

STATE CAPTURE INQUIRY
PARKTOWN, JOHANNESBURG

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CHAIRPERSON: Good morning Mr Pretorius.

ADV PAUL PRETORIUS SC: Good morning Chair.

CHAIRPERSON: Good morning everybody. Yes?

ADV PAUL PRETORIUS SC: Chair, the programme for this week is dedicated to Term of Reference 1.7 that is the Closure by the Banks of Gupta owned or Gupta-related bank accounts. The team is led by Advocate Mokoena who will do a short opening and will today lead Mr Ian Sinton of Standard Bank. Other members of the team will lead ABSA, First National Bank and Nedbank during the course of the week. If we may ask for an
10 indulgence to start on Wednesday at 9:30 am Chair so that that will allow the expert Dr Kaufmann to testify thereafter and complete his evidence on Wednesday. For the remainder of the week that will depend on preparation of witnesses and we will revert to you during the course of the week in that regard.

CHAIRPERSON: Yes, and of course Thursday I think, there is that one application by Ms Lynne Brown that we postponed to Thursday that I will deal with but that shouldn't take much time.

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: No, that's in order thank you very much. May I also take this opportunity to announce that tomorrow morning we will have to start a little later than
20 normal. Let's start at 11.30 tomorrow. The reason for that is that I have to hand down a Judgment in the Constitutional Court at 10.00 in the morning so I would like to allow enough time for me to finish that and then come over. So tomorrow we will start at 11.30. Thank you.

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Mr Chair. During [intervene]

CHAIRPERSON: Mr Mokoena.

ADV PHILLIP MOKOENA SC: Ja. During this session of the inquiry as pointed out by Mr Pretorius, the Commission will be focusing on the Term of Reference 1.7. For ease of reference Mr Chair and in order to meaningfully address the issues emanating from this Term of Reference, we have prepared a bundle which we also propose to mark it as Exhibit H1.

10 **CHAIRPERSON:** I have got this bundle and it will be marked as Exhibit H1.

ADV PHILLIP MOKOENA SC: Yes, Mr Chair, in order to assist the Chair to navigate through the bundle it contains, the first documents of the bundle contains a Notice of Motion, Founding Affidavit as well as Annexures which were filed in a matter initiated by the then Minister of Finance, Mr Gordhan, against the Gupta-related companies and you will see Mr Chair that from page 97 to page 165 you will find the witness statement and the Annexures submitted on behalf of Standard Bank. From page 166 to page 185 it is a witness statement and Annexures submitted on behalf of FNB and from page 186 to page 201 it is a witness statement submitted on behalf of ABSA and from page 202 to page 207 it is a witness statement submitted on behalf of Nedbank. For completeness Mr
20 Chair, may we remind ourselves of what this Term of Reference 1.7 entail. Mr Chair, it provides as follows:

“Whether any member of the National Executive and including Deputy Ministers unlawfully or corruptly or improperly intervened in the matter of the closing of the banking facilities of Gupta-owned companies.”

The genesis Mr Chair of this Term of Reference can be traced back to the application that was initiated by the Minister of Finance, Mr Gordhan, at the time against Oakbay and other Gupta-related companies. That application was brought before the High Court under Case No 80978/16; it's now reported in our Law Reports as the *Minister of Finance versus Oakbay Investment, 2018 Vol 3, SA on page 515 GP*.

10 In the aforesaid application Mr Chair, the Minister sought a declaratory relief to the effect that he is not by law empowered or obliged to intervene in the relationship between the banks and its clients and as evident Mr Chair from the bundle H1, with particular reference to page 1, you will see that the banks, including the Governor of the Reserve Bank, the Registrar of the Banks, where cited as respondents in the aforesaid application, ABSA, FNB, Standard Bank and Nedbank also filed affidavits in that application. For the purpose of addressing the Term of Reference 1.7, we did not deem it necessary at this stage to include those voluminous affidavits which were filed by the parties, more so that the averments which are contained therein, it would to a larger extent Mr Chair, they do find themselves also in the witness statement which are submitted on behalf of the banks for the purpose of this inquiry. However, should they be required, we will make them
20 available to the Chair.

In order to provide context to the issue to be canvassed in relation to the Term of Reference 1.7, we propose Mr Chair very briefly to highlight some of the factual averments advanced in the Minister's affidavit. We do so because they foreshadow the evidence which we intent leading during this session of the inquiry. The Minister in

paragraph 3 of his affidavit, for reference Mr Chair you will find it on page 10 of Annexure H1, sets out the purpose of the application in the following terms. He states that this is an application for declaratory relief arising from a dispute relating to the powers of intervention by Government in relation to the closing of private clients accounts by registered banks. This dispute has arising in circumstances which have considerable importance for the operation of the banking sector of the South African economy and its regulation by Government. The related controversy has received both national and international attention and it is clearly in the public interest, the interest of the affected clients and 11 banks and employees of both that it be authoritatively resolved. In

10 paragraph 7 of the Minister's affidavit, the Minister refers to the public announcement which was made by Oakbay to the effect that its banking accounts had been closed by the banks and that its auditors, KPMG and its sponsor on the Johannesburg Stock Exchange, that is SASFIN, have similarly terminated their relationship with Oakbay.

Lastly Mr Chair, by way of background and context, we find comfort in paragraph 19 of the Minister's affidavit without having to read it and summarise it for the Chair. In that paragraph Chair, the Minister laments the continued pressure exacted by Oakbay upon him in order for the Minister to intervene with the bank's decisions. He further highlights the regulatory scheme upon which the banks operates and a need to respect the autonomy of the banks but a theme you will find it throughout the affidavit of the Minister

20 and also in the affidavits of which was filed on behalf of the banks. The Gupta-related companies Mr Chair, accepted the decision of the banks to close their accounts as being lawful and that is apparent if one has regard to the letter which was written to the Minister of Finance by Mr Nazeem Howa, the CEO of Oakbay. You will find that letter Mr Chair, on page 122 of the bundle and it's marked as Annexure SB3.

CHAIRPERSON: SB3.

ADV PHILLIP MOKOENA SC: Yes Mr Chair. You will find on paragraph 3, unnumbered paragraph 3, the following is recorded:

“Given the time challenges facing us during the meeting and your suggestions around legal remedies, I thought it prudent to place on record that following detailed discussions with several legal advisors, we are of the strong view that given the contractual rights the banks have, any legal approach may indeed be still borne. The banks have each said as much to us in their correspondence to ourselves. As mentioned this morning, we have also been told by the key regulators such as the Banking Ombud and the National Consumer Council that our matter falls outside their jurisdiction. That advice Mr Chair,

10 was indeed correct, more so if one has regard to the Supreme Court Appeal Judgment in the matter of *Bredenkamp vs Standard Bank, 2010 Volume 4 SA on page 468*. You would recall Mr Chair that this was an appeal which was brought by Mr Bredenkamp pursuant to Standard Bank having closed its account. The Standard Bank closed their account after it became aware that the United State Department of Treasury office of Foreign Assets Control, abbreviated OFAC, has listed Mr Bredenkamp as a specially designated national. This was as a result of certain suspicious transactions which were noted and also it was as a result of the reason that Mr Bredenkamp had ties with the Zimbabwean Government and he was alleged to have been providing financial support and logistical support to the regime which was seen to be anti-Democratic principles.

20 Those were the basis upon which Standard Bank decided to cut ties with Mr Bredenkamp. The concerns of the Standard Bank Mr Chair are captured neatly from paragraph 17 and 18 of the Judgment simply for noting without having to read them and Mr Bredenkamp did advance a number of challenges including the Constitutional challenges to one of the temps in the contract to the extent that it was unconstitutional for Standard Bank to simply terminate the relationship without affording them a hearing and

therefore also that that clause was unfair. Ultimately the Court came to the decision that it was indeed within the rights of Standard Bank, having regard to the contractual scheme and the client/bank relationship that it was entitled to terminate and those are the basis upon which Standard Bank, even when there was a pressure which was exacted upon it, it relied on proper authority for its decisions and I suspect that the other banks also followed suit.

Mr Chair, having outlined the parameters upon which we foreshadow the evidence to be led on behalf of the banks, I will be leading the evidence of Standard Bank and Ms Sintel Buthelezi will be leading the evidence of ABSA Bank and Ms Refiloe Molefe will be leading the evidence of FNB and Ms Kate Hofmeyer will lead the witness from Nedbank. Mr Chair, we are ready to proceed with the evidence of Mr Sinton.

CHAIRPERSON: Thank you Mr Mokoena, the Registrar can swear in the witness or do an affirmation as the case may be.

ADV PHILLIP MOKOENA SC: Yes Mr Chair. Prior to swearing in the witness, we may also state for the record that the notices to the implicated parties were duly dispatched within the time periods. We received correspondents from the Attorneys of Mr Mosebenzi Zwane as well as Minister Oliphant to the effect that they are still consulting with their clients and they might in due course approach the Chair with an application if so desired.

CHAIRPERSON: Okay, thank you.

20 **REGISTRAR**: Please state your full names for the record?

MR IAN SINTON: Ian Hamish Scott Sinton.

REGISTRAR: Do you have any objection with taking the prescribed oath?

MR IAN SINTON: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR IAN SINTON: Yes.

REGISTRAR: Do you swear that the evidence you will give today, shall be the truth, the whole truth and nothing but the truth. If so, please raise your right hand and say, so help me God.

MR IAN SINTON: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you. You may proceed Mr Mokoena?

10 **ADV PHILLIP MOKOENA SC**: Mr Sinton, on the 13th December, 2016, you deposed to an affidavit in the matter which was brought by the Minister against Oakbay and other Gupta-related companies, is that correct?

MR IAN SINTON: That is correct.

ADV PHILLIP MOKOENA SC: Yes and in order to assist this Commission, you also submitted a witness statement?

MR IAN SINTON: That is correct.

ADV PHILLIP MOKOENA SC: Yes. May I refer you to the bundle before you which is marked H1 and if you may turn to page 97. That document runs from page 97 to page 165. Are you there Mr Sinton?

MR IAN SINTON: I am.

20 **ADV PHILLIP MOKOENA SC**: Yes. Is that the witness statement that you have furnished to the Commission?

MR IAN SINTON: It is.

ADV PHILLIP MOKOENA SC: May I refer you to page 117? Is that your signature?

MR IAN SINTON: It is.

ADV PHILLIP MOKOENA SC: Do you confirm the contents of your statement under oath?

MR IAN SINTON: I do.

ADV PHILLIP MOKOENA SC: Could you briefly share with us Mr Sinton your employment history within the banking sector?

MR IAN SINTON: Yes, prior to 2002 I practised as an attorney in South Africa. In 2002 I was recruited by the Standard Bank into their Corporate and Investment Banking Division
10 as their Head of Legal and I have been within Standard Bank in the Legal Department since then. In about 2008 I was appointed as Group General Counsel, i.e. I was responsible for the management of Legal Risk throughout the Standard Bank Group globally as from that date. I retired in June 2018 this year and I currently am retained by the bank to deal with certain outstanding issues that were pertinent at the time of my retirement.

ADV PHILLIP MOKOENA SC: Yes and at the time when you deposed to an affidavit on behalf of Standard Bank in the Oakbay litigation, which position did you occupy?

MR IAN SINTON: I was in the Group General Counsel.

ADV PHILLIP MOKOENA SC: Yes and what were your functions, what did that portfolio
20 entail?

MR IAN SINTON: As I mentioned, it entailed the management of Legal Risk throughout the group which obliged me to ensure that as a Standard Bank as a banking group we have banking operations in about 18 countries around the world and we had to ensure

that within those countries the legal requirements of the laws of the land as it were, were all complied with and then it also obliged me on issues where there are significant what we call legal or franchise risk were escalated to me and I was advised to assist the Executive of the bank or the banking group in dealing with those legal issues.

ADV PHILLIP MOKOENA SC: Yes. You mentioned that you had to deal with issues that had to mitigate any risk within the South African economy. Can you explain, just expand to us what risks are you mentioning, are you referring to?

MR IAN SINTON: Well, there is obviously multiple legal risks, it's compliance with all statutes is the obvious one ensuring that all of you must be into your compliance with the
10 common law that we don't conduct ourselves in the manner which detracts penalties or censure, those are the types in respect we manage.

CHAIRPERSON: Sorry, Mr Mokoena, you could raise your voice a little bit, if you could raise your voice a little bit and the witness's voice is raised but for some reason, I don't know why, I miss some words. Maybe there is something wrong with my own hearing so I don't know what you might need to do Mr Sinton but try and articulate what you are saying as clearly as you can. I think your voice is at the right level but I don't know why I am missing some words as you speak, so just do the best that you can.

MR IAN SINTON: Thank you Mr Chair, perhaps I will slow down.

CHAIRPERSON: Thank you.

20 **ADV PHILLIP MOKOENA SC**: Mr Chair, I will adopt Mr Maleka's position when he looks at the witness, maybe it might help. Could you explain, Mr Sinton, to us the regulatory framework which the banks operate within, you know, and please educate us about both the domestic and international instruments that the banks have to observe.

STINTON: Yes Mr Chairman, obviously the bank is a company like any other company saying it is obliged to comply with all laws that apply to companies so I won't really try and map those out. The one's that are pertinent I think to this Commission, are the Bank's Act obviously because banks operate in the Bank's Act and then the legislation that applies in the context of suspicious transactions, money laundering, dealing with the proceeds of crime and corruption.

The principal legislation that applies to us, well in fact applies to most institutions but particularly to banks, is the Financial Intelligence Centre Act. That Act obliges us as banks to report all suspicious transactions to the Financial Intelligence Centre, that is a
 10 compulsory obligation. Failure to report a suspicious transaction itself is a criminal offence. It's equally relevant Chairman that it is also an offence to disclose the fact that a suspicious transaction report has been made so the banks have to be very careful when they make these reports to ensure that the fact of the report has been made is not disclosed. The second piece of legislation which is pertinent is the Prevention of Organised Crime Act. Now that obviously, the main trusted Act is to do with the combatting of organised crime but very importantly, it also deals with the issue of money laundering and we understand that generally to be a prohibition on us as banks being in any way involved in facilitating money laundering or dealing in the proceeds of crime. The third piece of legislation pertinent I think, is the Prevention and Combatting of Corrupt
 20 Activities Act. We call it PRECCA for short because it is a difficult description and PRECCA in essence as it apply to us as banks, is we are obliged to ensure that our systems, our banking systems, are not used to in any way facilitate corrupt payments and to ensure that we don't become accessories of the fact in corruption.

I need to mention Chair that as you would expect in statute would provide for criminal sanctions that knowledge is a factor that has to be present. Knowledge of the facts giving

rise to the crime but in all of those sections they have a virtually identical definition of knowledge or knowing and that is actual knowledge of the facts or a reasonable suspicion of the facts, i.e. if a Court finds that a reasonable banker should have been suspicious but transacted nevertheless, that remains an offence on our interpretation of the legislation. We have regrettably experienced in dealing with international criminal justice systems in the United Kingdom and the USA, there they talk about disconsolable bill for blindness, people who are wilfully blind to wrongdoing can be as guilty as the wrongdoers themselves. That's the view they have taken. We interpret our legislation to make the same provision. That's the regime as it applies in South Africa on our understanding.

10 **ADV PHILLIP MOKOENA SC**: It's now [intervene]

CHAIRPERSON: Before you proceed Mr Mokoena, I just want to say, both of you, whatever you did, I can now hear both of you very well so please don't change so I can hear you very well now.

ADV PHILLIP MOKOENA SC: Then my legal posture did come to the Chairman's rescue.

CHAIRPERSON: It looks like it works.

ADV PHILLIP MOKOENA SC: It does. Mr Sinton, flowing from your answers, could you please relate to the Chair the adverse consequences which Standard Bank is likely to suffer in the event that it fails to comply with these international implement stake
20 regulatory obligations?

MR IAN SINTON: Yes. First Mr Chairman, obviously in South Africa failure to comply with the statutes would expose by Standard Bank and its employees to significant penalties. The fines are truly significant as are the prison terms provided for are really material but equally importantly is that we as a bank and in fact, most of the banks in South Africa are

obliged in order to conduct the business of a bank to facilitate cross border payments, i.e. to facilitate trade and investment across borders we have to have banking relationships with correspondent banks around the world. We can't make payments on behalf of our customers to people for whom they have imported goods, we can't receive the proceeds from the export of goods if we don't have banks in the countries where our customers operate. Now, again it is our experience that in most of the countries where we have correspondent relationships, there are similar laws to laws that apply in South Africa so whilst we in South Africa are very careful about who we do business with in the form of international banks to ensure that they do not expose us to contravention of our own

10 laws, they in turn as international banks, constantly monitor us to ensure that we don't expose them to corruption, money laundering and in some cases the financing of terror. So we are very careful in all we do but not only to ensure that we comply with South African law but we ensure we do it in a manner whereby we can't be criticised by our correspondent banks around the world for the manner in which we comply because the obvious consequences there as international banks, if they think we are not fully compliant will terminate dealings with us and that would have severe consequences for us as a bank and obviously for the country if international banks determine that we are a risk.

ADV PHILLIP MOKOENA SC: Yes, now in turn what would be the effects of such a

20 failure on the economy of the country?

MR IAN SINTON: Obviously it would be highly detrimental if Standard Bank for example, we are one of the larger dealers in United States Dollars. We provide Dollars throughout the African continent, not only to customers of ours in the commercial sector but to central banks and Governments and if we were denied access to the United States banking system because of deception that we do not uphold sufficient standards as

regards corruption, money laundering and the financing of terror, then that would be significantly damaging to our business and obviously for the country, the country would not be able to pay for imports or receive the proceeds of exports, etc., if such a calamitous situation were to arise.

ADV PHILLIP MOKOENA SC: Yes. May I refer you to page 99 of H1 with particular reference to paragraph 5 and 6 where you are setting out the background to the statement that you actually furnished to the Commission. In those paragraphs you say the following at paragraph 5:

10 *"Until 6 June 2016, Standard Bank had a banker customer relationship with various companies in which various members of the Gupta family and Mr Duduzane Zuma had direct or indirect interest. In this statement I will refer to these entities as the Gupta entities or Gupta and its associates."*

In paragraph 6 you are saying that:

"Standard Bank gave notice on the 6th April, 2016, to the Gupta entities of its intention to terminate the banker customer relationship with them as from 6 June, 2016. A notice period of two months on then at that date Standard Bank officially terminated those relationship. A list of the Gupta entities affected by this decision will be made available on request by the Zondo Commission."

20 Now, let me start with the last portion of your statement. Were you able to collate that information or to provide the list of those entities which were clients to Standard Bank?

MR IAN SINTON: Yes I have such a list.

ADV PHILLIP MOKOENA SC: Yes. Mr Chair, we beg leave to hand in the list and accordingly mark it as Exhibit H2.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Now, from the list that you [intervene]

CHAIRPERSON: Sorry, the document will be marked Exhibit H2.

ADV PHILLIP MOKOENA SC: Thank you Mr Chair. From the list that you have provided to the Chair, the one that is now marked H2, would I be correct that some of those entities are the one's which were cited as the respondents in the Minister's application against Oakbay?

MR IAN SINTON: That is correct.

ADV PHILLIP MOKOENA SC: Yes. Now how was the notice dispatched to the Gupta
10 entities, the Notice of Intention to terminate the banking relationship?

MR IAN SINTON: In each case the notice would have been in writing in the form of a letter and in each case the representative Standard Bank assigned to the management of the accounts would hand deliver it to the Gupta entity concerned, explain the content and leave it with them.

ADV PHILLIP MOKOENA SC: Yes. Were there any discussions between the Standard Bank and other banks prior to Standard Bank dispatching this notice?

MR IAN SINTON: None whatsoever.

ADV PHILLIP MOKOENA SC: Now, could you explain to the Chair the process which Standard Bank followed prior to it terminating or dispatching the notice to the Gupta-
20 related entities. What process internally was followed by Standard Bank?

MR IAN SINTON: Yes, Mr Chairman, obviously because of the need to constantly be on our guard to ensure we do not inadvertently contravene any of the statutes which I

mentioned by, for example, facilitating corrupt payments or dealing in the proceeds of crime, we constantly monitor media for adverse reports about customers. We also internally have ongoing relationships with customers where if we see any suspicious transactions going through the accounts, we contact the client and say you need to explain what is the source of the money, what is the application for this money and we also then have a team of people who are dedicated to looking out for suspicious transactions using algorithms and similar technology and to making sure that we fulfil our reporting obligations under the Financial Intelligence Centre Act. So the process which we follow generally is when through external media or internal information, we notice

10 conduct on the part of the customer which might give rise to a suspicion that the customer is involved in something unlawful. We trigger a process of gathering all information that we can about the customer, about the conduct and we in certain instances we employ outside agencies such as Thomson Reuters and others to help us with the gathering and collation of this information and once we think we have a picture of what really, of all the evidence that is available, we then, if it's compelling in our opinion, take a decision to terminate the relationship. If it is not very compelling or perhaps ambiguous, we will then ask for engagement with the customer and give the customer opportunity to persuade us that the adverse information is unjustified. On either basis we will then put the information so obtained before a committee of senior people who are

20 deem to be objective, i.e. who don't have vested interest as to whether we continue the relationship or not and that committee will make a decision on whether to terminate or not.

CHAIRPERSON: So are you saying that whether or not Standard Bank would have a discussion with a customer before making the decision to terminate the relationship, would depend on whether Standard Bank took the view that the evidence is compelling or

not and if Standard Bank thinks the evidence of wrongdoing or contravention of some laws is compelling, they won't discuss with the client if Standard Bank thinks that the evidence might not be so compelling, it would then have a discussion with the client?

MR IAN SINTON: That is correct then.

CHAIRPERSON: Why doesn't Standard Bank take the view that whether it thinks the evidence is compelling or not it will give the client an opportunity to explain before making a final decision because obviously a decision such as that is quite a serious decision for the client.

MR IAN SINTON: Mr Chair, it depends on the circumstances. Say for example, if a client
10 is being convicted of a criminal offence, we will not see any need to have a discussion about the effect of that on the relationship, the banker customer relationship but if there are simply unsubstantiated rumours or hearsay then we would feel a need to engage with the customer to have the discussion.

CHAIRPERSON: In the case of a conviction would you wait until all appeal processes have been completed or would you make a decision even before any appeal processes are completed?

MR IAN SINTON: No, for us the test is, from all information available, is there sufficient for us to suspect that our systems may be used for some or other offence and if we reach that conclusion, we will make a decision. We don't wait for there to be an actual
20 conviction or the outcome of an appeal before we make a decision to when we wish to continue, what is a contractual relationship.

CHAIRPERSON: Well my difficulty and Mr Mokoena maybe was still going to deal with that, is my difficulty is with the position that where you think that the evidence against the client is very strong, you don't hear the client's side of the story and yet you are dealing

with a very serious, with a decision that could have serious repercussions for an individual or for a business and I would have thought that is a thing to do to say, even if we think this client might not really be able to explain this thing but let's hear what he or she has to say and then make our final decision because this is a very serious decisions that we might take against this client. So I am asking those questions against that background and you said that, you made the example that if the client has been convicted and I assume convicted of certain crimes, then you would not see any need to give that client an opportunity to explain but you say that you won't wait for an appeal process. So I am wondering what happens if there is an appeal process after you have
 10 made the decision and the appeal succeeds and yet you made it your decision on the basis, you didn't give the person a chance to explain on the basis that there was a conviction?

MR IAN SINTON: Mr Chairman, I should mention it frequently occurs that when we convey a decision to the client, the client asks for to make representations about the decision and those are always entertained but we don't always before making a decision invite those representations, that is the way we conduct things.

CHAIRPERSON: But what would you say to a proposition that it would be unfair for an entity such as a bank which you know, plays a very important role in the affairs of many people in business and their individual affairs to make a decision such as that against a
 20 client without affording the client then opportunity to explain even if the bank thinks there is a compelling case against the client?

MR IAN SINTON: I would say it is difficult to balance the obligation to comply with a strict prohibition under the legislation not to deal with any client where you have a suspicion of wrongdoing with a corresponding obligation to actually have a process of engagement

but whether or not the conduct justifies the suspicion. It would be for us a difficult exercise but that is the way we do things at the moment.

CHAIRPERSON: Well, I am able to ask you more questions on this because you are a lawyer, you know about the *audi alteram partem* rule. Banks are not Government entities, but nevertheless they exercise a lot of power and their decisions could have far reaching consequences for a particular business or individual. And I just wonder whether to the extent that Standard Bank takes the, has adopted the position that you have articulated, that in some cases they won't give a client an opportunity to explain just because they think there is a compelling case against the client. Whether Standard Bank
10 can't be criticised then for acting unfairly in those cases – I am talking now in general, I am not talking about this particular one. In those cases where it decides to terminate the relationship with a client, just because it believes there is a strong case against that client, without giving that client an opportunity to explain and then make a decision thereafter.

MR IAN SINTON: Mr. Chairman, I think, well I hope the legal answer lies in the Bredenkamp versus Standard Bank decision of the Supreme Court of Appeal. And there was an attempt to appeal to the Constitutional Court that was denied on the grounds that there was no prospect. But the decision there is that the banker customer relationship as one find in the contract and a bank, just like the customer can unilaterally terminate his
20 contract with the bank, the bank can unilaterally terminate its contract with the customer. The bank is not performing an administrative or judicial function. It is simply saying, as your bank I have a contractual right to terminate. I worry that you are exposing me to criminal conduct, which I am not prepared to risk, and therefore I choose not to deal with you. And in particular in the Bredenkamp judgement it made clear that no reasons are required, there is no obligation on the bank to give a reason. So, I think once you adopt a

position, there should be an *audi alteram partem* principle and then a rational decision, etcetera, you go beyond the contractual right of a bank to say, I choose not to go down a road that I think is unnecessarily risky for me.

CHAIRPERSON: Well, I am sure that maybe at some stage there will be some argument on it. But I... if I were Standard Bank's client and Standard Bank decided to terminate our relationship; let's say for argument sake I have been with Standard Bank for a long time, we have been doing business together for a long time, and they form a view about myself or what they think I have done and they then terminate, they make the decision to terminate the relationship without affording me an opportunity to say this is the
10 explanation or this is not so, I would regard that as quite unfair. It may well be that, you know, argument may be put up on various grounds and you and I being lawyers might be aware of some of those grounds. But I would have thought that unless you are dealing with an emergency situation where you, there is no time to wait for an explanation because you have got to act promptly... unless you have that kind of situation, I would have thought that the bank would suffer no prejudice by saying, let's just hear what he has to say and then make our decision after that. You might or might not wish to comment on that. I am just mentioning to you what is going on in my mind and obviously I am open at a later stage for argument that might go either way.

MR IAN SINTON: Ja, Mr. Chairman, thank you.

20 **ADV PHILLIP MOKOENA SC**: Mr. Sinton, let's attempt to ease the mind of the Chair. The issues which the Chair was probing with you, would I be correct that they were also addressed in the Bredenkamp Supreme Court of Appeal matter?

MR IAN SINTON: Yes, my understanding, they were.

ADV PHILLIP MOKOENA SC: In fact, the argument advanced on behalf of Mr. Bredenkamp was exactly that that how could the bank decide to close its account without affording it its opportunity to state their case first, am I correct?

MR IAN SINTON: That is correct.

ADV PHILLIP MOKOENA SC: They also raised a number of constitutional challenge in relation to the expressed term of contract, which permitted Standard Bank to terminate its relationship as it did, am I correct?

MR IAN SINTON: That is correct.

10 **ADV PHILLIP MOKOENA SC:** And ultimately, the Supreme Court of Appeal also had to address issues pertaining to reputational risk, as well as business risk, which entitled a bank in those circumstances to can terminate even without affording the client any hearing. Will that be accurate?

MR IAN SINTON: My understanding, that would be an accurate summary of the judgement, yes.

ADV PHILLIP MOKOENA SC: Yes. Chair, those issues were canvassed at large at the Bredenkamp matter. The relevant paragraph will be paragraph 64 of the judgement. But those questions that the Chair has raised with Mr. Sinton were debated and were dealt with by the SCA. Thanks.

CHAIRPERSON: You said the Constitutional Court did not hear the matter.

20 **ADV PHILLIP MOKOENA SC:** Did not grant Mr. Bredenkamp leave. It must be on the good reasons. Mr. Howa, in his own letter says that any challenge about the conduct of Standard Bank will be still born and that was premised exactly on proper legal authorities

and there are also two opinions attached to the Minister's affidavit, which we have also made them available.

CHAIRPERSON: It would help, if at all possible, to obtain the letter that is usually send by the Registrar of the Constitutional Court to the parties indicating the outcome of an application for leave to appeal. Sometimes the reasons given there will indicate that the decision of the Constitutional Court is based on the merits. Sometimes it will indicate that the decision of the Constitutional Court is based on something else. I am particularly alive to that because sometimes people think if an application for leave to appeal is dismissed by the Constitutional Court, it necessarily means confirmation of the correctness of the decision of a lower court on the merits.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Whereas sometimes it is because of some other considerations.

ADV PHILLIP MOKOENA SC: Yes, Chair, we will attempt to get that letter. All what we can point out to the Chair is that, the current law is the Bredenkamp matter in the SCA and those issues were dealt with decisively. Mr. Sinton, are you able to share with the Chair the considerations which gave rise to Standard Bank having to close the Gupta related companies? What informed the decision, if you are able to share with us?

MR IAN SINTON: Yes, Chairman. They are summarised in the affidavit that we deposed to in response to Mr. Gordan's application in the High Court in Pretoria. But if I can, without reading that affidavit, summarise for you what they were. It really started with Absa Bank – it is important that we... it was reported that Absa Bank had elected to terminate all banking relations with these entities in the Gupta Group. Now, we would obviously accept that Absa Bank is bound by the same laws as we are, so if they saw good reason to terminate, it put us on notice that we should look carefully ourselves as to

what relationship we had and whether we were at risk. And that more or less stimulated the commencement of the gathering of information. In no particular order, KPMG who were the auditors to the group then, announced that they were terminating as auditors. You can fairly assume that an auditor would have far greater insight into the affairs of a company or group of companies than the bank, because we typically only get given evidence about credit worthiness. So, that was a concern, would have been concerning requiring some investigation of the type, required by the statutes. We then have Deputy Minister Jonas published the fact that he had been offered a promotion in exchange for benefits. Our interpretation of that was that fell squarely in the definition of an offence

10 under PREKA (spelling). And it was not insignificant that that account of what happened, was published on the website of National Treasury as an official publication by Government. And we, in a world where we can't ignore suspicious transactions, we thought that that was something that we ought to take cognisance of. We then had the former Minister of Parliament, Vytjie Mentor, announced that she had been, there had been an attempt to offer her a role in Cabinet in exchange for favours. And that for us was an issue of concern. Then Themba Maseka from the Government Information Agency or service announced that he had been instructed to assist Gupta entities. It so happened at the time that we had two companies in the Gupta Group who we provided services to that were in the media business. So, if there was anything unlawful about

20 that, we had to be concerned about whether they were then going to become party to some illegality. Then at the end of 2015 it was announced that Minister Zwane had accompanied a Gupta delegation to Switzerland to negotiate the purchase of the Optimum Coal Mine from Glencore. That on its own would have been concerning to us, because Minister Zwane was the Minister of Minerals at the time and in terms of the Mineral and Petroleum Resources Development Act, he would have been obliged to

approve any change and control of that mine and so to be part of the buyers delegation, if it occurred, would have been concerning and give rise to suspicions. Similarly, it was reported at the time in the Financial Mail, which is a fairly reputable publication, that the Oakbay Group of Companies had strongly denied that the Minister attended these meetings, had been part of the delegation, and yet a spokesman for the Minister readily admitted that he had been there. And that denial of what is a stated fact, gave rise to suspicions on our part and concerns. Then, it was reported in City Press that an executive of the Oakbay Group had assisted a wife of the President to purchase a house in Pretoria for the price of exceeding R3.5 million by obtaining a bond from the Bank of

10 Baroda. And that the bond had been repaid by a company within the group called Weston Investments. Now, Weston Investments was one of the companies with whom we did banking and so that was a cause of concern to us. That same report mentioned that Weston had in fact bound itself surety for the obligations of this particular, it wasn't the President's wife itself, it was a trust of which she was the sole beneficiary, sole trustee and one of his sons was a sole beneficiary and that was concerning. The same report mentioned that the executive involved had denied any involvement, yet the media had obtained a mortgage bond document of which that executive's signature appeared as a witness. So, there again the denial of any involvement by the executive to the reference to a mortgage bond wherein her signature was, was grounds for suspicion. We

20 then also had this company, we banked a company with the name of Astina. Astina was a company which was awarded a contract in the Free State Province to develop a farm. And there was wide publicity around how the farm itself had not been developed but substantial sums of money being paid to our client, Astina. When we investigated we found that large proportions of money were in fact sent to Dubai rather than being spend in South Africa on the farm. That obviously were suspicions on our part. After a

company by the name of Tegita had concluded the agreement to acquire control of Optimum Coal Mine, we received an email from Oakbay land claim to about R1.45 billion worth of funds that we held for a trust that had been established for the rehabilitation of the mine. We regarded that as suspicious. As a matter of law, these trusts, once set up for mine rehabilitation, are obliged to be ringfenced in the process, the funds in the trust may be used for no purpose other than rehabilitation of the mine, yet Oakbay had asked us to transfer the funds to Bank of Baroda. All of that read together caused us to come to a conclusion that we were at risk as a bank if we continued dealing with these entities of either dealing in the process of crime or facilitating money laundering or being involved in possible acts of corruption. I emphasise, there was no finding on our part, we are not in the business of adjudication, we just said there is sufficient red flags here to make us weary of doing further business. I also mentioned that at the same time of these, as the collection and collation of information from the media was taking place, our own internal processes with regards the reporting of suspicious transactions to the Financial Intelligence Centre were ongoing. And so, we would ask our money laundering reporting officer to make an input as to say we are reconsidering our relationship with these people based on this public information, do you have private information based upon what you've seen going through the accounts that should give us cause for concern and he most definitely told us that it was the case. He couldn't, in terms of our policy and process, tell us what he had seen and what had occurred, but he was able to say that we ought to exercise extreme caution in continuing to deal with these entities. So, the decision was taken based on that that we could no longer continue, all those combined factors that we should terminate our banking relationships.

ADV PHILLIP MOKOENA SC: Yes. Now, for completeness, may I refer you to Exhibit H2. It is a separate document handed to the Chair. You have mentioned a number of

entities and I take it that some of them did have a banking facility with Standard Bank. If you look at, on page 1, item 1, you have Oakbay Investment (Pty) Ltd and it was banking with Standard Bank. Am I correct?

MR IAN SINTON: Correct.

ADV PHILLIP MOKOENA SC: And you also mentioned the Gupta Media Houses. Would that be those that are reflected on item number 8, TNA Media (Pty) Ltd?

MR IAN SINTON: Correct.

ADV PHILLIP MOKOENA SC: If you turn over the page and you go to item number 14, it will be Infinity Media Networks (Pty) Ltd, would that be one of those media houses?

10 **MR IAN SINTON**: Correct.

ADV PHILLIP MOKOENA SC: And you also mentioned Astina, would I be correct that it is also reflected as one of your customers on item number 27?

MR IAN SINTON: That is correct.

ADV PHILLIP MOKOENA SC: Yes. Yes, now I also need to deal with you, to canvas with you, Mr. Sinton. You have now informed the Chair about the consideration that led to the Standard Bank having to terminate its banking relationship with those Gupta related entities. I need to deal with you with the events that took place subsequent to the termination of the relationship. You are providing that context in paragraph 7 to paragraph 9 of your statement. Now, could you in your own words inform the Chair what
20 was Oakbay's reaction after the accounts were terminated?

MR IAN SINTON: The... I suppose from a public point of view, Oakbay and its subsidiaries embarked upon a media campaign to persuade the banks to or not persuade, induce the banks to reverse their decision. I think in my witness statement I attached a copy of an

advertisement whereby the Chief Executives of the four banks were called upon by name to reverse the decision. And the reason given was that it was detrimental to the wellbeing of 7 500 workers in the Oakbay companies. That was the public campaign. Privately we received a request for our Chief Executive to attend a meeting at Luthuli House with the ANC to account to them for why we had closed these accounts. And then separately we received a request from a committee which was described as an Inter-ministerial Committee of Cabinet, to account to them for why we had closed these accounts.

ADV PHILLIP MOKOENA SC: Now, despite those private invitations that the Bank had, are you aware of any application which was brought by Oakbay and the Gupta registered
10 companies in order to reverse that decision before a court of law?

MR IAN SINTON: We are not aware of any such application. One was threatened but never proceeded with, we don't know if any of that were actually brought.

CHAIRPERSON: Before you proceed Mr. Mokoena. Mr. Sinton, you've said that after Standard Bank had closed the accounts of these entities, you received, I don't know if it was a letter or a call, to have a meeting with the ANC at Luthuli House and also what was referred to as an Inter-Ministerial Committee. I assume that is the one that was said to have been or at least at some stage approved by Cabinet. Now, I take it that prior to this occasion when you closed clients, these clients' accounts, you had had a number of other occasions when you closed clients' accounts for more or less similar reasons or not?

20 **MR IAN SINTON:** Mr. Chairman, yes. Although we do close accounts from time to time, it is not a frequent occurrence. In fact, I think when we did our research before those two meetings and we established it in the year of 2015, I think the total amount of accounts closed for these reasons, there are reasons other than concerns about corruption and

money laundering, but our concerns relating to corruption and money laundering only six or seven accounts were closed.

CHAIRPERSON: What was your or Standard Bank's reaction to being called upon to the headquarters of a political party to account for a decision relating to a client and to be called upon to meet the Inter-ministerial Committee in regard to its decisions about a client or clients?

MR IAN SINTON: We have a policy which we apply both in South Africa and in all jurisdictions where we do business that we constructively engage with all regulators and with Government. So, we would never ordinarily decline to meet with any organ of
10 Government that would ask for a meeting. We also at the time discussed the invitation from the African National Congress and our view was that it was the governing party of the day, it was responsible for policy and it would be disrespectful to simply decline to go. What transpired in the meeting, of course, is different. But we thought that it was appropriate and polite that we as a major bank should accept an invitation to talk to the governing party.

CHAIRPERSON: So, it was not something that Standard Bank viewed as strange to be called upon to account to the headquarters of the governing party for decisions that it made relating to certain clients and to account to the Cabinet Ministerial Committee in regard to decisions it had taken relating to private clients.

20 **MR IAN SINTON:** Mr. Chairman, yes. I think we could summarise by saying we thought it inappropriate, but we nevertheless agreed to attend it.

ADV PHILLIP MOKOENA SC: Mr. Sinton, there are three meetings which took place after you had closed the accounts of the Gupta related companies. The first meeting, you held a meeting with the Oakbay representatives. Am I correct?

MR IAN SINTON: That is correct.

ADV PHILLIP MOKOENA SC: Could you tell the Chair who attended the meeting on behalf of Standard Bank and who attended the meeting on behalf of Oakbay?

MR IAN SINTON: Mr. Chairman, may I just give some context? Firstly, we keep talking about closing the accounts, we gave notice in ample ...intervened.

ADV PHILLIP MOKOENA SC: Of intention, yes.

MR IAN SINTON: Of our intention to close after a lapse of two months. That was to give them an opportunity to find alternative banking facilities. During that period whilst the two months were running out, we had the invitation to meet with the ANC, we had the
10 invitation to meet with the IMC and we then had a request from the Oakbay representatives that they meet with us to persuade us to reverse that decision. Is that the meeting that you are talking about?

ADV PHILLIP MOKOENA SC: Yes, that is the meeting that I am referring to.

MR IAN SINTON: Yes. They requested a meeting because of the, I suppose the media interest, the political (?) climates and the like. It was... we agreed to the meeting not because that we would have met anyway, but it was a fairly senior delegation. The Oakbay delegation was made of Nazeem Howa, Terry Renson, Trevor Scott, Ashu Chawla, Veronica Ragawan (spelling). That was the delegation from Oakbay.

ADV PHILLIP MOKOENA SC: And from Standard Bank?

20 **MR IAN SINTON**: From Standard Bank it was David Monroe who was the Head of our Corporate Investment Bank at the time, Funeka Montjane who was Head of our Retail Bank at the time and still is, myself as General Counsel, Kenny Fihla who was Head of Client Coverage at the time, Zet House (spelling) was Head of Compliance in Corporate

Investment Banking, David Pipe was the Senior Relationship Manager and Venorthy (spelling) Naidoo was the Relationship Manager for many of these actual companies.

ADV PHILLIP MOKOENA SC: And what happened in that meeting?

MR IAN SINTON: The Oakbay delegation argued or made representation to the effect that we should not have made the decision to close the accounts. That all the adverse information affecting the group of companies all pertained to the Gupta family and Mr. Zuma. That the Gupta family members and Mr. Zuma had all resigned all positions within the Oakbay Group of Companies and therefore were no longer able to influence them and therefore any taint through their association was no longer relevant. They made the
10 submission that they had not been convicted in any court of law for any wrong doing, all these companies, and therefore it was unfair of the Bank to have made the decision to terminate absent that conviction. And finally, and I think for us what was the most relevant was, they made the point that they employed some 7 500 people throughout the group and their ability to pay their wages was being impacted by the closure of accounts and that would be unfair on those employees to be subject to that and for that reason also we should reverse our decision. Then they invited us to ask whatever questions we may have about the Oakbay Group against a promise by them that they could give us answers which would satisfy us that there was no truth in any of the adverse media information that had been published.

20 **ADV PHILLIP MOKOENA SC:** Did you pose those questions?

MR IAN SINTON: I asked the questions, yes.

ADV PHILLIP MOKOENA SC: What were... can you give us the details of the questions and the answers and whether or not Standard Bank was persuaded by those representations?

MR IAN SINTON: Yes. The questions which we asked were, we asked how they had funded the purchase price of the Optimum Coal Mine and we were told that it was from a loan from the Bank of Baroda plus some other funds. The relevance of that was in a context of the request that we hand over the rehabilitation fund to the Bank of Baroda as soon as the transaction was finalised, we thought that was suspicious. I pointed out that the Competition Commission, sorry the Competition Tribunal had published on its website the outcome of the application for approval for the merger. And in that, the Tribunal had noted that when they asked a question about what effect the merger would have on jobs at Optimum Coal Mine, the answer was they couldn't say because they had done no due
10 diligence. Now, it occurred to us that for people to buy a mine without doing due diligence and paid over R2 billion was an unusual occurrence and we asked how they could justify doing that. The answer they gave was that the Tribunal had misunderstood them, that they had done limited due diligence but they didn't do enough to now what impact the merger would have on employees. I then asked, I then referred to the email that we received from Veronica Ragawan of Oakbay in which, and I can quote, she sent us an email which says, from Oakbay, "we have presently a 1.456 billion, in account 494262 and we would like to move these funds to another bank, please advise, hereby send through the instruction." And it came from Oakbay. We had responded to that that these funds were held in a trust, a rehabilitation trust in our books that only the trustees of
20 the trust could give instructions to move the funds and therefore we couldn't respond at the time. Of interest was that we conveyed that to them on the 22nd of April 2016. By the 26th of April, that was a Friday, two business later they produced letters of authority from the master's office whereby all the trustees have been removed, appointees of the Guptas had been made trustees of the fund and they instructed us to move the money to the Bank of Baroda. So, I asked the question, why did you think it necessary to move

such a large sum of money from Standard Bank to the Bank of Baroda and the answer that I got was that because Bank of Baroda offered a better interest rate. So, we were not satisfied with that answer, because nobody had inquired of us as to what interest rate we were actually paying on the account. So, we didn't believe the answer. I then asked... I mentioned that one Veronica Govender had been reported as being a signatory to the mortgage bond granted by Bank of Baroda to Sincuma (spelling) Trust, which was set up by a wife of the President and where the son of the President was a beneficiary. And I asked ...intervened.

CHAIRPERSON: Sorry, Mr. Sinton, please raise your voice again so that I can hear
10 clearly.

ADV PHILLIP MOKOENA SC: Mr. Chair, before Mr. Sinton answers that question, I am reminded that it is now past the tea adjournment and this is quite an important aspect of the evidence, is it appropriate for us to adjourn now, would that be convenient?

CHAIRPERSON: We can do that or we let him just give that answer and then we take the break. Maybe he should give that answer and then we take the break.

ADV PHILLIP MOKOENA SC: Mr. Sinton, you may proceed.

MR IAN SINTON: Thank you, Mr. Chairman.

ADV PHILLIP MOKOENA SC: You were referring to a mortgage bond.

MR IAN SINTON: Mr. Chairman, I mentioned earlier that one of the factors that we had
20 taken into account in deciding to terminate the account, were media reports that the Bank of Baroda had granted a mortgage bond to a trust of which a wife of the President was the sole trustee and a son of the President was a beneficiary.

ADV PHILLIP MOKOENA SC: Who is the President that you are referring to?

MR IAN SINTON: President Zuma. And those reports said that Weston Investment, a customer of Standard Bank, had guaranteed the repayment of that loan. And I asked the representative at the meeting, Veronica Ragawan, if she was the same Veronica Govender and she confirmed that Govender was her maiden name. So, I asked her if there was any truth in the correctness of what had been reported. Her answer was to the effect that she had never met any wife of the President, let alone being party to arranging a loan to her or a trust on her behalf. I then mentioned the fact that her signature appeared as a witness on the mortgage bond itself, in which event she, after a lengthy pause, recalled that she had in fact been responsible, she had arranged that loan. Again, 10 the initial denial followed by the admission for us, left us completely unsatisfied with the answer. We then asked who, by that stage we had a meeting with the ANC, we asked who had asked the ANC to intervene to protect Oakbay's interest and Mr. Howa confirmed that he had done it, he had asked the ANC to intervene on their behalf. And he similarly said that he had also written letters to various people in Government and the President asking them to intervene on their behalf. In our meeting with the ANC we were asked to comment on the allegation that we were part of white monopoly capital and this closing the accounts was a campaign of us to drive black people out of business in South Africa. We dealt with that in that meeting, but I asked the Oakbay delegates who was responsible for this notion of, what basis they had come to the conclusion that they had 20 accused us of being part of this conspiracy and they refused to give an answer to that question. And then finally, I referred them to the fact that when they took over Optimum Coal Mine, Optimum Coal Mine banked with Standard Bank, they had banked with Standard Bank for many years as had Glencore. And because we were bankers, we've been given a copy of the share sale agreement, whereby Tegita Exploration Resources had purchased Optimum Coal Mine from Optimum Coal Holdings. And from a perusal of

the share sale agreement, it can be seen that the price for the shares was actually R1, that is what they paid for the shares. They then were required by Glencore sensibly to repay the banks who were owed about R2.1 billion, because Glencore or the subsidiary of Glencore had sought surety for that, so they needed to get released from that. But there was another condition precedent to the sale and that is that Tegita procure that Eskom release the Glencore subsidiary from its surety obligation, which made sense, but also from a claim for about R2.1 billion worth of penalties which had been evoked by Eskom for allegedly defective coal. So, the question I posed was what value, what consideration did you give Eskom for effectively waiving a R2.1 billion claim against the
 10 biggest mining company on the planet and their answer was none, they were not required to give any value to get that released. We were not satisfied with that answer either.

ADV PHILLIP MOKOENA SC: And having regard to all those answers and representations and a number of factors that you took into account, Standard Bank was not persuaded to reopen the accounts.

MR IAN SINTON: That is correct.

CHAIRPERSON: Thank you very much. We will take the tea adjournment now and we will resume at 11:40.

END OF SESSION 1

Session 2

CHAIRPERSON: Okay, you may, proceed Mr Mokoena?

ADV PHILLIP MOKOENA SC: Thank you Mr Chair, Mr Sinton before the tea adjournment, you were dealing with the Standard Bank meeting, the meeting between Standard Bank and Oakbay representatives. Is there anything that you need to add?

MR IAN SINTON: Mr Chairman I have nothing more of particular importance to say about that meeting.

ADV PHILLIP MOKOENA SC: Now let's move to another meeting which you mentioned in passing before the tea adjournment. You referred to the meeting which was held
10 between Standard Bank and the NEC of the ANC, am I correct?

MR IAN SINTON: That is correct.

ADV PHILLIP MOKOENA SC: Who called that meeting?

MR IAN SINTON: My understanding is that it was a request from the Secretary General of the ANC, Mr Mantashe made to Mr Sim Tshabalala who is the Chief Executive of Standard Bank.

ADV PHILLIP MOKOENA SC: And then where was the meeting held?

MR IAN SINTON: At Luthuli House.

ADV PHILLIP MOKOENA SC: Who represented Standard Bank if you are able to recall?

MR IAN SINTON: The Standard Bank was represented by myself, Mr Sim Tshabalala
20 and Ms Hannah Sadiki who was a Senior Executive in our retail banking division.

ADV PHILLIP MOKOENA SC: Yes and then ANC was represented by whom?

MR IAN SINTON: The ANC was represented by Mr Mantashe and Ms Jesse Duarte and Mr Enoch Godongwana.

ADV PHILLIP MOKOENA SC: Prior to attending the meeting, were you told as to what was the purpose of the meeting?

MR IAN SINTON: I was told it was to discuss the notice of closure, of the Gupta related accounts.

ADV PHILLIP MOKOENA SC: Now could you please tell us what happened in that meeting?

MR IAN SINTON: When the meeting commenced, after we had exchanged the normal
10 pleasantries, we made it clear to the ANC representatives, that we were not in a position legally, to discuss the affairs of any of our customers and in particular, we were not in a position to discuss the Gupta related entities, the Oakbay companies or our reasons for closing their accounts, but we were willing to explain our policies and procedures around account closing generally and the ANC representative seemed to accept that that would be an appropriate way to proceed with the meeting.

ADV PHILLIP MOKOENA SC: And then what happened in the meeting, can you share with us?

MR IAN SINTON: I then explained to the meeting, essentially what I explained to the Chairman here about the local and international obligations that we have about our
20 processes when we come across adverse information and how we make our decisions. I also took the opportunity to highlight the real risk for us. We had an unfortunate experience where our bank in Tanzania whilst it was negotiating to get a mandate from the government, employed a local partner that was part owned by a politically exposed person, which is the term we use in these issues and the partner, the mandate was

awarded, the partner paid its fee in US Dollars and the corporate partner withdrew that fee in cash. As a result of that fact alone, the Serious Fraud Office in the United Kingdom opened an investigation of corruption against us and the Department of Justice in the United States opened a case of corruption against us, based simply on the fact that a local partner had been employed and we explained that we cooperated with both the Department of Justice in the United States, we cooperated with the Serious Fraud Office and the result was, a deferred prosecution. The agreement was effectively a settlement agreement with the authorities, whereby we ended up paying about 38 Million US Dollars in penalties and fines for simply having employed a local partner and that deferred
10 prosecution agreement had to be approved by the courts in the United Kingdom and the judge who approved it, said that the prosecution was justified, simply on the basis that our staff should have foreseen the possibility that the local partner, being part owned by PREPS, would be sharing the fee with people in government, we should have foreseen as a possibility and therefore not employed at all. The fact that we employed them, rendered us guilty as far as they were concerned, both in the United Kingdom and the United States.

So I explained this to the meeting and said we are therefore highly sensitive to the possibility of dealing with people who could be using our systems and facilities for gratification, I think the local term is. Having explained all of that, the meeting did then go
20 on to talk about the issue of the closure of the Gupta accounts. We were asked to comment on the perception that we were part of White monopoly capital oppressing Black business. We were asked to comment on the reports that we were taking instructions from people in Stellenbosch in closing these accounts and we obviously rejected those out of hand. I must say it was the first time that I saw my boss, Mr Tshabalala get really angry and we were then also asked to comment about the concerns

that these account closures might have for the employees, i.e. the inability of the Oakbay entities to possibly pay their staff, could affect the staff adversely and we needed to comment on that.

I think our answer at the time, was the fact that we were simply complying with the law and taking the necessary steps to protect us and the point that I think Sim made at the time, was we employ 40 000 people and our staff are equally important to us and we can't do anything that is contrary to the law here and expose us to international sanctions.

ADV PHILLIP MOKOENA SC: After the meeting, you did send a letter to the ANC, am I correct?

- 10 **MR IAN SINTON:** Yes we did – the entire meeting was oral, there were no presentations made, no documents exchanged, so we thought it appropriate to send a letter just to summarise what we had said in the meeting, so we both had a clear understanding.

ADV PHILLIP MOKOENA SC: May I refer you to Page 138 of Exhibit H1?

MR IAN SINTON: That is the letter that was sent.

ADV PHILLIP MOKOENA SC: Is that the letter?

MR IAN SINTON: Yes correct.

ADV PHILLIP MOKOENA SC: And the letter captures what you have already informed the Chairperson in your testimony?

MR IAN SINTON: Yes I believe it does Mr Chairman.

- 20 **ADV PHILLIP MOKOENA SC:** Now, you also mentioned in passing, before the tea adjournment, that Standard Bank was invited to the meeting by a committee that was chaired by Mr Mosebenzi Zwane, do you recall that?

MR IAN SINTON: Yes I do.

ADV PHILLIP MOKOENA SC: Now how did Standard Bank become aware of the existence of the committee that was chaired by Mr Zwane?

MR IAN SINTON: Standard Bank received an email from an advocate, Zurena Kellerman, who addressed to Mr Ben Kruger, who at the time, was the Chief Executive of Standard Bank group, i.e. our group holding company, in which she said that she acts on behalf of an inter-ministerial committee and Mr Kruger was invited to a meeting to discuss the closure of accounts.

ADV PHILLIP MOKOENA SC: Did Standard Bank attend that meeting?

10 **MR IAN SINTON:** Yes we responded by pointing out that Ben Kruger was not the appropriate person. This was a matter involving the Standard Bank of South Africa Limited, i.e. our South African bank and the correct person to therefore engage with the IMC, was Mr Sim Tshabalala and he and I attended a meeting in Pretoria as a result.

ADV PHILLIP MOKOENA SC: And who represented the committee that was chaired by Mr Zwane?

MR IAN SINTON: When we arrived at the meeting, there were 3 people attending the meeting on behalf of the IMC. There was Minister Zwane, Minister Oliphant and Mr Jimmy Manyi.

ADV PHILLIP MOKOENA SC: Was Mr Jimmy Manyi a minister at the time?

20 **MR IAN SINTON:** No, we asked on what basis he was attending and he told us that he was an adviser to the ministers.

ADV PHILLIP MOKOENA SC: Did he remain in attendance throughout the meeting?

MR IAN SINTON: Yes he did.

ADV PHILLIP MOKOENA SC: Now, were you informed as to how this committee was established?

MR IAN SINTON: Minister Zwane introduced myself at the start of the meeting as being – he described that the committee had been formed by cabinet at the instance of President Zuma and he had been appointed as chairman and therefore he would be conducting the meeting in that capacity.

ADV PHILLIP MOKOENA SC: Were you informed about the agenda of the meeting?

MR IAN SINTON: We understood the purpose of the meeting to be, to discuss the
10 closure of the Gupta related bank accounts. The meeting took place on about the 5th of May 2016, so it was during the period when the notice period was still running its course, so our understanding, was that it was to discuss the closing of bank accounts.

ADV PHILLIP MOKOENA SC: Could you share with the Chair in your own words, as to what happened during the meeting?

MR IAN SINTON: Mr Chairman, we started the meeting by – as we had done with the ANC, make it clear that we are willing to discuss and explain to the committee, the policies and procedures that we adopt as Standard Bank when we have adverse information in the public domain and we again, as we had done with the ANC, explained why as Standard Bank, we are particularly sensitive to this issue. I might mention,
20 because I omitted to say so earlier, that when we concluded the deferred prosecution agreement with the Serious Fraud Office in the United Kingdom, the charge that was levelled against our bank in the United Kingdom, was that it has failed to prevent an act of corruption by an associate, so there was no allegation that Standard Bank London was corrupt, but it had failed to prevent an associate from corruption.

In the nature of a deferred prosecution agreement, the agreement sanctioned by a court, says we will allow you – the agreement is that you will pay a voluntary fine, you will compensate all people who have suffered loss as a result of the conduct complained of and you will undertake a remedial programme to ensure that this type of conduct never happens again and if after 3 years, you are not charged with a similar offence, then the charges will lapse, i.e. it's a non-prosecutorial outcome, it's as if the charges had never been laid, so our bank in London had this 3 year probationary period where it had to be exceptionally careful about what it did and said in connection with bribery and corruption and it had to be very careful to ensure that its associates did not in any way, become
10 accused of bribery and corruption. Now there is such a close relationship between all the banks within the Standard Bank Group that it would not be difficult to argue that our bank here, is an associate of our bank in London, so we had to be particularly careful about not being caught up in bribery and corruption in South Africa and I explained all of this to the IMC and they accepted those explanations.

However, once I had given that application, they turned almost immediately to the Oakbay entities and the closure of the accounts and the point they made, they said that Oakbay – they claimed they had about 7500 employees, they say that you can safely assume that in South Africa, that most employed people have more than 5 dependants and therefore, up to 60 000 South Africans they said, could be, if this decision was
20 implemented, adversely affected and that they might be deprived of income or payment and we should as a responsible bank, be sensitive to that and should reconsider for that reason.

Our response was to say we really are doing no more than complying with what we think is a very onerous law. We really are very concerned if people should be affected by those decisions, but it's really the conduct of the owners and managers of the business

that had brought them into that situation and not us. So that was the one representation they made. In that same line, they said well, surely if it's a contest as it were between the wellbeing of the employees and their dependants, or compliance with the law, we should favour the dependants, i.e. we should keep the accounts open to enable the dependants to be paid and risk non-compliance with the law and that was the proposition that they put to us. We said we couldn't accept that, we wouldn't accept that we would knowingly break the law in order to ameliorate the consequences of non-payment of employees.

They then suggested that the bank should not be allowed to close bank accounts all together, i.e. they said they had the power to change the law and that they would
10 consider recommending changes to the law to make it illegal for banks to close accounts.

ADV PHILLIP MOKOENA SC: Who said that?

MR IAN SINTON: Minister Zwane in the meeting.

ADV PHILLIP MOKOENA SC: Can you repeat what did he say?

MR IAN SINTON: He said that as a member of ruling party, he had the ability to get the law changed and he was inclined to propose a change in the law whereby it would become illegal for banks to close accounts in these circumstances.

CHAIRPERSON: And who said that if in effect you had to choose between not complying with the law and having workers lose their jobs, you should not comply with the law, if I understood your evidence correctly?

20 **MR IAN SINTON:** Mr Chairman I can't remember which of the two ministers said that, but that was the put proposition to us.

CHAIRPERSON: But it was one of the ministers?

MR IAN SINTON: That is correct Mr Chairman.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Yes Mr Sinton, then share with us further engagements between yourself and the committee in that meeting?

MR IAN SINTON: I think I have already mentioned that we were asked to comment on the allegation that we had colluded with the other banks in closing accounts and we said that that definitely was not the case. We were asked to comment on the allegation that we were representing White monopoly capital in closing accounts and we rejected that. We were asked why it is that we bank construction companies that have been fined for collusion in the building of soccer stadiums, yet we close the bank accounts of entities
10 that have not been convicted of any offence and we responded by saying that we didn't admit or deny that we did bank any construction companies, but we would regard an administrative fine for collusion as something quite different to money laundering or corruption.

Towards the end of the meeting, they reminded us that as a bank, we operate under a licence granted by government and that they suggested that we should be more responsive to concerns that they were, raising on behalf of government.

ADV PHILLIP MOKOENA SC: Do you recall who said that?

MR IAN SINTON: Mr Zwane that was his submission.

ADV PHILLIP MOKOENA SC: And what was the response from Standard Bank when
20 he said that?

MR IAN SINTON: We said that as far as we are concerned, we comply with all of the laws of the land to the best of our ability at all times and should the law change, we will adapt. So in summary, that was the tone of the meeting. The meeting ended with

Minister Zwane asking us what changes we would need to see within the ownership and management of the Oakbay group of companies that would be sufficient to persuade us to reverse our decision to terminate the accounts.

ADV PHILLIP MOKOENA SC: So despite you having informed Mr Zwane that you are not at liberty to discuss the customer relationship with the IMC, he continued to put those questions to you?

MR IAN SINTON: That is correct.

CHAIRPERSON: What was your answer? I didn't hear in terms of that last question from Minister Zwane?

10 **MR IAN SINTON:** Mr Chairman, our response was to say that we had taken the decision based upon the facts as presented to us, that if circumstances should change or facts could change, we might have to make other decisions, but at that point in time, we were operating on information at hand.

ADV PHILLIP MOKOENA SC: What impression did you gain after this meeting Mr Sinton? You must have reflected about what transpired in the meeting between Standard Bank and IMC, what impression did you gain about this meeting?

MR IAN SINTON: The meeting was an attempt by two cabinet ministers on behalf of cabinet, to persuade us to retract our decision to close the accounts of the Gupta related entities. There was no other reason for that meeting.

20 **CHAIRPERSON:** If your analysis of the discussions or rather if your analysis of the purpose of the meeting, is correct, then the position might not only be that two cabinet ministers wanted a meeting with Standard Bank to try and get Standard Bank to reverse its decision, but it might mean that if that committee was established by cabinet, it might

mean that cabinet wanted a meeting with Standard Bank through that sub-committee to achieve a reversal of Standard Bank's decision in the particular matter, is that right?

MR IAN SINTON: That would be correct Mr Chairman.

ADV PHILLIP MOKOENA SC: Now were there any minutes which were taken during this meeting by the committee?

MR IAN SINTON: The secretary to the committee was present throughout. She seemed to be taking notes, but after the meeting, no minutes were circulated at all. We were concerned that this was in effect, a meeting between Standard Bank and a sub-committee of cabinet and therefore, it ought to be formalised in some way and so we took
10 it upon ourselves as we had done with the ANC, write a letter to the ministers to record what oral representations and presentations and explanations we had given during the meeting.

ADV PHILLIP MOKOENA SC: May I refer you to Page 148? Would that be the email wherein you enclosed the letter starting from Page 149?

MR IAN SINTON: That is the email that was sent to the committee yes.

ADV PHILLIP MOKOENA SC: And then in the email, you see that please find attached documents for attention of Minister Zwane and Oliphant and what is attached, is the letter on Page 149, am, I, correct?

MR IAN SINTON: That is correct.

20 **ADV PHILLIP MOKOENA SC**: Now Mr Sinton are you able to summarise without having to read the contents of the letter on Page 149, as to what did you convey or what did Standard Bank convey to Minister Oliphant and Minister Zwane?

MR IAN SINTON: It records in more detail Mr Chairman what I just described to you now. Upfront, we reminded the ministers that we had hoped to keep the meeting about policy and practice and not any particular customers, but we did go on to discuss particular customers. It summarised all the laws that we say are applicable to us and the risk we face if we don't strictly adhere to those laws. We summarised the experience of its national views on dealing with bribery and corruption and we then described our process about what considerations we take into account when we make a decision to close, i.e. they are not arbitrary, or capricious decisions, they are carefully considered and effectively, we finished off with the wording where I say in response – well it was said

10 by Sim Tshabalala, I obviously had a hand in drafting it, in response to a closing query as to whether there is any possibility of Standard Bank reversing any decisions that could help save the jobs of the employees of Oakbay/the Gupta's, Standard Bank indicated that it applies the known facts and suspicions as envisaged by PRECA and POCA to the law to reach its decisions and therefore, if the facts should change, there could be a result in review.

Consequently, IMC requested as Standard Bank indicated the willingness that Standard Bank give consideration to inform the IMC in due course of what changes in the ownership and/or control of the Oakbay Gupta group of companies, could be required for Standard Bank to review any decisions it may have made.

20 **ADV PHILLIP MOKOENA SC:** Mr Sinton, this is quite a detailed letter addressing a number of issues. Were these issues that are contained in this letter, at any stage, disputed by Minister Zwane or Minister Oliphant or by anyone?

MR IAN SINTON: No we received an email back from the Secretary to the IMC, wherein she was asked to thank us for the, input and that's the only response we received to the letter.

ADV PHILLIP MOKOENA SC: Would that be the email contained on Page 154?

MR IAN SINTON: It is.

ADV PHILLIP MOKOENA SC: Other than that short email, nothing was communicated to Standard Bank about the contents of Annexure B16?

MR IAN SINTON: That is correct.

ADV PHILLIP MOKOENA SC: Now subsequent to that meeting, you will recall that there
10 was a press statement or an announcement made by Minister Zwane, do you recall?

MR IAN SINTON: I do recall that yes.

ADV PHILLIP MOKOENA SC: Could you share with the Chairperson, what was contained in that media statement and what was the purpose of that media statement? You are dealing with it from Page 111 Paragraph 31.1 to Paragraph 31.5 of your statement, if you can summarise for us, what was conveyed in the press or in the media statement?

MR IAN SINTON: On Page 111, is my summary, my witness statement of – well I quote there, extracts from the statement. If you look at Page 142 of the bundle, you will see the statement itself. Of relevance to this discussion, is where it was said on behalf of the
20 Department of Mineral Resources, that on 13 April 2016, cabinet established an inter-ministerial committee to consider allegations that certain banks and other institutions, acted unilaterally and in collusion when they closed bank accounts and/or terminated contractual relationship with Oakbay Investments. That was the purported purpose of

this meeting and then they go on to make recommendations for a judicial commission of inquiry into the closing of accounts and various other things.

ADV PHILLIP MOKOENA SC: And this was coming from the office of?

MR IAN SINTON: Minister Zwane.

ADV PHILLIP MOKOENA SC: Subsequent to this statement that has been made, we now know when reading your witness statement, that there was a media statement made by the then President Zuma, in relation to the contents of the statement made by Minister Zwane, do you recall?

MR IAN SINTON: I do recall that yes.

10 **ADV PHILLIP MOKOENA SC:** And can you share with us what was conveyed in that media statement?

MR IAN SINTON: Yes, you will find the actual statement at Page 155 of the bundle.

ADV PHILLIP MOKOENA SC: Annexure SB18?

MR IAN SINTON: Mr Chairman where you will see it's a statement – the heading is Statement of Minister of Mineral Resources in [indistinct] government position and the heading is the “the Presidency wishes to assure the public that the banking sector, as well as domestic and international investors of government’s un-waivering commitment to the letter and spirit of the country’s constitution as well as in the sound fiscal economic fundamentals that underpin our economy. They go on to say that the statement issued
20 by the Minister of Mineral Resources Mr Zwane, yesterday, on the work of the task team established to consider the implications of the decisions of certain banks and audit firms, to close down the accounts and withdraw all services from the company named Oakbay

Investments, was issued in his personal capacity and not on behalf of the task team or cabinet.

ADV PHILLIP MOKOENA SC: So the President there, was repudiating the media statement that was made by Mr Zwane?

MR IAN SINTON: Yes that seems so.

CHAIRPERSON: Is it your understanding too, that the statement that was issued by the Presidency at Page 155, while it may have repudiated the media statement issued by Minister Zwane, it acknowledged that he was a member of the task team? Well maybe I can help you. If you look at the third paragraph of this statement, it says Minister Zwane
10 is a member of the task team.

MR IAN SINTON: That is correct Mr Chair.

CHAIRPERSON: So it appears that officially, this statement doesn't deny the existence of a task team as such, but it repudiates the media statement that was made?

MR IAN SINTON: Yes, that was our interpretation of it Mr Chairman.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Now Mr Sinton, having gone through your statement and the annexures and provided oral testimony before the Chair, are you aware and I am asking this question flowing from your experience within the banking sector, whether you are aware of any provision in the constitution that could have entitled the executive to
20 interfere with the bank client relationship?

MR IAN SINTON: I certainly am not aware of any statute or law which allows for it and I would assume that the provisions of the Executive Members Ethics Act which prohibits executives from using their powers to benefit any one person, would in fact, prohibit it.

ADV PHILLIP MOKOENA SC: May I refer you to Page 115 of your statement in order to conclude your evidence? In Paragraph 39.1 on Page 115, you state that where Standard Bank has terminated its relationship with the Gupta entities, in order to avoid contraventions of and therefore in compliance with legislation not any minister or executive or any judicial commission, or inquiry, can lawfully direct that a terminated relationship be reinstated. Can you confirm that?

MR IAN SINTON: I can confirm that. I must hasten to add that I do say at the outset that what I say about legal conclusions is based on legal advice, but I do say that.

CHAIRPERSON: Mr Sinton, please try and raise your voice again? I think it's natural, sometimes one speaks at a certain level and then later on, it goes down, but if you do no
10 more than what you did earlier on when I asked you to try and raise it, that would be enough.

MR IAN SINTON: Thank you Mr Chairman, I will.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Lastly, Mr Sinton, you annex to your statement- may I refer you to Page 158 where you are annexing the transcript of the proceedings of Parliament and this will also assist in clarifying the questions that the Chair was posing around Mr Zwane's involvement as the member of the IMC. Now without having to read it Mr Sinton, you have dealt with this in your statement. What was the purpose of you
20 annexing that transcript? What does it convey in the light of the issues that you wanted to convey to the Chair?

MR IAN SINTON: Mr Chairman, I have already given evidence and we discussed how we were invited by the IMC to a meeting. Mr Zwane or his ministry then issued that statement saying that the recommendations of the IMC to cabinet had been accepted and

what those recommendations were. He was then repudiated to a degree by the Presidency. When we were faced with the application by the Minister of Finance in the Pretoria High Court for his declaratory order, we gave consideration to whether we could regard the workings of this inter-ministerial committee as having come to an end, or been rendered of no relevance to us by that repudiation and in our research, we obtained this transcript, which is a transcript of the goings on in Parliament in November 2016 and our interpretation of the questions to President Zuma at the time and his reply was, to the effect that whilst Minister Zwane has been repudiated for having issued that statement, the recommendations of his inter-ministerial committee, were still being considered by

10 him as President and we could still in due course, expect to receive some or other response and so the purpose of referring to it, was simply to tell the court, that it may have been at the time, not the end of the matter, as regards the meetings with the inter-ministerial committee and its recommendations.

ADV PHILLIP MOKOENA SC: Mr Chair for completeness, Mr Sinton is dealing with those aspects from Page 114 of his witness statement, Paragraph 37 to Paragraph 38. Subject to any questions from the Chair, that concludes the questions for Mr Sinton.

CHAIRPERSON: Maybe just one question Mr Sinton. Are you aware whether Minister Zwane had ever said anything in public about his statement that had been repudiated by the President or he didn't say anything publically that you are aware of?

20 **MR IAN SINTON:** Mr Chairman, the only public statement I am aware of, you can find at Page 156 of the bundle. That appears to be a report in the City Press on questions and answers in Parliament, where the report, two thirds the way down, says that the Presidency distances itself from Zwane's statement, saying that he had issued it in his personal capacity and that the contents of the statement were not the government's

position. The DA MP David Maynier asked Zwane whether he would resign from the cabinet and when he would do so. Zwane would not answer the question directly. He said in terms of the principle of separation of powers, the matter belonged to cabinet and not to Parliament adding that Maynier had no jurisdiction to ask him whether he would resign. Then they purport to quote from Mr Zwane, as I stated during my interview with the SABC, I stated that the matter of inquiry which Maynier seems to be [indistinct] can only be decided by the President once he has sufficiently applied his mind to the matter. We have been on record on this matter it is indeed unprecedented that banks can unilaterally close accounts. The matter can therefore not be left hanging said Zwane.

10 That is the only public commentary I am aware of.

CHAIRPERSON: Thank you very much. Thank you Mr Sinton, you will be released for now, but it is likely that the legal team may ask you to come back at some stage, but thank you very much for coming to give your evidence in the Commission, thank you very much, you are excused.

MR IAN SINTON: Thank you Mr Chairman.

ADV PAUL PRETORIUS SC: Chair the next witness has been arranged for tomorrow morning. Would it be appropriate to adjourn?

CHAIRPERSON: Yes that's fine. We will then adjourn the proceedings and as I indicated, tomorrow, we will start at 11:30 and not at 10:00 as we normally do. The
20 proceedings are adjourned.