrina CSA"**). OCM was advised by Eskom's Executive Procurement Committee that the terms of the revised Hendrina CSA were subject to



approval by Eskom's Executive-Procurement Committee and then by the Eskom Board's Procurement Committee.

212. On 13 April 2015, Dam Capital, representing the little-known Endulwini Consortium consisting of anonymous investors, made an offer to Glencore to purchase OCM as well as Optimum Coal Terminal's export allocation for USD 200 million, then R2,43 billion.

213. On 15 April 2015, the revised Hendrina CSA was presented to Eskom Board's Procurement Sub-Committee. However, the Committee was not willing to make a decision and referred the matter to the full Eskom Board for consideration.

214. In a written statement by Brian Molefe to the Parliamentary Committee for Public Enterprises on 21 November 2017, annexed as "FA67", he confirmed that OCM's request for a revised Hendrina CSA was being favourably considered by Eskom before his appointment as Eskom CEO.

215. On 23 April 2015, a week after the appointment of Brian Molefe as the acting CEO of Eskom, the Eskom Board met to consider the revised Hendrina CSA but did not make a decision and requested further information.

216. On 18 May 2015, Brian Molefe met with Glencore and advised that Eskom would not be concluding any revised deal with OCM and would continue to enforce the Hendrina CSA.

217. On 10 June 2015, Brian Molefe advised OCM in a letter that Eskom's dire financial condition prevents them from signing any amended Hendrina CSA.

218. Salim Essa and the Chief Executive of Sahara Computers, Mr Ashu Chawla, received confirmation of two bookings at the Oberoi Hotel in Dubai for a

deluxe suite for Eskom's CFO Anoj Singh and a presidential suite for Mr Rajesh Gupta coinciding over the period 12 to 15 June 2015.

219. On 22 June 2015, Eskom informed OCM that it was not willing to renegotiate the Hendrina CSA and terminated the hardship cooperation agreement.
220. On 1 July 2015, Glencore received a letter from KPMG Services signed by Nick Matthews, a Partner in Deal Advisory and Head of Mergers & Acquisitions. The letter stated that KPMG Services had been requested by one of their clients, who at the time wished to remain anonymous, to present an expression of interest to purchase either OCM or OCH for R2 billion. This is similar to the offer made by Dam Capital on 13 April 2015. The letter further stated that

"Our client has held discussions with its bankers regarding their capacity to fund the acquisition of Optimum Coal. Based on their existing business operations and assets (i.e. without recourse to the assets of Optimum Coal), they have received written letters of support for the required funding, which together with case resources, would allow them to fund the proposed purchase price of R2 billion, without recourse to the assets of Optimum Coal."

221. In early July 2015, despite the termination of the hardship cooperation agreement, OCM secured additional funding from Glencore to enable it to continue supplying Eskom. In this regard, I annex a transcript of Business Rescue Practitioner Piers Marsden's testimony on oath before the Parliamentary Committee for Public Enterprises on 1 November 2017 ("**Marsden Parliamentary Testimony on oath**") as "FA68", and refer to page 6 thereof.



222. On 16 July 2015, Eskom served a notice on OCM in which it asserted its rights to claim significant historical penalties from OCM ("**OCM penalty**"). No correspondence was previously addressed by Eskom pertaining to any penalties in terms of the Hendrina CSA.
223. On 31 July 2015, in the face of the action by Eskom, the directors of OCH and OCM resolved to commence voluntary business rescue proceedings.
224. On 31 July 2015, Atul Gupta emailed Eskom Board and ORE Board member Mark Pamensky to thank him "*for your very supportive discussion today and action, I really appreciate*". I annex a copy of the email correspondence between Atul Gupta and Mark Pamensky over this period as "**FA69**".
225. Between the period 2 August 2015 and 22 March 2016, Eskom CEO Brian Molefe and Ajay Gupta called each other 58 times. See page 300 to 303 of the State of Capture Report, annexed marked "**FA70**". The ineluctable inference is that such calls related, *inter alia*, to issues pertaining to OCH and OCM.
226. On 3 August 2015, the DMR took the unusual step of suspending mining operations at OCM under section 93(b) of the MPRDA ("**section 93(b) suspension notices**"). Over the previous six months, OCM had taken various steps to restructure its operations and reduce its costs. These steps included the downscaling of its operations its production activities. The DMR alleged that the associated retrenchments were carried out unlawfully and in an inhumane manner. There was no lawful basis for the section 93(b) notices.



227. On 4 August 2015, Piers Marsden and Petrus van den Steen were appointed as joint business rescue practitioners for OCH and its subsidiaries ("**BRPs**"). In terms of the OCH preferential creditor rights, all amounts due and payable to the OCM banking consortium would have to be settled first before the other funding arrangements (which are subordinated) could be settled.
228. On 5 August 2015, summons was served by Eskom on OCM for the OCM penalty, claiming a quantum of R2.177 billion (plus interest calculated at 9% *a tempore morae*). As noted at page 339 of the State of Capture Report (annexed hereto as "**FA71**"), "*[i]t is unclear as to why Eskom proceeded to refer a matter to arbitration and issue a summons on the same day. It can only be inferred that Eskom wished to exert pressure on OCH/OCM*".
229. The OCM penalty allegedly related to historic coal deliveries where product had been delivered to Eskom allegedly out of specification around the sizing of the product. The BRPs' real concern, however, was the forward looking Optimum coal quality penalty which, if imposed, would render OCM even further loss making given that it would effectively not receive value for the coal that it delivered. See page 4 of the Marsden Parliamentary Testimony on oath.
230. I point out that Eskom's Group Company Secretary at the time, Suzanne Daniels, testified on oath to the Parliamentary Committee for Public Enterprises in November 2017, a report on which is annexed as "**FA72**", ("**Daniels' Parliamentary testimony on oath**"), that the calculation of the OCM penalty (even if it was applicable) was grossly exaggerated by Eskom.
231. On 7 August 2015, Ashu Chawla, the Chief Executive of Sahara Computers, received an email from "infoportal1@zoho.com", annexed as "**FA73**",



containing an attached letter that the BRPs had sent to Eskom's senior executives regarding OCM's mining right suspension. Six months earlier, an email sent from the same address to Duduzane Zuma stated "*[e]vening sir please find attached my CV and supporting documents.*" Mogokare Seleke's CV was attached to the email, which ended "*Regards, Richard*" (Richard is Mogokare Seleke's middle name). It is my understanding that the email address infoportal1@zoho.com is used by Mogokare Seleke. I refer to an article published in the Sunday Times, annexed marked "**FA74**".

232. On 7 August 2015, the DMR lifted the section 93(b) suspension notices. Glencore announced that "*[t]his follows extensive discussions between the company and the DMR during which the company demonstrated that it had complied with all legal requirements in respect of the retrenchment process and the conditions of its mining right.*" I annex a report containing Glencore's announcement as "**FA75**".

233. On 20 August 2015, the BRPs sent a letter to Eskom stating that they were suspending all obligations of OCM in terms of the Hendrina CSA and that the BRPs were willing to supply coal to Eskom on terms which are sustainable for OCM. The BRPs attached a proposed interim arrangement which would see OCM supply coal to Eskom at a price equal to the cost of production for OCM, with Eskom paying on a weekly basis ("**proposed interim arrangement**").

234. On 21 August 2015, Eskom requested all of OCM's books from the BRPs "*in order to assess the economic viability of the proposal submitted to them*". The BRPs responded to the request on 21 August 2015, informing Eskom that a due diligence led by Ayanda Nteta from Eskom's primary energy



division had been performed and that sufficient information had already been supplied to Eskom. I annex page 154 from the State of Capture Report as "FA76".

235. On 24 August 2015, Eskom replied to the BRPs that it could not engage in negotiations related to the proposed interim arrangement without full financial disclosure by OCM and that the proposed interim arrangement was not acceptable.

236. On 29 September 2015, Oakbay made an offer to the BRPs to acquire OCM. See page 338 of the State of Capture Report, annexed marked "FA77".

237. On 30 September 2015, Eskom informed the BRPs that they had considered the proposed interim arrangement and were not willing to entertain it as:

237.1 any discussion and negotiation on the new contract price for coal in terms of the Hendrina CSA would only be considered closer to 2017; and

237.2 the OCM penalty was not negotiable and would have to be settled immediately in full.

238. As stated in page 338 of the State of Capture Report (annexed above marked "FA77"), *"the only party who probably stood to benefit from [OCM] being financially distressed...would be a prospective suitor. In this case, the prospective suitor was Tegeta."*

239. On 26 September 2015, President Zuma appointed Mosebenzi Zwane as the Minister of Mineral Resources. He replaced Ngoako Ramatlhodi, who in May 2017, publicly stated that he was removed as Minister after he resisted pressure from Eskom's CEO Brian Molefe and Eskom's chairperson Baldwin



Ngubane to suspend all of Glencore's mining licences in South Africa, pending the payment of the OCM penalty. Ngoako Ramatlhodi replied: "*I said to them: how many mines do these people have supplying Eskom? How many more outages are we going to have?*" Baldwin Ngubane allegedly informed Ngoako Ramatlhodi that he would have to report on their meeting to President Zuma immediately as the President needed to be in the know before leaving on a foreign trip to the People's Republic of China. Ngoako Ramatlhodi was dismissed shortly after President Zuma's return to South Africa. I annex a press article describing Ngoako Ramatlhodi's account of the meeting as "**FA78**".

240. On 7 October 2015, the BRPs signed a binding term sheet with Phembani, a minority shareholder in OCH, in relation to the sale of OCM ("**proposed Phembani OCM acquisition**"). See pages 5, 24, 25 and 33 of the Marsden Parliamentary Testimony on oath.

241. On 7 October 2015, the BRPs informed Oakbay that they had received a more favourable offer from a third party, being Phembani. The BRPs stated that the third party had requested OCM to engage exclusively with them and that OCM would therefore no longer engage Oakbay regarding their offer.

242. Eskom did not agree to the proposed Phembani OCM acquisition. In a letter that was received by the BRPs after Tegeta had acquired OCM, Phembani suggested that they were not given an opportunity by Eskom to conclude a similar type of transaction. See page 6 of the Marsden Parliamentary Testimony on oath.

243. On 20 October 2015, the BRPs met with Oakbay to discuss Oakbay's offer to purchase OCM.



244. On 23 October 2015, the BRPs confirmed with Oakbay that they were now willing to proceed with the sale of OCM to Oakbay with certain conditions. The BRPs stated that only OCM was for sale.

245. On 28 October 2015, a meeting was held between the BRPs and Eskom. According to a letter from OCM, set forth at pages 160 - 161 of the State of Capture Report, annexed marked "FA79", various options were discussed at the meeting:

245.1 a sale of OCM to Eskom;

245.2 the sale of OCM to a third party on condition that new terms can be agreed with Eskom;

245.3 the BRPs stated that they have been approached by Oakbay to purchase the assets of OCM; and

245.4 the BRPs further stated that they have limited time to explore this option due to the R120 million worth of funding required to operate OCM and supply Eskom on a monthly basis.

246. On 3 November 2015, the BRPs informed Eskom that they had not been able to develop a plan to ensure that OCM would be able to supply coal to Eskom in terms of the Hendrina CSA and that if they do not develop a viable plan they would have to consider the option of liquidating OCM.

247. On 4 November 2015, Matshela Koko sent an email to Mogokare Seleke, that contains the message: "*Please give the Boss. The fight begins*". This email was forwarded to the former Chief Executive of Sahara Computers Ashu Chawla. I annex a copy of the relevant emails as "FA80". Attached to the email was a letter from Just Coal (Pty) Ltd ("**Just Coal**"), a direct



competitor of Tegeta, dated 30 October 2015. In the letter, Just Coal state that Eskom did not assist Just Coal to deliver coal to *inter alios* the Arnot power station and that it was not possible for Just Coal to deliver coal within the contracted period. Just Coal further state that Eskom's decision regarding the termination of the coal supply agreements would have a costly negative financial impact on its business.

248. Just Coal had a contract to supply coal to the Arnot power station from Brakfontein at a price of R279.21 per ton which commenced on 1 April 2014 and would have terminated on 31 March 2024 ("**Just Coal Arnot contract**"). It seems clear that the Just Coal Arnot contract was cancelled by Eskom to pave the way for Tegeta to obtain a coal supply agreement in respect of the Arnot power station at a materially higher price. I annex an extract from a Report by Dentons in respect of the investigation into the status of the business and challenges experienced by Eskom, instituted by the board of Eskom in terms of a resolution passed on 11 March 2015 ("**Dentons' Report**") as "**FA81**".

249. On 4 November 2015, Matshela Koko forwarded a legal opinion that Eskom had received from senior counsel ("**Eskom Hendrina legal opinion**") to Mogokare Seleke. Mogokare Seleke forwarded the Eskom Hendrina legal opinion to the former Chief Executive of Sahara Computers Ashu Chawla. I annex a copy of the relevant correspondence and the Eskom Hendrina legal opinion as "**FA82**". The Eskom Hendrina legal opinion advised on Eskom's rights in terms of the Hendrina CSA. Mogokare Seleke, in turn, forwarded the Eskom Hendrina legal opinion to wdrsa1@gmail.com, which I understand is an email address used by Tony Gupta. The Eskom Hendrina legal opinion dealt with two issues: i) could a court remove Optimum's business rescue



practitioners?; and ii) could Eskom force OCM to keep delivering coal at the loss-making price of R150 per ton, in light of OCM having been placed into business rescue? The Eskom Hendrina legal opinion advises Eskom's executives to negotiate with Glencore and warns that Eskom was in a weak bargaining position, especially considering that *"Eskom currently had no supply of coal [to the Hendrina power station]; has not considered and/or identified an alternative supply..."*

250. On 5 November 2015, a draft letter on an Eskom letterhead (dated 4 November 2015) was sent from Rajesh Gupta to Ashu Chawla ("**the Gupta originating letter**"), a copy of which is annexed as "**FA83**". A few hours later, Matshela Koko sent the Gupta originating letter on behalf of Eskom to the BRPs. The Gupta originating letter stated that:

- 250.1 as a Glencore operation, OCM should enjoy far more than conditional funding for limited time periods;
- 250.2 Eskom may be compelled to seek intervention from such institutions such as the Competition Tribunal, the DMR and service providers to ensure meaningful engagement with OCM;
- 250.3 it may also be an appropriate time for Eskom to review the engagement with Glencore from a portfolio perspective;
- 250.4 Eskom *"note that [the BRPs] have an offer on the table. Eskom is happy to engage in a roundtable discussion with the interested party and yourselves to establish the veracity of the offer. You have repeatedly emphasized the limited time available to explore such*



options and Eskom would be willing to enter in such discussions provided that it aims to find a solution."

251. On 13 November 2015, the BRPs responded to Eskom that:

251.1 Oakbay had begun the due diligence process on OCM; and

251.2 they were hopeful of concluding a transaction with Oakbay with the consent of Eskom.

252. On 20 November 2015, 28.53% of Tegeta's equity was transferred to Mabengela Investments. I annex an article by Bloomberg as "**FA84**".

253. On 22 November 2015, Eskom and ORE Board member Mark Pamensky informed Atul Gupta in an email, annexed as "**FA85**", that:

"In terms of investment committee I am available to start straight away. As I'm at the tail end of the main acquisition of Optimal Coal, please ensure that a condition precedent is that the R2bn claim from Eskom is withdrawn or it becomes the sellers problem. I'm happy to get involved to assist with this acquisition and monthly monitoring/analyzing of all investments from today. I can meet anyone your require. If you need me in India or Dubai to discuss, I'll meet you there."

254. On 24 November 2015, a meeting was held among Eskom, OCM and Oakbay. Matshela Koko chaired the meeting and signed its minutes. During the meeting, Matshela Koko communicated that Eskom ("**Eskom's 24 November 2015 requirements**");

254.1 expected OCM to honour the Hendrina CSA until 2018;

254.2 would not waive the OCM penalty;



254.3 would withhold its consent from the transaction with Oakbay should it be limited to a transaction at OCM level; and

254.4 needed to know by that weekend whether there was a prospect of the transaction occurring at OCH level.

255. Eskom's 24 November 2015 requirements were unlawful and irrational, and were motivated by ulterior purposes of advancing the business interests of the Gupta family and their businesses.

256. The Gupta family and their businesses and business associates, through Eskom, thus unlawfully, corruptly and fraudulently ensured that the only offer on the table was the Tegeta one. According to Piers Marsden, after the failure of the proposed Phembani OCM acquisition and their various correspondence with Eskom, the BRPs realised that Eskom had foreclosed any opportunity to negotiate a revised coal supply deal and *"essentially we were left with Tegeta as the remaining offeror for the assets."* See page 6 of the Marsden Parliamentary Testimony on oath.

257. The BRPs received a verbal offer from Tegeta to purchase OCM's assets for R1 billion ("**original Tegeta offer**"). The original Tegeta offer implied a substantial write-off of the OCM banking consortium's debt, and the OCM banking consortium rejected the original Tegeta offer on 26 November 2015. See page 6 of the Marsden Parliamentary Testimony on oath.

258. On 1 December 2015, Glencore communicated in a meeting with the BRPs and Eskom that they would support OCH and discharge OCH's business rescue. See page 6 of the Marsden Parliamentary Testimony on oath.



259. Between 30 November 2015 and 2 December 2015, the Minister Zwane intervened to ensure that the Gupta family and business interests unlawfully prevailed. He did so in circumstances where he had no legitimate interest or jurisdiction to interfere in the relationship among the Gupta family / their businesses, Glencore, the OCH entities and Eskom. In any event, given Minister Zwane's very close relationship and history with the Gupta family and their businesses, he could not objectively or lawfully intervene in this matter, and the intervention was done for ulterior purposes as aforesaid.

260. He travelled with Rajesh Gupta and Salim Essa on board the Guptas' Bombardier jet, ZS-OAK ("**ZS-OAK group**") to meet with the CEO of Glencore in Zurich, Switzerland. Minister Zwane, Rajesh Gupta and Salim Essa met with the CEO of Glencore in Switzerland at the Dolder Hotel. See pages 124 to 126 of the State of Capture Report, annexed as "**FA86**". On 2 December 2015, the ZS-OAK group travelled from Zurich to Delhi, India, before departing for Muscat, Oman on 4 December 2015. I annex correspondence between the CEO of Sahara Computers Ashu Chawla and the ExecuJet Aviation Group as "**FA87**".

261. On or around 4 December 2015, Tegeta submitted a revised offer to the BRPs to purchase OCH with a substantially increased price. See page 7 of the Marsden Parliamentary Testimony on oath.

262. On 6 December 2015, Kamal Gupta (Ajay Gupta's son) circulated a spreadsheet entitled "*Latest Costing Model*" in relation to the OCH entities ("**Gupta OCH plan**"), annexed as "**FA88**". According to the Gupta OCH plan, the "Guptamisation" of the OCH entities would result in costs savings of 32%, the implementation of "Business Model 1" would result in costs savings

of 43% per tonne, and the implementation of "Business Model 2" would result in costs savings of 51% per tonne. The cost savings would be realised by substantial reductions in expenditure on rehabilitation, underground support, labour, repairs, maintenance, electricity and water.

263. On 6 December 2015, Matshela Koko wrote a letter ("**6 December 2015 letter**") in his capacity as Group Executive for Generation to the DMR which stated:

"In rather dramatic fashion, [OCM] was placed under business rescue and Eskom was faced with intermittent veiled threats of liquidation while at the same time, the business rescue practitioners purported sort constructive engagement between the parties;"

"Optimum supplies one of Eskom's key contributors to the National Power Station as Hendrina Power Station is a stalwart in the Eskom fleet, supplying approximately 2000 MW to the national grid. Glencore was fully aware of the dynamics and history relating to the nature of the coal supply agreement and its structure when it concluded the sale with its previous owners."

"Eskom is perplexed by this about-turn given the events of the past few months and at the blatant disregard Optimum displays for the impact that the threats of liquidation has on the precarious balance of electricity security and commercial viability. As a Glencore operation, Optimum surely cannot be perceived to be acting in the national interest."

264. According to the Eskom Board Parliamentary statement, Matshela Koko requested intervention by the DMR on 6 December 2015. The Director



General of DMR responded in a letter ("**December 2015 DMR letter**") indicating that the DMR would engage with parties and will take certain steps to assist "*considering the significant risk to the country.*" The DMR requested that "*Eskom play an active role in supporting the rescuing of the mine and in return for securing the honouring of the current contract up to 2018 to consider making a pre-payment for up to one years coal supply.*" I annex extracts from the Eskom Board Parliamentary statement as "**FA89**".

265. The DMR has no authority to intervene in Eskom's engagements with Eskom's suppliers. There is no lawful basis for the December 2015 DMR letter. The December 2015 DMR letter contrasts starkly with the DMR's decision to issue the section 93(b) suspension notices in relation to OCM to Glencore on 3 August 2015. The DMR's change in approach towards OCM coincides with changes in Tegeta's interests regarding OCM. The December 2015 DMR letter was sent at a time during which Tegeta and Glencore were engaged in advanced negotiations in respect of the Tegeta's proposed acquisition of OCH.

266. On 8 December 2015, Tegeta's CEO Ravindra Nath met with the OCM banking consortium to propose settling a portion of OCM's debt immediately, with the rest to be paid by Tegeta in 11 monthly instalments. The OCM banking consortium rejected this offer.

267. In a written statement by Eskom's Group Company Secretary at the time, Suzanne Daniels, to the Parliamentary Committee for Public Enterprises dated 8 November 2017, annexed as "**FA90**", ("**Daniels' written statement**") she confirmed that:



- 267.1 on 8 December 2015, Eskom's Chairperson Baldwin Ngubane instructed Suzanne Daniels to collate documents to be circulated via email to the Eskom Board requesting their approval for an "*Urgent Request to approve the Pre-Purchase of Coal from Optimum Coal (Pty) Ltd*" ("**8 December Prepayment**");
- 267.2 a meeting of Eskom's board investment and finance sub-committee was convened on 9 December 2015 ("**IFC meeting**");
- 267.3 Eskom's CFO Anoj Singh attended the IFC meeting in his capacity as the "*co-ordinating official*";
- 267.4 the IFC meeting was chaired by Devapushpum Naidoo and the other board members present included Venete Klein and Zethembe Khoza;
- 267.5 the IFC meeting resolved that: "*[i]t is recommended that the Board approve the transaction as set out in the submission to the Board relating to the pre-purchase of coal from Optimum (Pty) Ltd*" ("**IFC meeting resolution**");
- 267.6 on 9 December 2015, the Eskom Board approved the IFC meeting resolution ("**9 December Eskom Board resolution**"). Eskom's CEO Brian Molefe, the Group Executive for Generation Matshela Koko and the CFO Anoj Singh were "*authorised to negotiate and conclude a pre-purchase of coal agreement with the **proposed owners** of OCM*" (emphasis added).
268. In a written statement by Devapushpum Naidoo, an Eskom Board member and the chairperson of the IFC meeting, to the Parliamentary Committee for



Public Enterprises on 21 November 2017 ("**Naidoo's written statement**"), annexed as "**FA91**", she confirmed that:

268.1 Anoj Singh and/or Matshela Koko stated in relation to the 8 December Prepayment to Devapushpum Naidoo that Eskom was "*buying coal in terms of an existing contract and at the agreed price as per the agreement. Further I was advised there is no other means of getting Coal for Hendrina at a price of R150/ tonne*";

268.2 Devapushpum Naidoo approved the 8 December Prepayment at 19h30 on 8 December 2015, subject to the following:

268.2.1 the IFC "*signs off*" on the 8 December Prepayment; and

268.2.2 the 8 December Prepayment complies with PFMA and other statutory regulation.

269. Section 54(2) of the PFMA requires that prior to Eskom engaging in certain transactions ("**notification transactions**"), the Eskom Board must promptly, and in writing, inform the relevant treasury of the transaction and submit relevant particulars of the transaction to the Minister of Public Enterprises. In terms of the Significant and Materiality Framework between the Minister of Public Enterprises and Eskom dated 25 January 2012, the notification transactions include any acquisition of non-current assets valued in excess of R1.5 billion. The Minister of Public Enterprises was not notified of the 8 December Prepayment prior to the 9 December Eskom Board resolution. Without such notification, the 9 December Eskom Board resolution is patently unlawful.



270. There was no lawful or any basis for the IFC meeting resolution and the 9 December Eskom Board resolution, and such resolutions were irrational, contrary to the interests of Eskom and directly contrary to its practices. Those resolutions were actuated by ulterior purposes of unduly favouring the Gupta family and its businesses and bankrolling the purchase of OCH by Tegeta; they were taken in bad faith and corruptly. Moreover, Eskom did not obtain approval for any prepayments from the Minister of Finance and the Minister of Public Enterprises as required in terms of the PFMA.

271. The 9 December Eskom Board resolution notes that the pre-purchase of coal agreement with the proposed owners of OCM arose from a request by the DMR.

272. On 9 December 2015, the CEO of Tegeta Ravindra Nath sent an email to Matshela Koko with an attached letter which referred to a meeting where a prepayment of R1,68 billion for the supply of coal had been agreed to ("**the 9 December Prepayment**"). I annex a copy of the email as "**FA92**".

273. On 10 December 2015, all shares held in OCH were sold to Tegeta ("**Sale Agreement**"). The purchase price was R2.15 billion ("**Purchase Price**"). In terms of clause 3.1.4 of the Sale Agreement, Tegeta was obliged to have obtained the irrevocable and unconditional:

"3.1.4.1 consent of Eskom to the sale and purchase of the Sale Equity [Eskom's assignment and disposal consent];

3.1.4.2 release by Eskom of the [Eskom OCH Guarantee]; and

3.1.4.3 release by Eskom of the Seller and its past and current Affiliates (other than the Target Companies), with effect from the Closing Date, from all actions, claims, counterclaims, causes of action, debts,



obligations, damages, liabilities, rights and demands whatsoever, of whatever kind or nature, in contract or in delict, known or unknown, which Eskom now has or ever had against the Seller and its past and current Affiliates that are and/or may be based upon, arise under, or be related to the [Hendrina CSA], prior to and including the Closing Date."

274. On 10 December 2015, the Senior General Manager of Eskom's Treasury Caroline Henry prepared a memorandum addressed to Eskom's CFO Anoj Singh setting out the rationale for a bank guarantee to be granted by Eskom in favour of Tegeta, with ABSA Bank Limited as the issuing bank ("**the December 2015 guarantee**"). See page 9 of the Daniels' written statement.

275. On 11 December 2015, Tegeta's CEO Ravindra Nath sent an email to Anoj Singh annexed as "**FA93**" in which he requested certain amendments to the December 2015 guarantee. In the email, Ravindra Nath requested Anoj Singh to "*Kindly consider exclusion of clause 2.4 as this is an internal matter of Eskom.*" Clause 2.4 of the draft December 2015 guarantee, which had been sent via email by Anoj Singh to Ravindra Nath earlier on the same day stated:

"to the extent required, the Applicant has obtained required approvals in terms of the Public Finance Management Act, 1999".

276. Anoj Singh approved the December 2015 guarantee ("**Eskom's approval of the guarantee**") and on 11 December 2015 ABSA Bank Limited issued the December 2015 guarantee for R1.68 billion. See page 9 of the Daniels' written statement.



277. There was no legal or rational basis for Eskom's approval of the December 2015 guarantee or for Eskom to agree to any guarantee in favour of Tegeta, and the guarantee did not serve the best interests of Eskom. It was approved by Mr Singh and Eskom in bad faith and for ulterior purposes of advancing the interests of the Gupta family and their businesses. Moreover, no lawful approval of the guarantee or any decision to agree to a guarantee was given by the Eskom Board, the Minister of Finance and/or the Minister of Public Enterprises, as required in terms of the PFMA and otherwise in law.

278. On 10 December 2015, Eskom Board member Mark Pamensky sent an email to Atul Gupta, annexed as "FA94", which stated "*Congratulations (Mazeltov) on a brilliant and well thought out, planned and strategized acquisition of the Optimum Group of companies. Well done and I'm proud of you all. This is only the beginning of the resource group growth and many more to come into play. I'm more than sure that you and the team will make a huge success of this acquisition. I wish you all the success on the deal. The hard work begins now and we as a team will produce the results. **Let's me know when you ready to discuss the operational implementation.** I'm truly proud to be part of this group*" (emphasis added).

279. The Eskom Board claims in the Eskom Board Parliamentary statement, an extract of which is annexed as "FA95", that "*Eskom was not involved in the purchase of Optimum Coal Holding by Tegeta and therefore is unable to assist the Committee in this regard as this was a commercial transaction between two private companies.*" This is transparently false. Eskom and its officials were, unlawfully and corruptly, integrally involved in ensuring that Tegeta acquired the OCH entities.



280. On 15 December 2015, Tegeta submitted a "*Solvency and Liquidity Assessment*", ("**Tegeta assessment**") annexed as "**FA96**", to demonstrate to the BRPs that OCM would no longer be financially distressed as contemplated in terms of section 128(1)(f) and section 141(2)(b)(ii) of the Companies Act, 2008, for at least a 6 month period following the conclusion of Tegeta's acquisition of the assets of OCH. According to the Tegeta assessment:

- 280.1 OCM would change its business model and sell 220 000 tonnes of coal per month to Tegeta at an average selling price of R317 per tonne and an associated average cost of R114 per tonne;
- 280.2 the profit realised on the additional production of 220 000 tonnes per month will essentially assist in subsidising losses incurred on the Hendrina CSA; and
- 280.3 under Tegeta's control, OCM would defer "*non-essential rehabilitation and capital expenditure costs for at least six months.*"

281. On 16 December 2015, Eskom's CFO Anoj Singh travelled to Dubai. The costs of the trip, including in relation to limousines, accommodation, massages, food and beverages, were unlawfully and corruptly paid by the Gupta Family. I annex the relevant correspondence and the invoice received by Rajesh Gupta as "**FA97**".

282. On 17 December 2015, KPMG filed a large merger notification ("**the Competition Commission notification**") with the Competition Commission on behalf of Tegeta in relation to the proposed acquisition of OCH and the



OCH entities ("**the proposed OCH Tegeta transaction**"). A copy of an extract from the Competition Commission notification is annexed as "**FA98**".

283. According to the Competition Commission notification:

283.1 if the proposed OCH Tegeta transaction did not succeed and OCM was unable to trade itself out of financial distress, OCM would be forced into liquidation and would exit the market;

283.2 this would in all likelihood result in the loss of employment of all employees employed by OCM and the six other OCH entities. OCM alone employed 451 individuals and contracted with approximately 1500 contractors. Koornfontein employed 669 permanent employees and had contracted with 556 contractors. See page 16 of the Market and Competition Analysis;

283.3 all of Tegeta's, OCM's and Koornfontein's thermal coal sales to Eskom are predetermined insofar as volumes and prices are concerned. Accordingly, while the proposed merger gives rise to horizontal overlaps, the merger affords the merging parties little to no ability to raise prices post-merger.

284. On 18 December 2015, the Bank of Baroda issued a "letter of comfort" to BRPs, promising to effect payment of R2.15 billion to the OCM banking consortium.

285. Eskom then, unlawfully and corruptly, and for the ulterior purpose of furthering the business interests of the Gupta family, continued to create demand for coal from Tegeta and the OCH entities, in addition to cancelling the Just Coal Arnot contract.



286. In December 2015, Eskom decided to terminate its coal supply agreement with the Mafube colliery. The Mafube colliery is a joint venture between Exxaro and Anglo American just north of the N12 highway and mined and supplied coal via a long conveyor belt system to the Arnot Power Station. The Dentons' Report shows that the Mafube colliery supplied coal to Eskom coal under a fixed price contract ("**Mafube contract**") at R132.7 per tonne. The coal supplied under the Mafube contract was the cheapest on Eskom's books. According to Dentons' Report, the contract was due to run until the end of 2023. An extract from the Dentons' Report is annexed as "**FA99**".

287. On 31 December 2015, a 40-year-old contract between Exxaro and Eskom for the supply of coal from the Arnot coal mine to Arnot power station expired. Eskom elected not to exercise its contractual right to continue with the coal supply from the Arnot coal mine. Eskom decided not to renew the Exxaro contract even though it had not appointed a permanent replacement coal supplier in respect of Arnot. Instead, Eskom then contracted with Tegeta to supply coal on an emergency basis, as set forth below.

288. At 00h51 on 1 January 2016, Eskom Board member Mark Pamensky sent an email to Atul Gupta, Rajesh Gupta, Varun Gupta and Salim Essa, annexed as "**FA100**", which stated:

"We must take each and every opportunity and capitalize on it, to the fullest. Thank you for welcoming me to the family and making me part of the family and the group. I will not let you down."

289. In early January 2016, Matshela Koko travelled to Dubai. Sahara Computers was invoiced for significant sums of money by the Oberoi Hotel in Dubai for "*Koko, Matshela*". I annex a copy of an invoice from the Oberoi Hotel to

Sahara Computers as "**FA101**". Again, this was corrupt gratification given to Mr Koko by the Gupta family and its businesses.

290. On 5 January 2016, Nicolas Angio (the Group CFO of Centaur Asset Management Company) submitted a foreign loan application ("**Centaur loan**") and a loan agreement between Centaur Ventures Ltd and Centaur South Africa to Standard Bank of South Africa Limited ("**Standard Bank**"). I annex the correspondence regarding the Centaur loan as "**FA102**".
291. On 11 January 2016, Standard Bank approved the Centaur loan for R1.5 billion in terms of section 1.3(A) of the Exchange Control Rulings, with the third party lender being Centaur Ventures Ltd; the debtor being Centaur South Africa. A copy of Standard Bank's approval is annexed as "**FA103**".
292. On 13 January 2016, Tegeta and OCM entered into a contract for the supply of coal to Eskom's Arnot power station. The contract was for 100 000 tonnes at a rate of R18.68/GJ on a gross as received basis plus R60 per ton for delivery. I refer to page 168 of the State of Capture Report, annexed as "**FA104**".
293. On 22 January 2016, Tegeta sent a letter to Eskom referring to a discussion between Tegeta and Eskom. Tegeta offered to supply Eskom with 250 000 tonnes of coal per month for a three month period starting on 1 February 2016. The coal would be supplied at a rate of R22.00/GJ, exclusive of VAT, plus transportation costs based on Eskom's scale. Eskom agreed to this offer ("**the January 2016 Arnot contract**"). Thus, Tegeta received R470 per tonne for coal delivered to Arnot power station, excluding transport costs. By comparison, under the Hendrina CSA while OCM was under Glencore and the BRPs' control in 2015, OCM received R150 per tonne for coal

delivered to the Hendrina power station. Prior to their termination by Eskom, the Arnot power station had been receiving coal under the Just Coal Arnot contract and the Mafube contract at R279.21 per ton and R132.70 per tonne respectively. Tegeta was unduly and unlawfully favoured by Eskom in being chosen as the supplier of coal and at the price set forth above. Tegeta's appointment could not lawfully occur without a full tender process.

294. There was no open, competitive and lawful tender process in respect of the January 2016 Arnot contract and the goods and services to be supplied thereunder. The conclusion of the January 2016 Arnot contract was unlawful, unreasonable and irrational. It was also corrupt and made for ulterior purposes of furthering the business interests of the Gupta family and their businesses, and was not in the best interests of Eskom.

295. Eskom had previously performed extensive due diligence on OCM and was aware of exact production outputs for coal and the price of coal being supplied by OCM. There was no rational basis for Eskom to contract with Tegeta for a higher price of coal than the price OCM obtained under the Hendrina CSA. In any event, there was no basis to allow Tegeta to earn a commission on coal supply, by acting as an intermediary between OCM, as the supplier, and Eskom, as recipient. Eskom was aware that Tegeta was obtaining the coal from OCM and at a materially lower price than R 22.00/GJ. This is a further ground on which the January 2016 Arnot contract was unlawful and irrational.

296. On 26 January 2016, a KPMG director Anton de Bruyn emailed Nazeem Howa with a proposed response to a query by the Competition Commission relating to Tegeta's "*BEE shareholders*" ("**response to Competition**

Commission BEE enquiry"). According to KPMG, the Competition Commission wanted *"to see the effect that the merger will have on the direct/indirect black empowerment shareholding In so far as the primary acquiring firm, Tegeta Exploration and Resources ("Tegeta"), is concerned."*

297. According to the response to the Competition Commission BEE enquiry:

"Tegeta is currently controlled as to 50% plus one by black empowerment shareholders. Therefore, upon implementation of the proposed merger, the target firms (other than Optimum Nekel) will be indirectly held as to 50% plus one by black empowerment shareholders. Similarly, post-acquisition by Tegeta, 51% of the shares in Optimum Nekel will be indirectly held as to 50% plus one by black empowerment shareholders. On this basis, the proposed merger will directly result in an improvement in the black empowerment credentials of each of the target firms. gs of the target firms."

298. It is unclear on what basis Tegeta and KPMG could conclude that Tegeta was controlled as to 50% plus one by black empowerment shareholders. This is knowingly false.

299. On 31 January 2016, Eskom Board member Mark Pamensky sent an email to Atul Gupta and ORE CEO Nazeem Howa, annexed as "FA105", which contained a screenshot of a Whatsapp conversation between himself and Glencore Operations South Africa (Pty) Ltd CEO Clinton Ephron in relation to the Sale Agreement. Mark Pamensky claimed that he had been informed by Clinton Ephron that *"closing the deal is important to Glencor."* Mark Pamensky further stated that *"[t]he fact is that Eskom will not deal with Glencor and the business practitioner mentioned same to me."*



300. On 10 February 2016, a submission was made to Eskom's board tender committee ("**BTC**") signed by Vusi Mboweni (Eskom's Senior General Manager for Primary Energy), Neo Tsholanku (Eskom General Manager for Legal) and Matshela Koko. The document stated that a risk has been identified in relation to Tegeta's ability to pay the OCM penalty.

301. On 10 February 2016, it was resolved at a BTC meeting that ("**the BTC February 2016 resolutions**"):

301.1 Eskom's assignment and disposal consent would be provided to the proposed OCH Tegeta transaction ("**Eskom's assignment and disposal to Tegeta**");

301.2 Eskom would release OCH from the Eskom OCH Guarantee;

301.3 Tegeta would need to issue a guarantee in relation to the performance of the Hendrina CSA; and

301.4 cession of the Hendrina CSA was granted on the basis that all requirements in terms of the Sale Agreement have been met.

302. On 18 February 2016, Tegeta and OCM entered into a contract for the supply of coal to Eskom's Arnot power station ("**the February 2016 CSA**"). The contract was for 400 000 tonnes at a rate of R18.68/GJ on a gross as received basis plus the negotiated transport rate. This price was exclusive of VAT.

303. There was no open, competitive and lawful tender process in respect of the February 2016 CSA and the goods and services to be supplied thereunder. The conclusion of this coal supply agreement was unlawful, unreasonable



and irrational. It was also concluded corruptly and for the ulterior purpose of furthering the business interests of the Gupta family and their businesses.

304. On 4 March 2016, the Bank of Baroda issued a further "*letter of comfort*" that payment of R2.15 billion could be effected to the creditors of OCH.

305. Between 9 March 2016 and 14 April 2016, Centaur South Africa, Trillian Capital Partners, Trillian Asset Management, Trillian Advisory and Albatime transferred approximately R1 billion to the Bank of Baroda to be used as collateral for loans to pay the balance of the Purchase Price.

306. Trillian Holdings owns 60% of the shares in Trillian Capital. All of the shares in Trillian Holdings are held by Mr Salim Essa. Eskom and ORE Board member Mark Pamensky was at the relevant time the CEO of Trillian Capital Properties, the property division of Trillian Capital. I annex extracts from the Report into Allegations with Regard to the Trillian Group of Companies, and Related Matters by Geoff Budlender SC ("**Budlender Report**") marked "**FA106**".

307. During the course of 2016 and 2017, Trillian Capital received at least four unlawful payments totalling R564-million from Eskom, ostensibly in relation to a consulting agreement. I annex an announcement by Eskom dated 5 October 2017 as "**FA107**".

308. The following amounts were paid by Albatime, the Trillian group companies and Centaur South Africa to Tegeta to fund its acquisition of OCH:

308.1 Albatime: R10 million. Prior to 31 March 2016, Kuben Moodley (the sole director of Albatime) was an adviser to the Minister of Mineral Resources Mosebenzi Zwane;



308.2 Centaur South Africa: R885,3 million;

308.3 Trillian Capital: R65 million;

308.4 Trillian Advisory: R95.6 million; and

308.5 Trillian Asset Management (a division of Trillian Capital): R74.8 million.

309. I annex pages 274 to 276 of the State of Capture Report as "**FA108**".

310. On 30 March 2016, Tegeta informed the BRPs that all suspensive conditions of the Sale Agreement had been fulfilled. In this regard, Tegeta noted that they had obtained:

310.1 merger approval from the Competition Tribunal on 22 February 2016; and

310.2 consent under section 11 of the MPRDA in terms of its application that was submitted to the DMR and/or the Minister of Mineral Resources in respect of the sale and/or transfer of the OCH entities.

311. On 30 March 2016, the BRPs received confirmation that the Minister of Mineral Resources, *alternatively*, DMR had granted section 11 consent in relation to the Sale Agreement and the proposed OCH Tegeta transaction ("**the section 11 consent**"). See page 7 of the Marsden Parliamentary Testimony on oath. There was no lawful, rational or reasonable basis for the section 11 consent to have been granted. It was granted for ulterior purposes of furthering the business interests of Tegeta and the Gupta family. The decision maker could have had no evidence of OCM's (and Tegeta's) financial or technical ability after the acquisition of OCM by Tegeta. This was

particularly so given Eskom's imposition of the OCM penalty and the precarious financial condition of OCM as a result.

312. At the time of the section 11 consent, financial statements of OCH for the year ended 31 December 2014, as well as that of OCM for the year ended 31 December 2014, had not been audited. In a letter to ORE dated 8 December 2015, OCM and OCH's auditors Deloitte Touche Tohmatsu Limited stated that:

"[a]s at the date of this letter, we have not yet completed the statutory audit of the annual financial statements of our client for the year ended 31 December 2014 or the year ending 31 December 2015. Accordingly, we are unable to, and do not, express at this time any opinion on these financial statements.... The draft financial statements cannot in any way serve as a substitute for audited financial statements, or other inquiries and procedures that the purchaser would (or should) otherwise undertake for the purpose of satisfying themselves regarding the client's financial condition or for any other purpose in connection with the proposed acquisition" and

"management are unable to provide us with sufficient appropriate audit evidence that the entity [being OCH and OCM] will continue as a going concern for the foreseeable future".

313. Moreover, according to a financial model developed by KPMG for Tegeta ("KPMG Model"), OCM's rehabilitation liability was substantial, including R1,67 billion in surface rehabilitation and R2.1 billion in water rehabilitation liability, and OCM's Trust Fund Asset only amounted to R983.5 million at the time. I annex an extract from the KPMG model's user manual, marked



"FA109" and extracts from the KPMG Model, marked "FA110". OCM, OCH and Tegeta had no financial ability to cover this liability at the time of the section 11 consent. The section 11 consent could thus not lawfully or reasonably have been granted.

314. On 11 April 2016, Tegeta approached the BRPs, Glencore and the OCM banking consortium to claim that it was R600 million short in respect of its ability to pay the Purchase Price.


315. On 11 April 2016, Acting CEO of Oakbay Investments, Ronica Ragavan called Mr Molefe. I refer to page 303 of the State of Capture Report, annexed marked "FA111".

316. On 11 April 2016, Tegeta sent a letter to Eskom offering to supply an additional 1,25 million tonnes of coal to Eskom ("**the 11 April 2016 letter**"). The 11 April 2016 letter states that:

"Kindly refer to the negotiations we had in the captioned matter. In this connection Tegeta Exploration and Resources (Pty) Ltd (Tegeta) is ready to supply Eskom an additional 1,250,000 (one million and two hundred fifty thousand) tonnes of coal from the Optimum Coal Mine (Pty) Ltd (OCM) over a period of 5 months at a rate of R20.41 (Rand twenty and cents forty one) per gigajoule plus VAT less 3.5% discount."

317. The Daniels' written statement confirms that on Friday 11 April 2016:

317.1 at around 19h30, Eskom's Chairperson of the BTC Zethembe Khozo called Suzanne Daniels to inform her that it was necessary to convene a BTC meeting for that evening and that the item to be discussed was emergency coal supply to Arnot power station;



317.2 at 19h51, Suzanne Daniels received an email from Eskom's Chief Procurement Officer Edwin Mabelane to request that a meeting be held to discuss emergency coal supply to Arnot power station;

317.3 at 21h04, the meeting commenced telephonically; and


317.4 at 21h32 the meeting closed.

318. The BTC agreed to the terms of the 11 April 2016 letter, in effect, the BTC, within the space of one day, awarded Tegeta a R700 million contract ("**the April 2016 supply contract**") to supply the Arnot power station with 1.2 million tonnes of coal without any lawful, open or competitive procurement process whatsoever. At R470 per tonne, this supply arrangement is one of Eskom's most expensive coal supply contracts. The BTC resolved ("**the BTC April 2016 resolutions**"):


318.1 to extend the supply of coal to Arnot power station for up to a further five months and/or such period as may be requested by the supplier;

318.2 to authorise Eskom's CFO Anoj Singh to approve the basis for prepayment to secure the fixed coal price for the period of extension provided i) that there is a discount in the price; ii) the supplier offers a guarantee in favour of Eskom; and iii) that the Eskom CFO could provide assurance to the BTC that the transactions are economically viable for Eskom; and

318.3 to authorise the Eskom Group Executive of Generation Matshela Koko to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.



319. According to Eskom's Supply Chain Management Policy (SCM 32-1034), advance payment may be an acceptable strategy for Eskom where the supplier is required to invest in significant capital expenditure before commencing the contract. As confirmed at pages 31 and 32 of the Marsden Parliamentary Testimony on oath, annexed as "FA112", the capital investment that could have been required was R 10 million, in respect of the supply of coal to the Arnot power station, some 70 times smaller than the quantum of the April 2016 Prepayment agreement.
320. The BTC April 2016 resolutions and the decisions to approve of the terms in the April 2016 letter were without a lawful, rational or reasonable basis. The April 2016 supply contract was also not authorised by the Minister of Finance as required under the PFMA. The BTC April 2016 resolutions and the April 2016 supply contract were approved for ulterior purposes of advancing the business interests of the Gupta family and their businesses and were corrupt.
321. On 12 April 2016, the Bank of Baroda received a letter of fixed deposit collateral undertaking from Centaur. This allowed the Bank of Baroda to extend loans amounting to R885.3 million (the amount Centaur had deposited with them) to Tegeta, using the fixed deposits of Centaur as collateral.
322. On 13 April 2016, an agreement was signed between Eskom and Tegeta ("**the April 2016 Prepayment agreement**") in terms of which *"Eskom would make an advanced payment to Tegeta in lieu of future coal supply in the amount of R 659,558,079 inclusive of VAT, payable on 13 April 2016."* OCM was still owned by OCH and managed by the BRPs. Tegeta was essentially paid to provide a service from an asset that it did not yet own. According to



page 315 of the State of Capture Report, annexed marked "FA113": "*It appears that the conduct of the Eskom Board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of Optimum, in severe violation of the [PFMA].*" There was no lawful, rational or reasonable basis for Eskom to conclude the April 2016 Prepayment agreement. The April 2016 Prepayment agreement was approved for ulterior purposes of advancing the business interests of the Gupta family and their businesses and was corrupt.

323. On 14 April 2016, an amount of R160,246,000 was withdrawn from the Trillian Group's current account with the Bank of Baroda. According to the Budlender Report, an extract of which is annexed as "FA114":

"The withdrawal does not appear to "fit" within any of the categories of transactions for which Trillian asserted that the Bank of Baroda account was used."

324. On 14 April 2016, Tegeta settled the Purchase Price. Tegeta raised the funds to pay the OCM banking consortium from various sources. All funds were deposited via at least thirty-two Electronic Funds Transfers between 9 December 2015 and 14 April 2016 into the Bank of Baroda. The Bank of Baroda then effected payment on behalf of Tegeta into the Escrow Account held by Werksmans Incorporated. As stated on pages 275 and 276 of the State of Capture Report, annexed marked "FA115", the "*frequency and amounts deposited should have attracted attention and an investigation by other financial institutions anti-money laundering departments due to money laundering risks based on the Financial Intelligence Centre's ("FIC")*

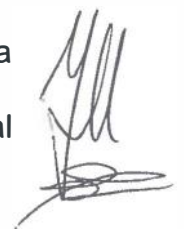
guidance note concerning the reporting of suspicious and unusual financial transactions."

325. During the period 29 January 2016 to 13 April 2016, Eskom paid Tegeta R1,161,953,248. Of this amount paid by Eskom, at least R910 million was diverted by Tegeta to fund 42% of OCH's Purchase Price.

326. On 23 May 2016, the value of the Koorfontein Rehabilitation Trust Fund of R280,000,000 (in respect the rehabilitation obligations of Koorfontein Mines' mining right) was also transferred to the Bank of Baroda. This was authorised or approved by the DMR and/or the Minister of Mineral Resources ("**the Koorfontein authorisation**"). The DMR and/or the Minister did not take reasonable steps to ensure that satisfactory arrangements were in place for the prescribed financial provision by Tegeta or Koorfontein (Pty) Ltd for environmental rehabilitation in respect of mining rights held by Koorfontein Mines.

327. On 21 June 2016, the value of the Optimum Mine Rehabilitation Trust Fund of R1,469,916,933 (in respect the rehabilitation obligations of OCM's mining right) was transferred to the Bank of Baroda. This was authorised or approved by the DMR and/or the Minister. The DMR and/or the Minister did not take reasonable steps to ensure that satisfactory arrangements were in place for the prescribed financial provision by Tegeta or OCM for environmental rehabilitation in respect of mining rights held by OCM.

328. In early August 2016, Eskom chief executive Brian Molefe wrote to the National Treasury requesting permission to extend the contract for the supply of coal from OCM to Arnot power station for six months by a further R855 million ("**August 2016 Molefe proposal**"). The National



Treasury did not approve the request to extend the contract. Had the August 2016 Molefe proposal gone through, Tegeta would have received a cumulative R1.7 billion to supply the Arnot power station without participating in any open tender process. Such proposal was made for the ulterior purpose of advancing the business interests of the Gupta family and their businesses.

329. On 5 September 2016, a consortium comprising of Vitol Group, based in Switzerland, and Burgh Group Holdings CC ("**Terminal Rights Consortium**") offered to purchase OCT from Tegeta for about R3.6 billion.

330. I mention that it is plain that the amount of R2.15 billion as the purchase price of all the OCH entities did not even remotely approximate fair value for such entities. It was a sale effected unlawfully and under duress from Tegeta, the Gupta family, Eskom, the Minister and the DMR.

331. In April 2017, Eskom reduced the OCM penalty from the R2.177 billion claimed from OCM prior to its acquisition by Tegeta to R577 million ("**the OCM penalty reduction decision**"), of which R248 million had already been paid by OCM. In any event, from the time that the OCH entities were acquired by Tegeta, Eskom had not insisted on immediate and/or full payment of the OCM penalty.

GROUNDINGS OF UNLAWFULNESS AND REVIEW

332. I am advised that as appears from the above, the following decisions constitute administrative action and are reviewable under PAJA, alternatively they constitute exercises of public power and are reviewable under the principle of legality ("**the impugned decisions**");



- 332.1 Eskom's decisions to enter into, approve and/or ratify the TNA agreement;
- 332.2 the DMR's decision to grant the Brakfontein mining right to Tegeta;
- 332.3 Eskom's decision to enter into the March 2015 Brakfontein CSA;
- 332.4 Eskom's decision to enter into the October 2015 Brakfontein CSA;
- 332.5 Eskom's decisions not to renegotiate the Hendrina CSA with Glencore and the OCH entities between May and December 2015;
- 332.6 Eskom's decision to impose the OCM penalty;
- 332.7 the President's appointment of Mosebenzi Zwane as the Minister of Mineral Resources;
- 332.8 the Seleke appointment by Minister Brown;
- 332.9 Eskom's decision to resume;
- 332.10 Eskom's decision to reject the proposed Phembani OCM acquisition;
- 332.11 Eskom's decision to impose the 24 November 2015 requirements;
- 332.12 Eskom's decision to make and the making of the 8 December Prepayment;
- 332.13 Eskom's decision to approve and/or make, and the making of, the 9 December Prepayment;
- 332.14 the 9 December Eskom Board resolution;
- 332.15 Eskom's approval of the December 2015 guarantee;



- 332.16 Eskom's approval and conclusion of the January 2016 Arnot contract;
- 332.17 Eskom's assignment and disposal to Tegeta;
- 332.18 the BTC February 2016 resolutions of Eskom;
- 332.19 Eskom's decision to release OCH from the Eskom OCH Guarantee;
- 332.20 Eskom's decision to approve and conclude the February 2016 CSA;
- 332.21 the section 11 consent by the DMR;
- 332.22 Eskom's decision to approve the 11 April 2016 letter;
- 332.23 the BTC April 2016 resolutions of Eskom and the April 2016 supply contract;
- 332.24 Eskom's approval and conclusion of the April 2016 Prepayment agreement;
- 332.25 Eskom's OCM penalty reduction decision.

333. When reference is made in 332 to:

- 333.1 the "*DMR*", this is a reference to "*the DMR, the Minister, the Director General of the DMR and/or the Mpumalanga Regional Manager of the DMR*"; and
- 333.2 "*Eskom*", this is a reference to "*Eskom, Mr Singh, Mr Koko, Mr Pamensky, Mr Ngubane, Mr Molefe, Ms Mabude, Ms Carrim, Ms Cassim, Mr Khumalo, Ms Naidoo, Mr Matjila, BTC and/or the Eskom Board*".



334. The applicants sought to obtain further information about, and reasons for, the impugned decisions by way of letters dated 1 November 2017, copies of which are annexed marked "FA116".
335. The request for reasons has not been answered at all. In relation to the request for information, Eskom emailed the applicants on 1 December 2017 asking for an extension to 28 February 2018 to respond (I annex the correspondence marked "FA117"). This extension request does not account for the gravity of the matter or the expedition with which it should be resolved. Such a substantial delay will be detrimental to the public interest. This is particularly so as Eskom has had to grapple with the state capture allegations for some time. In any event, such a lengthy extension would be highly unusual and is not contemplated in the empowering provisions. The Minister and the DMR have not responded to the requests for reasons or information at all.
336. The applicants have been frustrated in obtaining explanations and further information from Eskom and the Minister/DMR. The applicants are not obliged in law to wait for Eskom and the Minister/DMR. The applicants have been able to collate the facts set forth in this affidavit from publicly available sources and third parties. The facts already known constitute a compelling case of pervasive unlawfulness and corruption. Action must be taken without any further delay. The entities responsible for the impugned decisions have, in the past, not been transparent in relation to the circumstances surrounding those decisions and have not been held to account for their misdeeds and illicit benefits. To the extent that any further information emerges as a result of the production of the rule 53 record, or otherwise, the applicants reserve their right to supplement this application.



337. Each of the impugned decisions was taken unlawfully, irrationally, unreasonably, in bad faith, for ulterior purposes and corruptly. The decisions had no rational or reasonable connection to the empowering provision, or to the reasons given (or not given, in this instance), or to the information before the decision maker in question. The decisions were taken without taking account of all the relevant considerations and after taking into account irrelevant considerations. The decisions were also taken without approval from the National Treasury and the Minister of Finance as would have been required under the PFMA for the incurring of future financial obligations. The decisions were motivated by purposes other than those set forth in the empowering legislation. One of those purposes was to benefit Tegeta, the Gupta family, Oakbay and persons and entities associated with the Gupta family, Oakbay or Tegeta, and not to benefit Eskom, the State or the public, as is required by the relevant legislation. The impugned decisions were made without following any fair, open, transparent and competitive tender process, as was required by law. The impugned decisions were also based on Tegeta's BEE representations, which were false and fraudulent.

338. The impugned decisions also constituted acts of corruption. Each of the decision makers who took the relevant impugned decisions acted with ulterior purposes and received unlawful gratification or accepted gratification which has unduly influenced his/her/it taking the decision in question. The gratification was constituted by a direct pecuniary benefit or travel or entertainment benefit provided to the decision-maker or related persons, and/or the appointment or promotion of Mr Singh, Mr Koko, Mr Pamensky, Mr Ngubane, Mr Molefe, Ms Mabude, Ms Carrim, Ms Cassim, Mr Khumalo, Mr Seleke, Mr Zwane, Mr Naidoo and/or Mr Matjila to their roles at Eskom, as

set forth in this affidavit. Such gratification was given so as to ensure that the aforementioned persons:

338.1 exercised their influence or authority within Eskom and/or DMR or otherwise in law to ensure that their or Eskom/DMR/Minister's powers, functions or duties were exercised in an illegal, biased, dishonest, unauthorised or incomplete manner, or so as to benefit entities or persons other than Eskom/the State;

338.2 acted, or influenced other persons within Eskom and/or the DMR to act, in a manner:

338.2.1 which amounts to an abuse of authority, a breach of trust or violation of a legal duty or a set of rules;

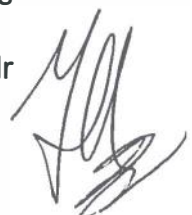
338.2.2 so as to achieve an unjustified result; or

338.2.3 that amounts to any other unauthorised or improper inducement to do or not do anything.

339. The aforesaid gratification was given by the Gupta family, Salim Essa, Duduzane Zuma, Oakbay, Tegeta (collectively, "**the Gupta crowd**") (or persons affiliated to the Gupta crowd), Minister Brown and/or President Zuma.

340. The conduct set forth in paragraphs 338 and 339 was undertaken with the requisite intention, including the intention to give and receive gratification for the aforesaid unlawful purposes.

341. Moreover, Mr Singh, Mr Koko, Mr Pamensky, Mr Ngubane, Mr Molefe, Ms Mabude, Ms Carrim, Ms Cassim, Mr Khumalo, Mr Seleke, Mr Zwane, Mr



Naidoo and/or Mr Matjila aided and abetted the corrupt and unlawful activities of the respondents as set forth in this affidavit.

342. The applicants have not been provided with full information as to the reasons for or facts surrounding the impugned decisions. The State of Capture report published in November 2016 alluded to some potential relevant facts. The facts have been substantially augmented by the information which has emerged in 2017, and particularly since a cache of emails was released by various news organisations and the Platform for Protection of Whistleblowers in Africa during the period May to November 2017. Critical information about the impugned decisions has also become public through the Eskom inquiry before the Parliamentary Portfolio Committee on Public Enterprises, which has been ongoing from August 2017.

343. Although the impugned decisions were taken between 2014 and 2016, it was very recently, mainly since August 2017, that relevant information about the decisions came to light. The reasons for those decisions are still outstanding. In all the circumstances, I submit that this application was brought without unreasonable delay and within the time periods allowed under statute and the Constitution. To the extent that any aspect of the review was brought outside of the statutory or constitutional time parameters, I request the time for bringing the application to be extended, alternatively, for the delay to be condoned, having regard to the immense public interest in this matter and in bringing wrongdoers to book, the inadequate information which has been at the applicants' disposal over time, the fact that full reasons have not been provided to date, the clear attempts by the respondents to conceal wrongdoing from public scrutiny, and the complexity of unravelling the network of corrupt relationships so as to bring these proceedings.



AMOUNTS PAID PURSUANT TO THE IMPUGNED DECISIONS OR OTHERWISE UNLAWFUL CONDUCT

344. All amounts or the full value of the benefits unlawfully and/or corruptly obtained pursuant to the impugned decisions or fraudulent or corrupt conduct set forth in this affidavit must be paid in full to:

344.1 the state entity from which it was obtained;

344.2 *alternatively*, any entity or person who has suffered the pecuniary loss to which such amount relates, unless such entity or person was itself involved in the decisions or the conduct;

344.3 if the entities or persons set forth in 344.1 or 344.2 cannot be identified or do not exist, the National Revenue Fund.

345. The liability to pay the aforesaid amounts should be borne, jointly and severally, by all persons who causally contributed to, or benefited from, the impugned decision and/or unlawful and/or corrupt conduct in question.

346. The applicants are aware of the following payments and/or benefits having been made as a result of the impugned decisions:

Eskom's decision to enter into the TNA agreement

346.1 R43,200,000 was paid by Eskom to Tegeta on 14 April 2015 for sponsorship;



Eskom's decision to enter into the March 2015 Brakfontein CSA

346.2 a contract valued at R3,7 billion was agreed to by Eskom in favour of Tegeta on 10 March 2015 for the supply of coal from the Brakfontein coal mine;

Eskom's approval of the December 2015 guarantee

346.3 a guarantee of R1,68 billion was granted by Eskom in favour of Tegeta on 11 December 2015;

Eskom's approval and conclusion of the January 2016 Arnot contract

346.4 a contract valued at R117,5 million was agreed to by Eskom in favour of Tegeta on 22 January 2016 for the supply of coal from the Brakfontein coal mine. In terms of the January 2016 Arnot contract, Tegeta would provide 250,000 tonnes of coal at R470 per tonne;

Eskom's decision to release OCH from the Eskom OCH Guarantee

346.5 Eskom decided to release OCH from the Eskom OCH Guarantee on 10 February 2016. The Eskom OCH Guarantee was in respect of OCM's performance under the Hendrina CSA. In terms of the Hendrina CSA, OCM was required to sell and deliver 5,500,000 tonnes of coal per annum to Eskom. The Hendrina CSA endures until the end of 2018. At a minimum of R150 per tonne, the value of the Eskom OCH Guarantee was at least R2,475 billion.



Eskom's decision to approve and conclude the February 2016 CSA

346.6 a contract valued at R325,500,000 was agreed to by Eskom in favour of Tegeta on 18 February 2016 for the supply of coal from the Brakfontein coal mine to the Arnot power station. In terms of the February 2016 CSA, Tegeta would provide 400 000 tonnes at a price of R18.68/GJ, exclusive of VAT.

Eskom's approval and conclusion of the April 2016 Prepayment agreement

346.7 R659,558,079 was paid by Eskom to Tegeta on 11 April 2016 for sponsorship for the future supply of coal;

Eskom's OCM penalty reduction decision

346.8 In April 2017, Eskom reduced the OCM penalty to R577 million, from R 2.2 billion; and

The impugned decisions which assisted Tegeta to purchase OCH at a price which did not even remotely approximate fair value for the OCH entities, including: (i) Eskom's decisions not to renegotiate the Hendrina CSA with Glencore and the OCH entities between May and December 2015; (ii) Eskom's decision to impose the OCM penalty; (iii) the President's appointment of Mosebenzi Zwane as the Minister; (iv) the Minister of Mineral Resource's decision to audit the Glencore mines; (v) Eskom's decision to reject the proposed Phembani OCM acquisition; (vi) Eskom's decision to reject the proposed Phembani OCM acquisition; (vii) Eskom's decision to impose the 24 November 2015 requirements;



(viii) Eskom's assignment and disposal to Tegeta; ix) the BTC February 2016 resolutions of Eskom; and (x) the section 11 consent by the Minister

346.9 The purchase price paid by Tegeta in respect of the OCH entities was R2.15 billion, which was substantially lower than the market value.

347. The above list is necessarily incomplete as the applicants were not party to all the unlawful payments. To the extent that full information on fund flow is not available, the applicants pray for a full and proper accounting to be ordered.

REMEDIES AND RELIEF

348. The applicants submit that it would be appropriate for this Honourable Court to review and set aside the impugned decisions and to declare the impugned decisions to be inconsistent with the Constitution and unlawful. In light of the facts set out above, this is clearly an exceptional case, where payment or disgorgement of all unlawfully obtained benefits, revenues and amounts should be ordered. The payment should be made by any persons whose conduct causally contributed to, or who benefitted from, the unlawful decision in question. Payment should be made to the entity whence the funds or benefits in question originated; *alternatively*, if there is no ascertainable beneficiary, the payment should be made to the State.

349. To the extent that the amounts due are known, they are set forth in this affidavit. As set forth above, however, the information about illicit benefits is incomplete and the applicants submit that this Honourable Court should order a full and proper accounting to be delivered by all relevant parties, followed



by a debatement of the said account and payment of whatever amounts are due pursuant to the debatement. Such statement and debatement of account should be overseen by the Court, as part of its supervisory jurisdiction in structural orders. This would also ensure that no party, or a person who benefitted from unlawful and corrupt conduct, can escape the reach of the reimbursement and compensation remedy. Given the disparate nature of the payments made, a real possibility exists that funds have been siphoned off.

350. Section 172(1)(a) of the Constitution, states that a court, when deciding a constitutional matter within its power, must declare that any conduct that is inconsistent with the Constitution invalid to the extent of its inconsistency, and may make an order that is just and equitable. Similarly, in terms of PAJA, the Court must order relief which is "*just and equitable*". The Constitution enjoins the Courts to fashion new remedies and forge new tools that are appropriate to vindicate the right, remedy the wrong and entrench the rule of law.

351. Each of the impugned decisions was taken unlawfully, irrationally, unreasonably, in bad faith, for ulterior purposes and corruptly by the relevant state functionaries. The impugned decisions have caused considerable financial loss to the South African fiscus, Eskom and other public bodies, with the losses aggregating to billions of Rand. The just and equitable compensation orders are in the public interest and are necessary to protect and enforce the Constitution and to uphold accountability, openness and responsiveness. They are efficient and effective means of affording the applicants and the public proper redress, as commanded by the Constitution and in statute.

352. Moreover, given that many of the respondents had, or had acquired, knowledge of corrupt, fraudulent and otherwise unlawful conduct, each of the Mr Singh, Mr Koko, Mr Pamensky, Mr Ngubane, Mr Molefe, Ms Mabude, Ms Carrim, Ms Cassim, Mr Khumalo, Mr Naidoo, Mr Matjila, President Zuma, Mosebenzi Zwane, Lynne Brown, Mr Seleke, Ajay Gupta, Atul Gupta, Salim Essa, Rejesh Gupta, Duduzane Zuma, Nazeem Howa, Ronica Ragavan, Chetali Gupta, Arti Gupta, Nazeem Howa and Ashu Chawla ("**the relevant respondents**") had, and have breached, their obligations to report one or more of the impugned decisions (and circumstances surrounding such decisions) to the Directorate for Priority Crime Investigation ("**DPCI**") in terms of section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 ("**PRECCA**"). I submit that it is appropriate for this Court to declare that those respondents have failed to report the relevant facts, and direct that the relevant respondents make the reports contemplated in section 34 of the PRECCA. I also submit that the Court should maintain oversight jurisdiction to ensure that those reports are properly made.

REFERRAL TO THE NATIONAL PROSECUTING AUTHORITY AND THE DPCI

353. In light of the fact that corrupt and fraudulent conduct has taken place in this matter, this Court is requested to refer for criminal investigation and, if applicable, prosecution, the facts set forth in this affidavit. This should include both the circumstances surrounding the impugned decisions and the failure, to date, by the relevant respondents to report in terms of section 34 of PRECCA.



COSTS

354. The applicants pursue these proceedings with the objective of ensuring compliance with the rule of law and fundamental constitutional principles. This matter raises constitutional issues of significant public interest. Should the applicants be substantially successful in this application, they are entitled to a costs order in their favour, including the costs of two counsel. Given the disgraceful conduct evidenced in this application, and the pervasive corruption, abuse, lack of candour and non-disclosure set forth above, the scale of the costs order should be punitive.

CONCLUSIONS

355. In light of the above, it is clear that the impugned decisions constituted acts of corruption and were taken unlawfully, irrationally, unreasonably, in bad faith, and for ulterior purposes. Each of the impugned decisions must be reviewed, set aside and declared to be inconsistent with the Constitution and unlawful. In light of the facts set forth above, it would be just and equitable for this Honourable Court also to grant the other relief set forth in the notice of motion.

WHEREFORE I pray that this Honourable Court grants the relief sought in the notice of motion with costs on the scale as between attorney and own client, including the costs of two counsel.

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[Handwritten Signature]

DEPONENT

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to before me at Rosebank on this the 14 day of **December 2017**, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

[Handwritten Signature]
 0529 657-9
 M. H. Kwekwe
 Sgt

COMMISSIONER OF OATHS

Full names: M. H. Kwekwe
 Business address: 15 Sturdee Ave
 Designation: Police Officer
 Capacity: SERGEANT

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|------------------------------|
| SOUTH AFRICAN POLICE SERVICE |
| CLIENT SERVICE CENTRE |
| 2017 -12- 14 |
| CSC ROSEBANK |
| SUID-AFRIKAANSE POLISIEDIENS |

| | |
|--|---------------------------|
| GOLDRIDGE TRADING (PTY) LTD | Twenty Second Respondent |
| CHETALI GUPTA | Twenty Third Respondent |
| ARTI GUPTA | Twenty Fourth Respondent |
| ASHU CHAWLA | Twenty Fifth Respondent |
| MATSHELA MOSES KOKO | Twenty Sixth Respondent |
| BALDWIN NGUBANE | Twenty Seventh Respondent |
| NAZIA CARRIM | Twenty Eighth Respondent |
| ROMEO KHUMALO | Twenty Ninth Respondent |
| DEVAPUSHPUM VIROSHINI NAIDOO | Thirtieth Respondent |
| MARIAM CASSIM | Thirty First Respondent |
| CHWAYITA MABUDE | Thirty Second Respondent |
| MABENGELA INVESTMENTS (PTY) LTD | Thirty Third Respondent |
| ELGASOLVE (PTY) LTD | Thirty Fourth Respondent |
| OAKBAY INVESTMENTS (PTY) LTD | Thirty Fifth Respondent |
| OAKBAY RESOURCES AND ENERGY LIMITED | Thirty Sixth Respondent |
| ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY (PTY) LTD | Thirty Seventh Respondent |
| SHIVA URANIUM (PTY) LTD | Thirty Eighth Respondent |
| TRILLIAN HOLDINGS (PTY) LTD | Thirty Ninth Respondent |
| TRILLIAN FINANCIAL ADVISORY (PTY) LTD | Fortieth Respondent |
| TRILLIAN CAPITAL PARTNERS (PTY) LTD | Forty First Respondent |
| TRILLIAN MANAGEMENT CONSULTING (PTY) LTD | Forty Second Respondent |
| OPTIMUM COAL HOLDINGS (PTY) LTD | Forty Third Respondent |
| WESTDAWN INVESTMENTS (PTY) LTD | Forty Fourth Respondent |
| MFAZI INVESTMENTS (PTY) LTD | Forty Fifth Respondent |
| CENTAUR DE ROODEPOORT (PTY) LTD | Forty Sixth Respondent |



| | |
|---|--------------------------|
| TNA MEDIA (PTY) LTD | Forty Seventh Respondent |
| INFINITY MEDIA NETWORKS (PTY) LTD | Forty Eighth Respondent |
| OLIVE GREEN TRADERS (PTY) LTD | Forty Ninth Respondent |
| ACTION INVESTMENTS (PTY) LTD | Fiftieth Respondent |
| REGIMENTS CAPITAL (PTY) LTD | Fifty First Respondent |
| ISLANDSITE INVESTMENTS 254 (PTY) LTD | Fifty Second Respondent |
| CONFIDENT CONCEPT (CC) | Fifty Third Respondent |
| ALBATIME (PTY) LTD | Fifty Fourth Respondent |
| AEROHAVEN TRADING (PTY) LTD | Fifty Fifth Respondent |
| DIXIE INVESTMENTS (PTY) LTD | Fifty Sixth Respondent |
| MOSEBENZI ZWANE | Fifty Seventh Respondent |
| LYNNE BROWN | Fifty Eighth Respondent |
| THE DIRECTOR-GENERAL, DEPARTMENT OF MINERAL RESOURCES | Fifty Ninth Respondent |
| THE REGIONAL MANAGER, MPUMALANGA REGION OF THE DEPARTMENT OF MINERAL RESOURCES | Sixtieth Respondent |
| GLENCORE OPERATIONS SOUTH AFRICA (PTY) LTD | Sixty First Respondent |
| JACOB GEDLEYIHLEKISA ZUMA | Sixty Second Respondent |
| OPTIMUM COAL MINE (PTY) LTD | Sixty Third Respondent |
| KOORNFONTEIN MINES (PTY) LTD | Sixty Fourth Respondent |
| OPTIMUM COAL TERMINAL (PTY) LTD | Sixty Fifth Respondent |
| OPTIMUM VLAKFONTEIN MINING AND EXPLORATION (PTY) LTD | Sixty Sixth Respondent |



OPTIMUM OVERVAAL MINING AND EXPLORATION

(PTY) LTD

Sixty Seventh Respondent

ZETHEMBE WILFRED KHOZA

Sixty Eighth Respondent

VENETE JARLENE KLEIN

Sixty Ninth Respondent

GIOVANNI MICHELE LEONARDI

Seventieth Respondent

PATHMANATHAN NAIDOO

Seventy First Respondent

DIRECTOR GENERAL OF THE DEPARTMENT OF

PUBLIC ENTERPRISES

Seventy Second Respondent

MOGOKARE SELEKE

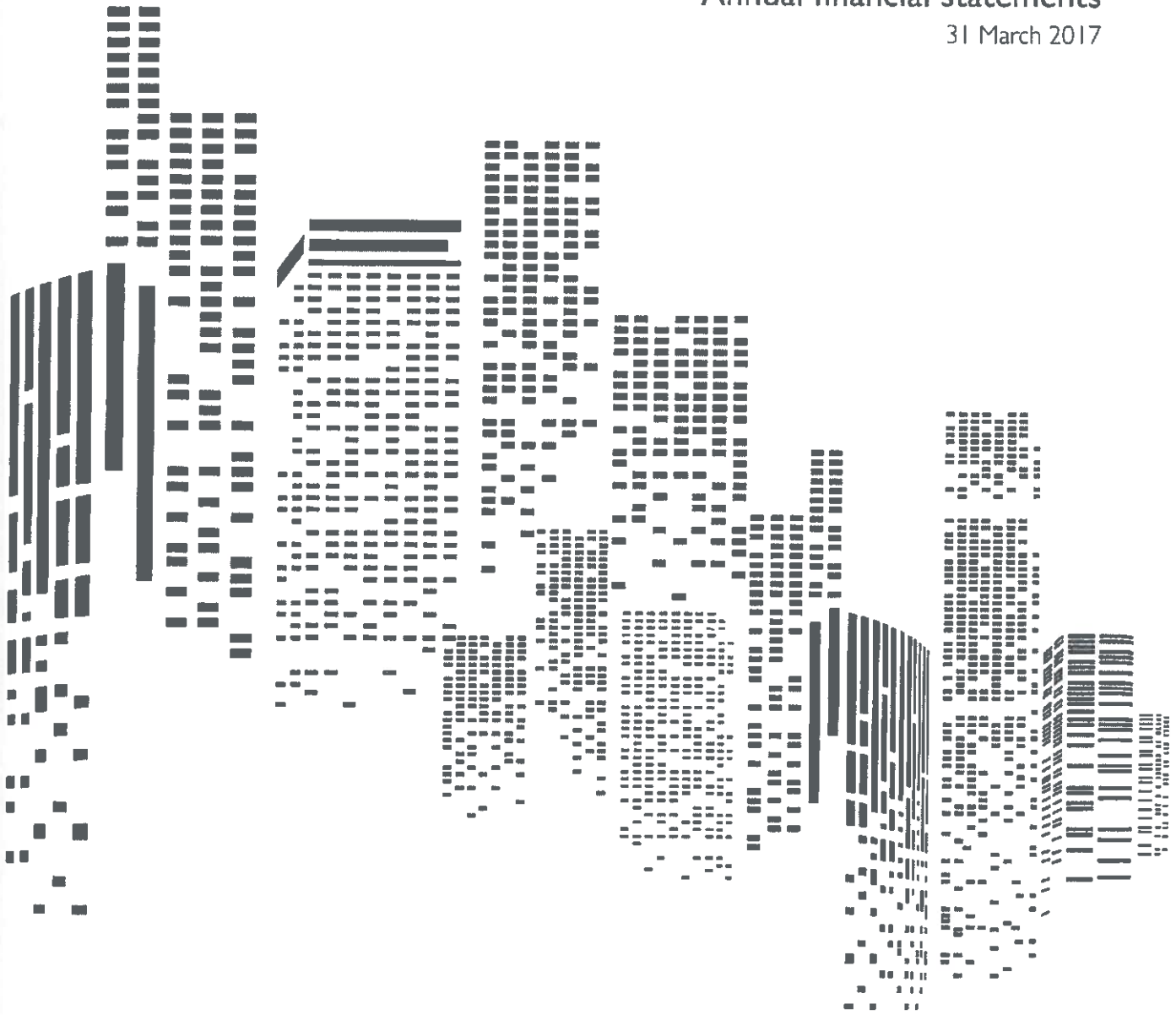
Seventy Third Respondent





Annual financial statements

31 March 2017



Enabling economic growth

