

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

CASE NO.

In the matter between:

SOUTH AFRICAN HISTORY ARCHIVE TRUST Applicant

and

SOUTH AFRICAN RESERVE BANK First Respondent

**GOVERNOR OF THE SOUTH AFRICAN
RESERVE BANK, L KGANYAGO** Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

CATHERINE MOIRA KENNEDY

hereby make oath and state:

- 1 I am the director of the applicant, the South African History Archive Trust ("SAHA"). I am duly authorised to bring this application on behalf of SAHA. In this regard, I attach a copy of a resolution of the Trustees of the South African History Archive Trust marked "FA1".
- 2 The facts set out herein are within my personal knowledge, unless stated

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otherwise or indicated by the context, and are to the best of my knowledge and belief both true and correct. Where I make legal submissions, I do so on the basis of the advice of SAHA's legal representatives.

THE PARTIES

3 The applicant is the **SOUTH AFRICAN HISTORY ARCHIVE TRUST** ("SAHA"), a non-governmental organisation constituted as a trust in terms of the laws of South Africa. It is situated at the Women's Jail, Constitution Hill, 1 Kotze Street, Braamfontein, Johannesburg. SAHA made the request for information that forms the subject matter of this application.

4 The first respondent is the **SOUTH AFRICAN RESERVE BANK** ("the Reserve Bank"), the central bank of the Republic of South Africa. It is established in terms of section 223 of the Constitution and is governed by the South African Reserve Bank Act 90 of 1989 ("the Reserve Bank Act"). Its head office is at 370 Helen Joseph Street, Pretoria. The Reserve Bank is responsible for, amongst other things, the protection of the value of the currency of the Republic in the interest of balanced and sustainable economic growth; assisting the South African government in the formulation and implementation of macro-economic policy, and informing the South African public about South African monetary policy and the South African economic situation.

5 The second respondent is the **GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK, LESETJA KGANYAGO**, who is cited in his official

capacity. He is the information officer of the Reserve Bank, in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA"). He is responsible for the records that were the subject of SAHA's request for information under PAIA.

THE NATURE OF THIS APPLICATION AND RELIEF SOUGHT

6 SAHA brings this application in terms of section 78(2) read with section 82 of PAIA because the Reserve Bank has refused access to records requested by SAHA in terms of PAIA on 1 August 2014.

7 A copy of the request is attached marked "FA2".

8 The request was one of six different requests for information that SAHA made to the Reserve Bank on 1 August 2014 ("the 2014 requests"). It carried the SAHA reference SAH-2014-SRB-0007. All of the 2014 requests related primarily to abuses of the financial rand, corruption and foreign exchange transactions under apartheid, including loans and permissions for transfer of funds outside the country.

9 The request sought access to:

"Copies of any and all records, or parts of records, of any evidence obtained by the bank at any time as part of investigations into any substantial contravention of, or failure to comply with the law in terms of significant fraud (including fraud

through manipulation of the financial rand dual currency, foreign exchange or forging Eskom bonds), gold smuggling or smuggling of other precious metals from 1 January 1980 to 1 January 1995 in relation to the following persons:

- The late Mr Giovanni Guiseppe Mario Ricci (born 07/08/1929; ID# 2908075136186; last known address Bryanston/Midrand; died 16/07/2001)
- The late Mr Stephanus Petrus (Fanie) Botha (former Minister of Labour/Manpower, born 05/05/1922; ID# 220505027083; died in Pretoria, 04/09/2010)
- Brigadier Johann Philip Derk (Jan) Blaauw (born 14/10/1920 ID# 2010145028004; believed to be dead)
- Mr Paul Ekon (ID# 5905265017082)
- Mr Robert Oliver Hill (ID# 3907245021004, as involved in South African Reserve Bank v Torwood Properties (Pty) Ltd 626/94) [1996] ZASCA 104; 1997 (2) SA 169 (SCA) [1996] 4 All SA 494 (A); (25 September 1996)
- Mr Vito Roberto Palazzolo (also known as Mr Robert von Palace Kolbatschenko; born 31/07/1947; currently serving a prison sentence in Italy for Mafia association.)
- Mr Craig Michael Williamson (born 23/04/1949; ID# 4904235577003)

- Dr Wouter Basson (born 06/07/1950)

- 10 SAHA requested those records after consulting with the Open Secrets project, a group of South African researchers based in Cape Town who are in the process of collecting and analysing apartheid era archival material for the purpose of a book that will focus on procurement practices and public accountability during apartheid (an under-researched area of work). The records fall within the scope of information that SAHA routinely archives and makes available to the public.

- 11 SAHA had previously, in September 2013, made requests for information that were refused by the Reserve Bank ("the 2013 requests"). In refusing SAHA's 2013 requests, the Reserve Bank stated that SAHA had failed to include sufficient particulars pertaining to the information and entities referred to in the request to enable it to identify the precise records sought.

- 12 In making its 2014 requests, including the request at issue in the present application, SAHA attempted to frame its request in as clear and concise a manner as possible in order to assist the Reserve Bank to identify and source the relevant records. In this matter, SAHA sought access to records relating to eight named individuals, identified by their identity numbers and dates of birth and death, where relevant. The records requested were of evidence obtained by the Reserve Bank from investigations into substantial contraventions of or failure to comply with the law.

- 13 The records sought are those that would reveal evidence of:
- 13.1 significant fraud including fraud through manipulation of the financial rand dual currency, foreign exchange or forging Eskom bonds,
 - 13.2 gold smuggling; or
 - 13.3 smuggling of other precious metals.
- 14 I submit that the request is sufficiently clearly framed and focused to enable the Reserve Bank to give effect to its constitutional and statutory obligations to provide access to information.
- 15 The Reserve Bank initially failed to make a decision on the request within the time periods prescribed in PAIA. On 28 October 2015, it refused access to the records.
- 16 The Reserve Bank asserted that it had done a search of its records and was unable to find any records of the sort requested, in relation to the five individuals listed below. Dr J De Jager, the Deputy Information Officer of the Reserve Bank, made an affidavit in terms of section 23 of PAIA stating that the Reserve Bank was unable to locate any such records. Those five individuals are:
- 16.1 Mr Giovanni Giuseppe Ricci;
 - 16.2 Mr Stephanus Petrus Botha;

16.3 Mr Paul Ekon;

16.4 Mr Craig Michael Williamson; or

16.5 Dr Wouter Basson.

17 In respect of Brigadier Johann Philip Derk Blaauw, Mr Robert Oliver Hill and Mr Vito Palazzolo, the request for information was refused in terms of section 27 of PAIA. I deal with why there is no basis in law for such a refusal, below in this affidavit.

18 SAHA now brings this application in terms of section 78(2) read with section 82 of PAIA for an order:

18.1 declaring that the decision of the First and Second Respondents to refuse access to the records requested by SAHA in its request for information in terms of the PAIA, is unlawful and in conflict with the provisions of PAIA and the Constitution;

18.2 reviewing and setting aside the refusal by the First and Second Respondents of SAHA's request;

18.3 directing the Respondents to provide the requested records in respect of Brigadier Blaauw, Mr Ricci, Mr Botha and Mr Hill to the Applicant within 15 (fifteen) days of the granting of this order.

18.4 directing the Respondents to notify Mr Ekon, Mr Palazzolo, Mr Williamson and Dr Basson within 5 days of the date of this order, of the request, in accordance with section 47 of PAIA and thereafter

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to comply with the time periods and provisions in Chapter 5 of PAIA;
and

18.5 directing the First and Second Respondents to pay the costs of this application.

JURISDICTION

19 I am advised and submit that this Court has jurisdiction to hear this application by virtue of the definition of "court" in section 1 of PAIA, which provides that court includes the High Court within whose area of jurisdiction the requester is domiciled or ordinarily resident.

20 Section 82(2) of PAIA provides that the court hearing an application of the present sort may grant any order that is just and equitable including orders:

"(a) confirming, amending or setting aside the decision which is the subject of the application concerned;

(b) requiring from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within period mentioned in the order;

(c) granting an interdict, interim or specific relief, a declaratory order or compensation;

(d) as to costs; or

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(e) condoning non-compliance with the 180-day period within which to bring an application, where the interests of justice so require."

- 21 Clause 6.3 of the Reserve Bank PAIA manual, which is compiled in terms of section 14 of PAIA, states that it does not provide for any internal appeal procedures. There are therefore no internal remedies that need to be exhausted before the institution of these proceedings. I attach a copy of Clause 6.3 of the manual marked "FA3".
- 22 I am advised and submit that accordingly, SAHA is entitled to bring this application in terms of section 78(2) read with section 82 of PAIA.
- 23 In this affidavit I address the following issues in turn:
- 23.1 An overview of the objectives and functions of SAHA;
 - 23.2 The constitutional right of access to information and the role of PAIA in this regard;
 - 23.3 The factual background to this application;
 - 23.4 The grounds on which Reserve Bank has refused to grant access to the records
 - 23.5 Why there is no basis in law for that refusal;
 - 23.6 The public interest in the disclosure of the records.

24 Before doing so, I point out that SAHA has, throughout its interactions with the Reserve Bank, attempted to avoid litigation, and to assist the Reserve Bank to make the records accessible. To this end,

24.1 SAHA decided to lodge a fresh request in light of the Reserve Bank's complaint that SAHA's 2013 requests were overbroad and unclear.

24.2 On 26 September 2014, SAHA wrote to the Reserve Bank stating that it was willing to send researchers to the Reserve Bank to inspect the records in order to assist the Reserve Bank in identifying the records requested and to enable SAHA further to narrow its requests if necessary. I attach a copy of this letter marked "FA4".

24.3 Although SAHA is not required by PAIA to provide reasons for its request for access to records of a public body such as the Reserve Bank, when asked to do so, it explained the nature of the work that SAHA does and why it had requested the specific records concerned. This is also clear from annexure FA3.

25 However, the Reserve Bank has failed to comply with its obligations under PAIA. There are no valid grounds for the refusal of SAHA's request. In the circumstances, SAHA has no other recourse but to approach this Court for relief.

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THE OBJECTIVES AND FUNCTIONS OF SAHA

- 26 SAHA's objectives are to preserve, collect and catalogue materials of historic, contemporary, political, social, economic and cultural significance, and to encourage the accessibility of such materials to the public as a whole. I attach a copy of SAHA's trust deed marked "FA5".
- 27 SAHA is an independent NGO dedicated to documenting and providing access to archival holdings that relate to past and contemporary struggles for justice in South Africa. SAHA was established in the late 1980's by anti-apartheid activists. Its founding mission was to promote the recapturing of South Africa's lost and neglected history and to record history in the making. Further, SAHA aims to document, support and promote awareness of past and contemporary struggles for justice through archival practices and outreach, and the utilisation of access to information laws.
- 28 SAHA launched its Freedom of Information Programme in 2001. It is dedicated to using PAIA as a method to test and extend the boundaries of freedom of information in South Africa. This programme further seeks to create awareness of, compliance with and use of PAIA.
- 29 Since 2001, SAHA has made over 1800 requests for information from various government departments. It has made numerous applications to the High Court arising out of refusals of such requests. SAHA has also intervened as *amicus curiae* in a number of PAIA applications.

30 SAHA has developed a comprehensive capacity training programme for NGOs and community based organisations on using PAIA. It has developed resource kits, workshop guides, PAIA case study DVDs, and a dedicated online management system for the submission and monitoring of PAIA requests made by members of the PAIA Civil Society Network, a network of civil society organisations that collaborate to improve the implementation and usage of PAIA and create awareness about the Act. SAHA has also trained hundreds of activists, students, community members, NGO members, local government officials, attorneys and paralegals in the use of PAIA.

31 The request for access to the records concerned was made in this context.

THE CONSTITUTIONAL RIGHT OF ACCESS TO INFORMATION AND THE ROLE OF PAIA IN GIVING EFFECT TO THE RIGHT

32 Section 32 of the Constitution establishes a right of access to information held by both public and private bodies. It states that:

"(1) Everyone has the right to have access to

a) any information held by the State; and

b) any information that is held by another person that is required for the exercise or protection of any right.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the State."

33 PAIA is the national legislation envisaged in section 32(2) of the Constitution. It was enacted in order to give effect to the right of access to information and to promote the values of openness, transparency, accountability and good governance – principles which are foundational to the Constitution.

34 The preamble of PAIA records that the system of government in South Africa before 27 April 1994 *"resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations"*. The preamble states that PAIA is enacted to *"foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information"*.

35 Section 9(e) of PAIA describes as its object, *inter alia*, the promotion of:

"... transparency, accountability and effective governance of all public and private bodies by including, but not limited to, empowering and educating everyone

(i) to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;

(ii) to understand the functions and operation of public bodies;

(iii) to effectively scrutinise... decision-making by public bodies that affects their rights."

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36 Public bodies are under a duty to provide access to a requested record, or part of it, unless refusal of the request is permitted or required by one or more of the grounds listed in PAIA. Section 11(1) of PAIA provides that a requester must be given access to a record held by a public body if the requester complies with all the procedural requirements in the Act and no valid ground for refusal in terms of Chapter 4 of PAIA is applicable. Notably, section 11(3) provides:

“(3) A requester’s right of access contemplated in subsection

(1) is, subject to this Act, not affected by-

(a) any reasons the requester gives for requesting access; or

(b) the information officer’s belief as to what the requester’s reasons are for requesting access.”

37 The Constitutional Court has made clear that the right of access to information is fundamental to the realisation of the other rights guaranteed by the Bill of Rights.

THE RESERVE BANK IS A PUBLIC BODY FOR PURPOSES OF PAIA

38 I am advised and submit that the Reserve Bank is a public body in terms of paragraph (b) of the definition of “*public body*” in section 1 of PAIA. A public body is defined in section 1 of PAIA as:

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“(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or

(b) any other functionary or institution when-

(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation”

39 The Reserve Bank is established by the Constitution; it exercises its powers and performs its duties in terms of the Constitution; and it is governed by the South African Reserve Bank Act, in terms of which it exercises public power and performs a public function. Section 3 of the Act describes the primary objective of the Bank as being to *“protect the value of the currency of the Republic in the interest of balanced and sustainable economic growth in the Republic.”*

40 In the correspondence to which I refer below, the Reserve Bank refers to and relies on sections of PAIA that apply to public bodies.

FACTUAL BACKGROUND

41 As I have stated above, the request at issue in this application was made

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on 1 August 2014, together with certain other requests.

42 On 14 August 2014, the Reserve Bank's attorneys wrote to SAHA asserting that the requests were vexatious and an attempt to "intimidate" the Bank. The letter also asked for reasons why and the purpose for which SAHA sought the information. I attach this letter as "FA6".

43 SAHA's attorneys replied on 26 September 2014, stating that as the Reserve Bank is a public body in terms of PAIA, SAHA was not obliged to provide reasons for its request for information. However, in the spirit of collegiality, SAHA stated the reasons for which it sought the records. It also offered to send researchers to the Reserve Bank to inspect the records. I attach a copy of this letter marked "FA7".

44 In February 2015, SAHA made an application to this Court, in terms of PAIA, for access to a request it had made for information relating to investigations into abuses of the financial rand from its introduction in September 1985 until its abolition in March 1995. That application is pending.

45 On 27 July 2015, the Reserve Bank's attorneys wrote to LHR in relation to this matter ("FA8"). The Reserve Bank asserted:

45.1 The request was vague and ambiguous.

45.2 No definition of "substantial contraventions of the law" or "significant fraud" was provided in the request.

45.3 Therefore further particulars of the records requested were required.

45.4 Third parties had to be notified as required by PAIA.

45.5 The requests fell foul of section 18 of PAIA in that they do not precisely identify the records relevant to the request.

46 On 19 August 2015, SAHA's attorneys replied to the Reserve Bank's attorneys, addressing all of the matters raised by the Reserve Bank.

47 The letter pointed out the manner in which PAIA requires third party notification to take place. The letter noted that PAIA only requires, in sections 28 and 46, that *reasonable steps* be taken to notify a third party, failing which a decision must be made by the Reserve Bank. In relation to SAH-2014-SRB-0007, the letter also provided more information on Mr Oliver Hill, which SAHA had found through media reports.

48 In relation to the Reserve Bank's delay in accessing and perusing its records, the letter stated:

"if the archival legislation is complied with, retrieval of records should not be very time consuming. Our client repeats its offer to assist in this regard."

49 On 28 October 2015, in a letter from its attorneys ("FA9"), the Reserve Bank informed SAHA of its decision with regard to the request at issue in this application.

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- 50 That letter distinguished between two groups of records requested, namely those relating to Mr Ricci, Mr Botha, Mr Ekon, Mr Williamson and Dr Basson ("the five individuals") and those relating to Brigadier Blaauw, Mr Hill and Mr Palazzolo ("the remaining individuals.")
- 51 In relation to the five individuals, the letter stated that the Reserve Bank had conducted a search of its records and had not located any records that matched the request. An affidavit to this effect by Dr Johan de Jager ("FA10") was subsequently furnished to SAHA.
- 52 Dr De Jager stated that the request was vague and without sufficient particulars to enable the Reserve Bank to identify the records without unreasonably diverting its resources. However, the Reserve Bank attempted to locate what it thought were the correct records.
- 53 In determining what precisely was requested, the Reserve Bank defined "*investigations into any substantial contravention of, or failure to comply with the law in terms of significant fraud*" to mean such records as

"were entered into the register of investigations by the Investigations Division of the formerly known Exchange Control Department of the South African Reserve Bank, now the Financial Surveillance Department (FSD). In this regard, the aforementioned records consist of a register of investigations (both in hard copy format and for later investigations, in electronic format (Online Risk Management System));

relate specifically and directly to the parties specified in Part D of the requests; and

constitute formal investigations conducted by the FSD into allegations of "significant" fraud in respect of the parties listed in Part D of the requests as contemplated in the requests."

54 Dr De Jager stated that the Reserve Bank took all reasonable steps to locate the investigation records as contemplated in section 23 of PAIA. He stated that *"these steps include extensive searches conducted by Mr Alexander Ellis, a specialist legal counsel for the Reserve Bank of the existing records of the FSB."* He stated further that Mr Ellis was unable to locate any entry in the records of the FSD that relates to any investigations by the FSD into the conduct of a series of companies, or the five individuals. It did not suggest that the Reserve Bank was not able to locate any records that matched the request in relation to the remaining individuals.

55 The affidavit of Mr Ellis ("FA11") sheds no light on the process used to search for the records, or whether he conducted these searches himself or with the assistance of other staff members.

56 I am advised and submit that this does not meet the requirements of section 23 of PAIA which provides:

"The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in

question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

- 57 Neither Dr De Jager nor Mr Ellis provides any information of the precise steps taken to determine whether the records exist, nor do they indicate which individuals assisted Mr Ellis in his search, or disclose all communications with such individuals.
- 58 It seems very unlikely that that Mr Ellis - the specialist legal counsel of the Reserve Bank – personally conducted a search into approximately 20 companies and eight individuals without assistance from any other Reserve Bank employee. The affidavits of Dr De Jager and Mr Ellis therefore do not satisfy the requirements of section 23 of PAIA.
- 59 At various points during SAHA's engagement with the Reserve Bank, SAHA offered to send researchers to assist with the search for the records requested. This offer was not accepted by the Reserve Bank. If the Reserve Bank wished to comply with the request but was unsure of what was being requested, it had an open line of communication with SAHA through which it could have obtained the clarity it claims to have required. It chose not to do so.

THE RESERVE BANK'S GROUNDS OF REFUSAL

- 60 The grounds of refusal on which the Reserve Bank relies, as set out in its

attorneys' letter of 28 October 2015, are the following.

"Disclosure is precluded by section 33 of the Reserve Bank Act"

61 The Reserve Bank contends that disclosure is precluded by section 33 of the Reserve Bank Act. That section prohibits a director, officer or employee of the Reserve Bank from disclosing any information acquired during the course of his/her duties or the exercise of his/her functions, relating to the affairs of the Reserve Bank, a shareholder or client of the Reserve Bank.

"Disclosure is precluded by section 37(1) of PAIA"

62 The Reserve Bank relies further on section 37(1) of PAIA, which requires the information officer of a public body to refuse to disclose a record if disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

63 The Bank states that courts have consistently recognised the duty of confidentiality owed by banks towards their clients in relation to clients' banking affairs.

"Disclosure is precluded by section 39(1)(b) of PAIA"

64 The Reserve Bank relies further on section 39(1)(b) of PAIA. It provides that a request for information may be refused if the record contains

"methods, techniques, procedures or guidelines for-

(aa) the prevention, detection, curtailment or investigation of a contravention or possible contravention of the law; or

*...
and the disclosure of those methods, techniques, procedures or guidelines could reasonably be expected to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence."*

"Disclosure is precluded by section 37(1)(b) of PAIA"

- 65 The Reserve Bank further contends that the disclosure of the information could reasonably be expected to prejudice the future supply of similar information to the Reserve Bank by third parties (including informants) as contemplated in section 37(1)(b) of PAIA.

"Unreasonable diversion of resources"

- 66 The Reserve Bank further contends that it is entitled to refuse the request in terms of section 45(b) of PAIA, because it would be required unreasonably and substantially to divert its resources in order to consider thousands of documents pertaining to the remaining individuals, in order to ascertain the status of the documents and the details of third parties

whom it will have to consult.

Section 34: protection of privacy of a third party who is a natural person

67 Finally, the Reserve Bank relies on section 34 of PAIA, which deals with the unreasonable disclosure of personal information about a third party who is a natural person.

The public interest override: section 46

68 The Reserve Bank contends that the provisions of section 46, which create a "public interest override", do not apply to the request, because the public interest in disclosure does not clearly outweigh the harm contemplated by the provision of the information.

RESPONSE TO THE GROUNDS OF REFUSAL

69 I am advised and submit that there is no basis in law for the Reserve Bank's reliance on the grounds of refusal set out above.

Section 33 of the Reserve Bank Act

70 I submit that section 33 of the Reserve Bank Act is aimed at ensuring confidentiality that Reserve Bank directors, officers and employees maintain confidentiality in carrying out their duties. It is not a prohibition

directed at the Bank itself.

71 I am advised and submit that in any event, this provision, enacted in 1989, cannot and does not override PAIA, which gives effect to a constitutional right, and which governs the circumstances in which access to information must or may be granted to a requester.

72 In this regard, I point out that section 5 of PAIA provides:

"This Act applies to the exclusion of any provision of other legislation that-

(a) prohibits or restricts the disclosure of a record of a public body or private body; and

(b) is materially inconsistent with an object, or a specific provision, of this Act."

73 I submit that to the extent that section 33 of the Reserve Bank Act has the consequence for which the Reserve Bank contends, it is a provision that prohibits or restricts the disclosure of a record of the Reserve Bank, and it is materially inconsistent with the objects and provisions of PAIA. PAIA therefore applies to the exclusion of section 33.

74 The Reserve Bank appears to contend that if pre-PAIA legislation restricts disclosure and is materially inconsistent with the objects and provisions of PAIA, it overrides PAIA. I submit that precisely the opposite is the case.

Section 37(1) of PAIA: protection of client confidential information

75 I submit that the Reserve Bank's reliance on client confidentiality, on the basis of section 37(1) of PAIA, is fundamentally misconceived:

76 The Reserve Bank was the regulatory authority with regard to the financial rand. When it received applications and considered giving approvals, and when it monitored the financial rand system, it did not do so on behalf of the applicants for authorisation. It did so in its capacity as the regulatory authority. The records that it received were thus not received on behalf of "clients" of the Reserve Bank, and no question of client confidentiality can arise.

77 Similarly, when the Reserve Bank carried out its investigations into abuses of the financial rand, collecting evidence of such abuses, it was not doing so on behalf of a client of the Reserve Bank. The records that it obtained in the course of those investigations cannot be the subject of client confidentiality.

78 I submit that section 37(1)(a) of PAIA, dealing with potential actions for a breach of confidence, is simply of no application in this context. The Reserve Bank does not bear a general duty of confidence to third parties when it carries out its regulatory functions.

Section 39(1)(b) of PAIA: disclosure of methods

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- 79 Section 39(1)(b) of PAIA deals with the disclosure of methods, techniques and procedures or guidelines for the prevention, detection, curtailment or investigation of contraventions of the law.
- 80 I submit that a blanket and generalised reliance on this ground of refusal is insufficient to justify a refusal to disclose information. What is necessary is to identify which of the requested records (or classes of requested records) would result in disclosure of protected information, and what protected information would be disclosed.
- 81 If in answer the Reserve Bank provides some specificity with regard to this ground of refusal, I will then be able to deal with it.

Section 37(1)(b) of PAIA: supply of information by third parties

- 82 Section 37(1)(b) of PAIA deals with prejudice to the supply of information by third parties.
- 83 Again, I submit that a blanket and generalized reliance on this ground of refusal is insufficient to justify a refusal to disclose information. What is necessary is to identify the requested records (or classes of requested records) whose disclosure will prejudice the future supply of information, what is the nature of that supply of information, and why this consequence will follow disclosure.

- 84 If in answer the Reserve Bank provides some specificity with regard to this ground of refusal, I will then be able to deal with it.

Diversion of resources

- 85 Section 45(b) of PAIA provides that the information officer of a public body may refuse a request for access to a record of the body if *"the work involved in processing the request would substantially and unreasonably divert the resources of the public body"*.

- 86 SAHA has requested access to records relating to eight named individuals. The Reserve Bank must have organised its records in a manner that includes an indexing system that enables it efficiently to search for and identify, either electronically or manually, its dealings with and records relating to a particular individual. I invite the Reserve Bank to state whether this is the case.

- 87 The answer given by the Reserve Bank indicates that it has found relevant records relating to the remaining individuals.

- 88 In order to justify its refusal to disclose any of those records, the Reserve Bank relies on a generalized and unsubstantiated blanket assertion. It does not say how many relevant records it has identified relate to each of the remaining individuals. A generic assertion cannot provide a justification for a refusal to disclose. And the mere fact that a request may

involve a large number of records does not per se justify a refusal to disclose them.

89 I point out that this ground of justification contradicts the other grounds of refusal which have been put up. If the Reserve Bank has given sufficient consideration to the requested documents for it to be able to reach a responsible conclusion that they should not be disclosed for one of the statutory reasons, then it follows that the Bank has been able to consider the documents in question.

90 If the Reserve Bank has not been able to consider all of the relevant records relating to those individuals, that does not provide a lawful basis for refusing to provide those records that it has been able to consider.

91 I submit that to the extent that the Reserve Bank relies on section 45 of PAIA, this is without merit.

Section 34 of PAIA: personal information of natural persons

92 Section 34(1) of PAIA provides:

"Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual."

93 There has plainly not been any attempt to inform the five individuals of the request. The Reserve Bank states that it has not attempted to inform the remaining individuals as required by section 47(1) of PAIA, because two of them (Brig Blaauw and Mr Hill) are believed to be deceased, and the third (Mr Palazzolo) is incarcerated outside South Africa.

94 I submit that a public body is not entitled to decline to attempt to inform a third party who may be affected (such as Mr Palazzolo), and then to rely on section 34(1) as a basis for refusing to disclose information about him.

95 But even assuming that the procedure followed by the Reserve Bank is permissible, I submit that it has provided no substantive answer as to why it should refuse to disclose the requested information, and particularly the information about the remaining individuals. I submit that section 34(1) does not authorise a blanket and unsubstantiated refusal, which has no apparent regard to the period that has elapsed since the events in question (in this instance more than twenty years), or to the relevance of the fact that the individual is deceased, or to the nature of the information in each of the documents (or even each class of documents) concerned.

96 Again, if in answer the Reserve Bank provides some specificity with regard to this ground of refusal, I will then be able to deal with it.

No consideration of severance under section 28 of PAIA

97 There is no suggestion that the Reserve Bank has ever considered

whether any part of a record can be released, as section 28 of PAIA requires it to do.

98 Section 28 of PAIA provides that information must be disclosed where information that may or must be refused can reasonably be severed from any part that does not contain information that may or must be refused. This is peremptory.

99 The Reserve Bank has effectively refused access not only to every one of the requested records, but also to every part of every one of the requested records.

100 I submit that it is inconceivable that every part of every one of the records is excluded by PAIA from disclosure. I invite the Reserve Bank, if it contends that this is the case, to produce evidence on affidavit by the person(s) who considered each of the requested records and concluded that no part of any one of them could or should be disclosed.

The attempts by the Reserve Bank to avoid disclosing any part of any relevant document

101 By their nature, the grounds of objection are fact-specific. They must relate to the particular content of each document and its parts, and they require the consideration of each document. The Reserve Bank however relies on generic and blanket objections that cannot conceivably apply to every part of every document requested. Its true objection is an objection

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in principle to disclosing any document that is under its control, or any part of any such document. This is simply inconsistent with PAIA.

THE PUBLIC INTEREST OVERRIDE

102 In any event, even if one of the statutory grounds of refusal is relevant, which I deny, I am advised and submit that the public interest in the information clearly outweighs any interest advanced for refusing access to the records.

103 Section 46 of PAIA provides:

“Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1), 36(1), 37(1)(a) or (b), 38(a) or (b), 39(1)(a) or (b), 40, 41(1)(a) or (b), 42(1) or (3), 43(1) or (2), 44(1) or (2) or 45, if-

(a) the disclosure of the record would reveal evidence of-

(i) a substantial contravention of, or failure to comply with, the law; or

(ii) an imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.”

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104 This general override is mandatory, and does not vest any discretion in the information officer.

105 The Reserve Bank has provided no reason why section 46 is not applicable. It has simply asserted that it is not applicable, by repeating the words of the section.

The Public Interest in disclosure

106 The contents of the records are of profound public interest and importance. They are relevant to past and contemporary struggles for justice in South Africa.

107 The Reserve Bank is with some certainty the only institution that holds at least some of the documents requested.

108 The right to truth is fundamental to challenging impunity, and is recognised in international law. I refer in this regard, for example, to resolution 2005/66 of the United Nations Commission on Human Rights (UNCHR) which "recognises the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights." The right to truth is essential to ensuring that all human rights violations, including economic crimes, are not repeated. The silence on economic crime during apartheid is a major stumbling block to the right to truth. Very little detail is publicly known of economic crime that took place in the final decades of apartheid. This is the result of the pervasive

culture of state secrecy at the time. There is a strong public interest in not perpetuating the results of that culture.

109 The named individuals either worked for the apartheid state, or allegedly provided services such as facilitating the circumvention of United Nations sanctions.

110 Until the mid-1990s, the movement of large sums of money abroad was illegal in the absence of approval from the Reserve Bank. Nevertheless, estimates of capital flight run to tens of billions of dollars, including through manipulation of the financial rand mechanism, through which different exchange rates applied to different types of transactions. In order to incentivise foreign investment, it could be made at the more favourable financial rand rate. In order to protect the rand from volatility, transfers of goods and services had to be done at the less favourable commercial rand rate. It is well known that this system was exploited through fraudulent "round tripping" of money, generating massive illicit profits. One estimate of the total value of the financial rand market had it as between R141 billion and R204 billion at year-end 1993,¹ or between about R450 billion and R650 billion at modern rand values.

111 At that time, there was a marked lack of transparency in corporate governance, such that share ownership arrangements, private transactions, indirect holdings, possible conflicts of interest, and even

¹ Jonathan Garner, 1994, An analysis of the financial rand mechanism, *Centre for Research into Economics and Finance in South Africa*, Research Paper no. 9: iv.

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director remuneration were almost impossible to trace. Sanctions and boycotts produced a sense of siege, which encouraged stealth. Particularly where large and possibly strategic businesses were concerned, the state was willing to make available foreign exchange, to overlook a certain margin of tax avoidance, and to facilitate international expansion, all in conditions of utmost secrecy. There were however a handful of known cases of high-profile fraud related to the financial rand or other aspects of foreign exchange regulations. One of the best-known involved businessman Oliver Hill.² The Reserve Bank itself was suspected of irregular conduct in a number of such dealings. Its institutional culture of secrecy made it impossible to subject it to meaningful scrutiny.³

- 112 Releasing such information would allow researchers and the public to gain a better understanding of corruption under apartheid, and also demonstrate the need for the Reserve Bank's constitutionally required commitment to transparency and accountability. Further, many of the named individuals were senior officials in the apartheid state or had close ties to it. The illicit activities mentioned above, including fraud, smuggling and manipulation of foreign exchange and the financial rand, were carried out in many instances to support (overtly or covertly) the apartheid state, whose policies were a crime against humanity. The public has a right to know information that sheds light on how and by whom this state and

² <http://mg.co.za/article/1996-10-18-judgment-day-for-king-of-roundtripping>.

³ Hennie Van Vuuren, *Apartheid Grand Corruption* (1996) p 72.

system were supported.

113 I now provide some information on each of the named individuals. This information is derived from research undertaken by Mr Hennie van Vuuren, a participant in the Open Secrets project. Mr Van Vuuren does not have personal knowledge of this information, and the information is not submitted in order to prove its truth. Rather, it is submitted in order to show that there are serious allegations in the public domain that each of the named individuals was actively involved in contravening the law. Given the nature of the international transactions involved, disclosure of the requested information could expose a crime. An affidavit in this regard, deposed to by Mr Van Vuuren is attached marked "FA12".

Giovanni Giuseppe Mario Ricci

114 Mr Ricci was an Italian businessman who settled in the Seychelles in the mid 1970s, after living and doing business in Mexico, Haiti and Somalia, and leaving in his trail a fraud conviction in Italy in 1958 and a later charge in Switzerland of possessing counterfeit money – both of which he subsequently had expunged.⁴ He became a friend and financial advisor to President Rene, as well as financier of Seychelles' single political party and the government itself. He was granted the sole rights to incorporate and administer offshore companies in the Seychelles, through a new entity called the Seychelles Trust Company. He appears to have become

⁴ Sunday Star, "Nat Superspy's Shadowy Boss", 1987

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an especially important intermediary for South Africa following South Africa's failed attempt to effect a coup in the Seychelles in 1981 – an attempt to replace President Rene with his predecessor. Ricci then partnered with South African spy, Craig Williamson, and established a company called GMR (named after Ricci's own initials). Williamson became MD of GMR South Africa. GMR's purpose was primarily to 'replace disinvestment'. Williamson and Ricci claimed that it was set up to break the capital boycott and trade sanctions by bringing foreign capital from an array of foreign businesses into South Africa, and facilitating the movement of boycotted goods through the Seychelles.⁵

Stephanus Petrus (Fanie) Botha

115 Mr Botha was a senior cabinet Minister and from 1978 National Party Leader in the then Transvaal province. He was involved in the 1975 exchange agreement between with Israel and South Africa for uranium and tritium at which Jan Blaauw was also present. Following the 1978 South African election campaign, Botha was in debt to Volkskas bank to the value of R1,7 million.⁶ Jan Blaauw assisted Botha financially, and claimed that he had been promised a lucrative diamond concession by Botha in return. The Israeli government, with whom Blaauw was conducting business at the time, was equally eager to ensure that Botha

⁵ Stephen Ellis, "Africa and International Corruption: The Strange Case of South Africa and the Seychelles", *African Affairs*, 95 (379), 1996, pg. 175

⁶ Sasha Polakow-Suransky, *The Unspoken Alliance: Israel's Secret Relationship with Apartheid South Africa* (Cape Town: Jacana, 2010).

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was financially secure given that it thought he might become the future Minister of Defence. In 1983 this information was leaked to the media, and Botha resigned in the ensuing scandal.

Brigadier Johann Philip Derk (Jan) Blaauw

116 Brigadier Jan Blaauw (SADF, retired 1975) was at one stage part of the military. He subsequently started his own business.⁷ From the 1970s he was engaged in the international arms trade, including with Israel in violation of the United Nations Arms embargo. He was present at a meeting in 1976 when Botha (then a senior cabinet member) concluded a deal with the Israeli government to provide the government with 500 tons of uranium (yellowcake) in return for thirty grams of tritium, a radioactive substance that thermonuclear weapons require to increase their explosive power.⁸ Blaauw claimed that his old classmate Botha had promised him compensation in return for his sensitive services on behalf of the country. Botha claimed that Blaauw was attempting to extort him into granting him a lucrative diamond concession on the South African/Namibian coast.

117 I understand that Brig Blaauw is now deceased.

⁷ Hengeveld, Richard and Rodenburg, J, *Embargo: Apartheid Oil Secrets Revealed*. Amsterdam University Press, 1995

⁸ Sasha Polakow-Suransky, *The Unspoken Alliance: Israel's Secret Relationship with Apartheid South Africa* (Cape Town: Jacana, 2010).

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Paul Ekon

118 Mr Ekon was a millionaire socialite in South Africa in the 1990's. In 1996, it emerged that he was being investigated in a case of illegal possession of unwrought gold worth millions of Rand. This discovery led investigators to allege that he was part of an international illegal gold smuggling racket that had cost South Africa R250 million in a single year.⁹ A Mr Willie Lotter, a close associate of Ekon, was prosecuted for gold smuggling activities, around that time. At the time, Mutual Legal Assistance (MLA) requests were made to Switzerland and possibly France, for information concerning the gold smuggling network.

Robert Oliver Hill

119 Mr Hill was a South African businessman who fled the country in 1988 to evade alleged foreign exchange fraud charges of R170 million. There were over 500 individual fraud charges, including those involving an alleged financial rand scam through the forgery of Eskom bonds.

Vito Robert Palazzolo

120 Mr Palazzolo was an Italian banker, who in 1984 in order to avoid extradition to face more serious charges in Italy, admitted to and was sentenced in Switzerland, for his role in money laundering for the Sicilian

⁹ <http://mg.co.za/article/1996-11-08-paul-ekon-under-scrutiny-for-gold-deal>

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mafia. The operation in which he was implicated was known as the New York "Pizza Connection", in which over a billion dollars' worth of heroin and cocaine was smuggled from Turkey, via Italy, to the United States in the late 1970s and early 1980s.¹⁰ Palazzolo's South African connections at the time likely arose from the fact that his business dealings included the international trade in precious stones.¹¹ The Harms Commission of Inquiry into alleged unlawful acts of the security forces¹² was told that Palazzolo was in 1981 trying to source R300,000 from Swiss banks as payment for an undeclared consignment of diamonds.¹³ While incarcerated, Palazzolo investigated the possibilities of relocating to South Africa, and was able to secure a Ciskei Passport through a National Party member of parliament, Peet de Pontes, and by making a donation of R20,000 in the form of a "personal contribution to charitable purposes" to the Ciskei President's People's Education Fund.¹⁴

121 It has been alleged in the media that Palazzolo found such an easy welcome in both the Ciskei and South Africa because of the Ciskei's importance as an intermediary in the movement of covert funds from South Africa, possibly especially in order to finance arms and nuclear

¹⁰ <http://www.foxnews.com/world/2012/12/19/thailand-to-extradite-italian-implicated-in-pizza-connection-trial-for-alleged/>.

¹¹ <http://www.vrpalazzolo.com/court-documents/the-court-of-appeal-palermo-11th-july-2007-2/>.

¹² <http://www.sahistory.org.za/dated-event/harms-commission-terms-reference-are-laid-out>

¹³ http://www.noseweek.co.za/article.php?current_article=486.

¹⁴ <http://www.vrpalazzolo.com/court-documents/the-court-of-appeal-palermo-11th-july-2007-2/>; <http://www.vrpalazzolo.com/court-documents/palermo-draft-judgement-5th-july-2006-2/>, Business Day Jan 1989

programmes in secret collaboration with Israel.¹⁵ According to media reports Palazzolo, through Papillon International (a company he and De Pontes set up), was to use his contacts, capital and expertise with illicit flows to help set up the Bank of Bisho for this purpose, as well as facilitate the trade of embargoed arms.¹⁶ Finally, and particularly relevant to this request, the *Sunday Times* reported that Palazzolo was described in an internal Reserve Bank document of the time as a “highly exceptional case”, and that unnamed senior authorities had intervened to authorise the bending of exchange control rules in order to allow R14,5 million in Financial Rands to be released to him (the standard limit for immigrants was R100,000).¹⁷

122 A recent international investigation by a consortium of investigative journalists summarises the significance of Palazzolo to the criminal economy in South Africa as follows: “For the Mafia, South Africa has long proved to be a place where sanctuary can be found, where friends and family can easily shield a man from unwanted attention and provide a comfortable life. In the past 30 years, it has also become one of the most important foreign economies for the Cosa Nostra. The organisation deftly managed this country’s transition to democracy and, like other, more legitimate businesses, used it as a base from which to expand northwards...Much of that is the legacy of one man: Vito Roberto

¹⁵ http://www.noseweek.co.za/article.php?current_article=486.

¹⁶ http://www.noseweek.co.za/article.php?current_article=486.

¹⁷ “Palazzolo an exceptional case, said Reserve Bank”, *Sunday Times*, 1991.

Palazzolo, aka Robert von Palace Kolbatschenko, for years the most valued banker of the Cosa Nostra and a resident of South Africa, with connections reaching deep into local business and politics."¹⁸

Craig Michael Williamson

123 Mr Williamson was a member of the security police and spy who engaged in a range of illegal activities for the apartheid state. He was granted amnesty by the Truth and Reconciliation Commission in 2000 for a range of violent offences, including the murder of Ruth First. In 1985 he was seconded to military intelligence, and publicly announced he was "moving into business".¹⁹ This business was with Mario Ricci (discussed above), and was primarily directed towards busting the various international sanctions against South Africa at the time.²⁰ Mr Williamson was on record as stating that GMR was used to "avoid any inhibiting laws" preventing the import of goods to South Africa – hinting at least once that he was utilising Ricci's contacts with Italian oil companies in order to obtain oil shipments through the Seychelles (this was never proven).²¹ It was confirmed by an official in the Seychelles, however, that Seychelles did become a crucial part of South Africa's sanctions busting network in the late 1980s as a

¹⁸ Guilio Rubino, Cecilia Anesi. Married to the Mob: The diamond boer and the honeytrap. Mail & Guardian. 17 April 2015

<http://mg.co.za/article/2015-04-16-married-to-the-mob-the-diamond-boer-and-the-honeytrap>

¹⁹ Stephen Ellis, "Africa and International Corruption"

²⁰ Stephen Ellis, "Africa and International Corruption"

²¹ Stephen Ellis, "Africa and International Corruption"

place that facilitated "paper transactions".²²

Wouter Basson

124 Dr Basson is the former head of the Apartheid State's Chemical and Biological Weapons (CBW) programme. He was prosecuted and eventually acquitted of a range of crimes, including murder, drug trafficking, fraud and theft. The fraud and theft charges are particularly relevant to this request. The state's evidence used at trial showed that secret funds for a state project known as Project Coast (totaling millions of Rand) were used to purchase advanced CBW equipment that was never used, and may have been sold for private gain.²³ These funds also appeared to have been used to purchase "front homes" and trips on private jets, and otherwise fund a lavish lifestyle for individuals like Basson.²⁴

125 I submit that there is a clear public interest in the disclosure of these records. Keeping this information secret is contrary to the public interest.

125.1 Very little is known of the nature and extent of corruption under apartheid. The public have a right to be informed of such practices.

125.2 The public have a limited understanding of the impact of such practices. Greed, venality and corruption arise from the activities

²² Stephen Ellis, "Africa and International Corruption"

²³ Apartheid Grand Corruption, 67

²⁴ Apartheid Grand Corruption, 67

of networks that are found in all societies, throughout human history. South Africa is no exception in this regard. Where access to information concerning the nature and legacy of such networks under apartheid is denied, this limits the democratic transformation of the state and our society. South Africa is a newly democratic society grappling with the implementation of a Constitutional vision of transparency and accountability. Hidden histories serve the interests of the powerful and the connected, and undermine democratic consolidation. In the case of South Africa there are complex ties that bind the country's elite networks in politics and business. Greater transparency and access to information enable informed research to take place, and facilitate an informed public opinion. This helps us better to understand our present and ensure that criminal practices such as corruption do not continue to shape our future.

126 A nation that has understanding of its past is best placed to avoid repeating the mistakes of the past.

127 To the extent that there is any substance at all in the vague and generalised harm alleged by the Reserve Bank, it is clearly outweighed by the public interest in the disclosure of the requested documents. The information deals with events of great importance in our country's history. Serious allegations are already in the public domain. What is lacking is the evidence and the detail that the requested documents are likely to contain. It is in the public interest that the truth be established and made

known.

SECTION 80 OF PAIA

128 Section 80(1) of PAIA authorizes a court to take what has been termed "a judicial peek" at the documents in issue. It provides:

"Despite this Act and any other law, any court hearing an application, or an appeal against a decision on that application, may examine any record of a public or private body to which this Act applies, and no such record may be withheld from the court on any grounds."

129 I submit that a "judicial peek" would be appropriate if there are any material disputes of fact as to what the records contain.

CONCLUSION

130 As I have pointed out, the Reserve Bank did not respond to the request within the time stipulated by PAIA. It was therefore deemed to have refused the request. Thereafter the Reserve Bank engaged with SAHA with regard to the request. On 28 October 2015 it actually refused the request.

131 I respectfully submit that to the extent that there has been non-compliance with the 180-day period for making an application to court, this should be

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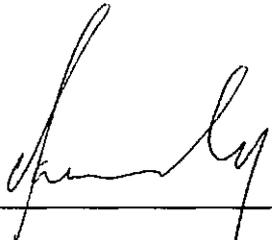
condoned. SAHA engaged with the Reserve Bank during and after that 180-day period, in an attempt to avoid unnecessary litigation. The delay has been caused by the Reserve Bank's tardy responses to the request. I respectfully submit that it is in the interests of justice that the delay in making this application should be condoned, and SAHA asks for an order to this effect, to the extent necessary.

132 For the reasons set out in this affidavit, I submit that:

132.1 The respondents have failed to give effect to their constitutional obligations and their obligations under PAIA; and

132.2 There is no justifiable basis for the refusal of access to the information requested.

133 In the circumstances, I ask this Honourable Court to make an order in terms of the notice of motion.



CATHERINE MOIRA KENNEDY

I hereby certify that the deponent stated that she knows and understands the contents of this affidavit, and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at **JOHANNESBURG** on this the ___ day of FEBRUARY 2016. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with

COMMISSIONER OF OATHS
Nomaswazi Malinga
Attorney
ProBono.Org
1st Floor West Wing
Women's Jail
Constitution Hill
1 Kotze Street
Braamfontein

COMMISSIONER OF OATHS
Full names:
Address:
Capacity:



RESOLUTION BY THE TRUSTEES OF THE SOUTH AFRICAN HISTORY ARCHIVES TRUST
Pursuant to clause 9.6 of the Deed of Trust

It is resolved that:

1. The South African History Archive Trust ("SAHA") will launch applications in its own name in the High Court of South Africa, Johannesburg, challenging various compliance issues under the Promotion of Access to Information Act, 2000 ("PAIA") including relating to certain provisions around application of exemptions, providing adequate reasons, searches for records and obligations to respond to PAIA requests submitted in consultation with researchers, including Mr Hennie van Vuuren and Professor Jane Duncan.
2. That Lawyers for Human Rights Pretoria Law Clinic be appointed to act as attorneys of record and represent SAHA in the proceedings to be instituted against respondents to be confirmed and that the said attorneys do all things necessary in the application on behalf of SAHA.
3. That Catherine Moira Kennedy be authorised to depose to such affidavits in the said proceedings on behalf of SAHA, as may be required and further Catherine Moira Kennedy be authorised to give instructions from time to time as she may deem necessary to the said attorneys in relation to the proceedings.

Signed on this the 27th day of September 2014.

TRUSTEE	SIGNATURE	DATE
VERNE HARRIS ID: 5804215085085		30/9/2014
SELLO HATANG ID: 7504285846089		27/09/2014
HORST KLEINSCHMIDT ID: 4510175466089		28.11.14
ANTHONY MANION ID: 7604135132084		27/09/2014
MN NIEFTAGODIEN ID: 6410225158083		27/09/14

Box 31719, Braamfontein 2017, Johannesburg - Tel: +27 (0) 11 718 2560 - Fax: +27 (0) 865 001 600 - Email: info@saha.org.za - www.saha.org.za

Trustees: D Ntsebeza (Chairperson), L Callinicos, V Harris, S Hatang, H Kleinschmidt, MN Niefertagodien, P Pigou, M Powell, C Rassool, R Saleh, A Manion (ex officio)

Non-Profit Trust No. 2522/93 - 031-807-NPO

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ARCHIVE FOR JUSTICE
South African History Archive Since 1998

TRUSTEE	SIGNATURE	DATE
DUMISA NTSEBEZA ID: 4910315121083		01/10/2014
PIERS PIGOU ID: 6705305221184		27 Sept 2014
MARLENE POWELL ID: 5907270095087		27 Sep 2014
CIRAJ RASSOOL ID: 6112275648084		28 Sept 2014
RAZIA SALEH ID: 6208080199089		27 Sep 2014
SPIRIDOULA WEBSTER (also known as Luli Callinicos) ID: 3611100106088		2 December 2014

Box 31719, Braamfontein 2017, Johannesburg - Tel: +27 (0) 11 718 2560 - Fax: +27 (0) 865 001 600 - Email: info@saha.org.za - www.saha.org.za

Trustees: D Ntsebeza (Chairperson), L Callinicos, V Harris, S Hatang, H Kleinschmidt, MN Nieftagodien, P Pigou, M Powell, C Rassool, R Saleh, A Manion (ex officio)

Non-Profit Trust No. 2522/93 - 031-807-NPO

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FORM A
REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18 (1) of the Promotion of Access to Information Act, 2000
(Act No. 2 of 2000))
[Regulation 2]

FOR DEPARTMENTAL USE	
	Reference number: _____
Request received by _____ (state rank, name and surname of information officer/deputy information officer) on _____ (date) at _____ (place).	
Request fee (if any):	R.....
Deposit fee (if any):	R.....
Access fee:	R.....
	_____ SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Chief Deputy Information Officer: Dr Johan de Jager
Legal Services Department
South African Reserve Bank
PO Box 427
Pretoria South Africa 0001

Telephone: +27123133596
Fax: +27123134090
Email: Johann.DeJager@resbank.co.za

J. de Jager

B. Particulars of person requesting access to the record

- a) *The particulars of the person who requests access to the record must be recorded below.*
- b) *Furnish an address and/or fax number in the Republic to which information must be sent.*
- c) *Proof of the capacity in which the request is made, if applicable, must be attached.*

Full names and surname: South African History Archive (SAHA)

Identity/Passport number: Non-Profit Trust No. 2522/93

Postal address: P.O.Box 31719, Braamfontein, 2017

Fax number: +27866491491

Telephone number: +27117182563

E-Mail Address: foip@saha.org.za

SAHA Reference: SAH-2014-SRB-0007

Capacity in which request is made, when made on behalf of another person:

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname:

Identity number:

D. Particulars of record

- a) *Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.*
- b) *If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

- o Description of record or relevant part of the record:

Copies of any and all records, or part of records, of any evidence obtained by the bank at any time as part of investigations into any substantial contravention of, or failure to comply with, the law in terms of significant **fraud (including fraud through manipulation of the financial and dual currency, foreign exchange or forging Eskom bonds), gold smuggling or smuggling of other precious metals** from **1 January 1980 to 1 January 1995** in relation to the following persons:

[Handwritten signature]
[Handwritten initials]

- the late Mr Giovanni Giuseppe Mario Ricci (born 07/08/1929; ID#: 2908075136186; last known address: Bryanston/Midrand; died 16/07/2001)
- the late Mr Stephanus Petrus (Fanie) Botha (former Minister of Labour / Manpower, born 05/05/1922; ID#: 2205055027083; died in Pretoria, 04/09/2010)
- Brigadier Johann Philip Derk (Jan) Blaauw (born 14/10/1920, ID#: 2010145028004; believed to be dead)
- Mr Paul Ekon (ID#: 5905265017082)
- Mr Robert Oliver Hill (ID# 3907245021004, as involved in *South African Reserve Bank v Torwood Properties (Pty) Ltd (626/94) [1996] ZASCA 104; 1997 (2) SA 169 (SCA); [1996] 4 All SA 494 (A); (25 September 1996)*)
- Mr Vito Roberto Palazzolo (also known as Mr Robert von Palace Kolbatschenko; born 31/07/1947; currently serving a prison sentence in Italy for mafia association)
- Mr Craig Michael Williamson (born 23/04/1949; ID#: 4904235577003)
- Dr Wouter Basson (born 06/07/1950)

- Reference number, if available:
- Any further particulars of record

E. Fees

a) *A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.*

b) *You will be notified of the amount required to be paid as the request fee.*

c) *The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*

d) *If you qualify for exemption of the payment of any fee, please state the reason for exemption.*

Reason for exemption from payment of fees:

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: _____	Form in which record is required: _____
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Mark the appropriate box with an "X".

NOTES:

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
- (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in printed form:

<input checked="" type="checkbox"/>	Copy of record*		Inspection of record
-------------------------------------	-----------------	--	----------------------

2. If record consists of visual images:

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc).

	view the images	<input checked="" type="checkbox"/>	copy of the images*		transcription of the images*
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3. If record consists of recorded words or information which can be reproduced in sound:

	Listen to the soundtrack (audio cassette)	<input checked="" type="checkbox"/>	transcription of soundtrack* (written or printed document)
--	---	-------------------------------------	--

4. If record is held on computer or in an electronic or machine? readable form:

	Printed copy of record*	<input checked="" type="checkbox"/>	Printed copy derived from the record*	copy in computer readable form* (stiffy or compact disc)
--	-------------------------	-------------------------------------	---------------------------------------	--

	YES	NO
* If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?		<input checked="" type="checkbox"/>

A postal fee is payable.

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

In which language would you prefer the record? **ENGLISH**

G. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide

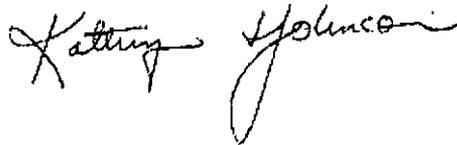
Handwritten initials/signature

the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record? **In writing, preferably by email.**

Signed at Johannesburg this 1st day of August 2014.

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE



Kathryn Johnson
Freedom of Information Programme
South African History Archive (SAHA)



4.3.4 Access to the aforesaid information will be granted to the requester in the manner requested, unless such manner would unreasonably interfere with the running and operation of the SARB or damage its records or infringe its copyright.

4.3.5 If, for practical reasons, access cannot be given in the requested manner but in an alternative manner, then the fee for access will be calculated according to the manner of access which the requester had initially requested.

4.3.6 If the requester is unable to read or write, or has a disability, then the requester can make the request for access to the records orally, in which event the Information Officer will complete the prescribed form on behalf of such requester and furnish the requester with such completed form.

4.3.7 The requester must clearly indicate on the request form -

- if he or she wishes to be informed of the success of his or her request telephonically, in writing or any other manner;
- the capacity in which the request is made in the event the information is requested on behalf of somebody else.

4.4 **Remedies available if the provisions of the Act are not complied with**

The SARB does not have internal review or appeal procedures and the requester must approach a competent court of law in this regard.

de N.V.

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LAWYERS FOR HUMAN RIGHTS

Strategic Litigation Unit
Kutlwano Democracy Centre
357 Visagie Street, Pretoria 0002

Tel (012) 320 2943
Fax (012) 320 2949/7681
Web www.lhr.org.za

By fax and email

Please quote our file reference: SL14/01/PTA

26 September 2014

ATT: Mr. N. Kirby
Werksmans Attorney
155 5th Street
Sandton 2196

Fax: 011-535-8600
Email: nkirby@werksmans.com
Your Ref: Mr Kirby / Mr Moraitis/hk/SOUT3267.44/#3183509v1

Dear Mr. Kirby:

RE: PAIA REQUEST – SOUTH AFRICAN HISTORY ARCHIVES

1. Your letters dated 14 August 2014 and 26 August 2014 refer.
2. We apologise for the delay in responding to you.
3. In your correspondence, you requested reasons for the requests for information that were put to your clients by the South African History Archives ("SAHA"), whom we represent.
4. At the outset, we point out that we are of the view that the South African Reserve Bank ("the SARB") is a public body for purposes of the Promotion of Access to Information Act 2 of 2000 ("PAIA"). PAIA provides in section 11(3) that a requester's right of access is not affected by the reasons given for requesting access nor by the public body's belief as to what those reasons may be. Our clients are therefore not required by PAIA to provide any reasons the requests for information made under that Act. However, they are willing, in a spirit of collegiality and without conceding that SARB is a private body, to provide you with the following reasons:
5. Our client is a non-profit, non-governmental organisation which seeks to archive and preserve records evidencing past and contemporary struggles for justice. Of particular importance to our client is ensuring public access to historical records relating to struggles for justice and to prevent the loss of such records. In this vein, our clients use the Promotion to Access to Information Act 2 of 2000 ("PAIA") as one of its primary tools to seek access to records.
6. The principle focus of our client's work is the preservation and archiving of documents relating to struggles for justice. SAHA has historically demonstrated an interest in records relating to the work of the Truth and Reconciliation Commission ("the TRC"). In this particular case the records requested relate to your client's work in an attempt to make records relating to the work of the TRC more widely accessible (something which was a specific recommendation of the TRC itself).
7. We deny that our client's requests were "vexatious" or aimed at "intimidating" your client. As a body with a clear responsibility to the South African public, we would expect that your client would be willing to assist in



endeavours to uncover corrupt practices which may have occurred in the years prior to our current democratic dispensation.

- 8. Our clients are of the view that the request falls squarely within the public interest considering the subject matter and the reasons for which it is being sought. Moreover, our client has taken steps, in so far as it was possible from the information available to them, to limit these requests. You will note that the requests are, wherever possible, limited both with respect to time periods and persons involved as well as with respect to types of records, as is apparent from each of those individual requests.
- 9. Further, our client is willing to send researchers, as they have done in the past in relation to PAIA requests submitted *inter alia* to the South African National Defence Force and the Companies and Intellectual Proprieties Commission, to inspect the records held by your client relating to these requests, in order to enable our client to further narrow their requests.
- 10. We trust that the above information has satisfied your client's concerns in order to proceed and approve the request.
- 11. If you require any further information, please do not hesitate to contact us. We look forward to your response to our application.

Yours sincerely,
LAWYERS FOR HUMAN RIGHTS
Per:

P.P. 
DAVID COTE



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SOUTH AFRICAN
HISTORY ARCHIVE

"SAHA"

DEED OF TRUST

Amended by resolution 28 October 2002
Further amended by resolution 09 April 2011
Further amended by resolution 24 November 2012

SAHA Deed of Trust – as amended by resolution 24 November 2012 – Page 1

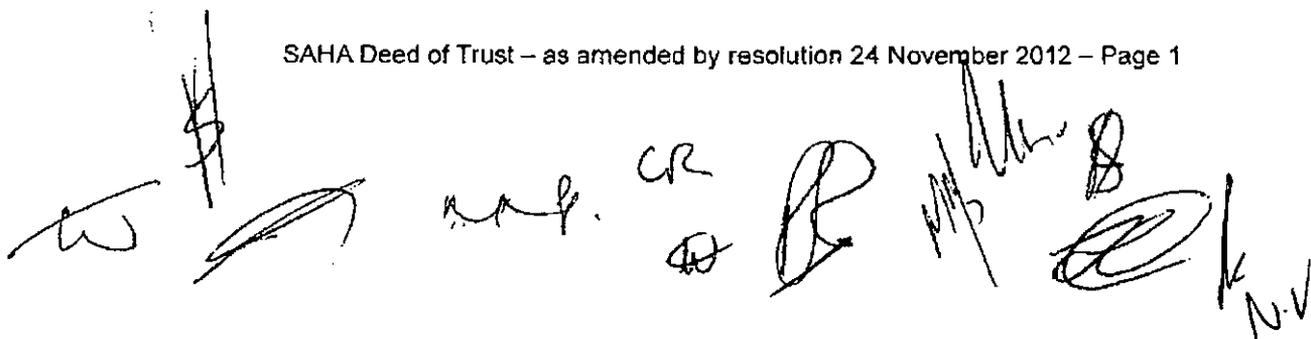
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TABLE OF CONTENTS

1. MOTIVATION
2. ESTABLISHMENT OF TRUST
3. OBJECTIVES OF THE TRUST
4. FURTHER OBJECTIVES OF THE TRUST
5. GALA
6. INTERPRETATION
7. THE AFFAIRS OF THE TRUST
8. TRUSTEES PROVISIONS
9. PROCEEDINGS
10. DISPENSATION OF SECURITY
11. VESTING, COLLECTION, UTILISATION OF FUNDS AND CONTRIBUTIONS
12. TAX ISSUES
13. DUTIES OF TRUSTEES
14. INDEMNIFICATION OF THE TRUSTEES
15. TRADING ACTIVITY
16. POWERS OF TRUSTEES
17. BOOKS OF ACCOUNTS, RECORDS OR OTHER DOCUMENTS
18. AMENDMENTS
19. TERMINATION OF TRUST AND DISTRIBUTION OF ASSETS
20. DISPUTES
21. COSTS
22. ANNEXURE "A" : ORIGINAL TRUSTEES
23. ANNEXURE "B" : CURRENT TRUSTEES

1. ORIGINAL MOTIVATION

- 1.1 There is a need to collect, preserve and catalogue materials of historical and contemporary political, social, economic and culture importance.
- 1.2 There is a need to promote awareness of the importance of preserving records of contemporary events of historical significance.
- 1.3 There is a need to make the above-mentioned materials accessible to the public, to historians and to researchers.
- 1.4 There is a need to promote public awareness of recent historical events.

2. ESTABLISHMENT OF A TRUST

- 2.1 A trust is hereby constituted to be known as the South African History Archive ("SAHA") Trust for the purpose herein set out and otherwise on the terms and conditions of this Trust Deed.
- 2.2 SAHA is a body corporate and has an identity and existence distinct from its members and office bearers.
- 2.3 SAHA continues to exist despite changes in the composition of its trustees and director.
- 2.4 Trustees or directors have no rights in the property or other assets of the organisation solely by virtue of holding those positions.

3. OBJECTIVES OF THE TRUST

- 3.1 The main objective of the Trust is to document, support and promote greater awareness of past and contemporary struggles for justice through archival practices and outreach, and the utilisation of access to information laws.
- 3.2 It is not the objective of the Trust to make a profit or gain and the income and assets of the Trust may not be distributed to any person save for the payment of reasonable remuneration for services actually rendered in furtherance of the objects of the Trust.

4. ANCILLARY OBJECTIVES OF THE TRUST

- 4.1. In furtherance of its primary objectives the Trust shall:
 - 4.1.1 Recapture lost and neglected histories;
 - 4.1.2 Record aspects of South African democracy in the making;
 - 4.1.3 Bring history out of the archives and into schools, universities and communities

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in new and innovative ways;

4.1.4 Extend the boundaries of freedom of information in South Africa;

4.1.5 Raise awareness, both nationally and internationally, of the role of archives and documentation in promoting and defending human rights.

5. GALA

5.1 It is recorded that in 1996 SAHA established the Gay and Lesbian Archives (GALA) as a project of SAHA.

5.2 In 2007, GALA formed a separate and independent trust. However, the work of SAHA and GALA remains closely aligned and the organisations continue to work in close collaboration.

6. INTERPRETATION

In this Deed, unless the context otherwise requires, words importing the singular shall include the plural. The following expressions used in this Deed shall have the meaning hereinafter assigned to them unless the context shall clearly otherwise require:

6.1 "Trust Fund" : shall mean the assets or funds held and administered by the Trustees from time to time, that is to say, the Trust capital together with donations and any additions or accruals thereto, including bequests from time to time from any sources and in any form.

6.2 "Trust Capital" : shall mean the capital of the Trust consisting of the Trust Fund and including that part of the net income which is not distributed and is accumulated as part of the capital after deducting:

6.2.1 the aggregate of the liabilities of the Trust, both actual and contingent, and

6.2.2 the sum of all provisions for depreciation, renewals or diminution in value of assets or for liabilities (actual or contingent) the amount of which cannot be determined with substantial accuracy.

6.3 "Fund Raising Act" : shall mean the Fund Raising Act 107 of 1978 as amended from time to time.

6.4 "Nonprofit Organisations Act" : shall mean the Nonprofit Organisations Act 71 of 1997 as amended from time to time.

6.5 "Income Tax Act" : shall mean the Income Tax Act 58 of 1962 as amended from time to time.

6.6 "Trust" : shall mean the Trust created under this Deed of Trust.

6.7 "Trustees" : shall mean the signatories to this Deed as Trustees and any other persons appointed to that office in terms of this Trust Deed from time to time for so long as they hold office as such, who shall be deemed to be members of the trust for all purposes

under the Fund Raising Act and the Nonprofit Organisations Act.

7. THE AFFAIRS OF THE BUSINESS

7.1 The affairs and business of the Trust shall be conducted from Johannesburg.

8. TRUSTEES PROVISIONS

8.1 The parties listed in Annexure A of this Trust Deed were the first Trustees of the Trust;

8.2 The parties listed in Annexure B of this Trust Deed are the Trustees of the Trust at the date of amendment of this Trust Deed.

8.3 Upon the death, permanent incapacity, removal or resignation of anyone of the Trustees, the Trustees then remaining shall, as soon as possible, appoint another Trustee to the office of Trustee, which person shall be decided upon by the remaining Trustees as they in their sole and absolute discretion may determine, it being the intention of the parties hereto that there shall always be a minimum of 5 Trustees and not more than 15 Trustees of the Trust in office. Between 2 and 4 Trustees shall serve as members of the Management Committee, as nominated by the Trustees on an annual basis.

8.4 Where the death, permanent incapacity, removal or resignation of one of the Trustees results in the number of remaining Trustees being less than 5, those remaining Trustees may appoint a further Trustee in the manner outlined in clause 8.3 but may take no other action in relation to the operation of the Trust until such appointment has been made, restoring the number of Trustees to at least 5;

8.5 The Trustees shall at any time from time to time be entitled to accept the resignation of any other Trustee;

8.6 The Trustees shall at any time from time to time have unlimited power of co-option of further Trustees, subject to the maximum referred to in 8.3 above, which shall be exercised on such terms and conditions and for such period as they in their sole discretion may determine;

8.7 Any appointment, removal or resignation, delegation of powers or co-operation shall not be valid unless recorded in writing;

8.8 A Trustee shall vacate his/her office if:

8.8.1 he/she commits any Act of insolvency as defined in the insolvency law from time to time in force;

8.8.2 he/she becomes of unsound mind or is declared incapable of managing his/her own affairs;

8.8.3 he/she resigns his/her office by written notice to the other Trustees;

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- 8.8.4 he/she fails to attend three (3) consecutive meetings of the Trustees without the leave of the remaining Trustees;
- 8.8.4 he/she is removed from office by the decision of the majority of the remaining Trustees after he/she has been given written notice of the intention of the remaining Trustees to remove him/her and given an opportunity to address the remaining Trustees or furnish them with reasons in writing why he/she should not be removed as a trustee.

9. PROCEEDINGS OF TRUSTEES

- 9.1 A quorum for a meeting of the Trustees shall be 50 per cent of the Trustees, at least one of whom shall be a member of the Management Committee. In the event of the meeting being inquorate thirty (30) minutes after the time of commencement, it shall stand adjourned to a date which all Trustees shall be notified of in writing, but which shall be not less than seven (7) days after the date of the inquorate meeting, and at such adjourned meeting all those Trustees present shall constitute a quorum.
- 9.2 Subject to the Trustees giving effect to the terms and conditions of this Deed, administering the Trust and its affairs, they shall adopt such procedures and take such administrative steps as they shall, from time to time, deem necessary and advisable including the appointment of a management committee from amongst themselves which shall be responsible for the disbursement of monies, application by criteria for such disbursement, reporting to funders on a quarterly basis, and control an administration of activities;
- 9.3 The Trustees shall meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, but not less than twice a year. The date and the place of the meetings shall be as determined by the Trustees. The Chairperson shall, however, have the power to call a meeting of the Trustees when in his or her opinion circumstances justify such a step and will be obliged to do so on receipt of a written request signed by not less than three (3) Trustees specifying the business to be transacted at such a meeting. Reasonable notice will be given to Trustees of all meetings of the Trustees, which notice may be given by letter, telegram, telex, telefax, electronic mail, or orally.
- 9.4 A notice dispatched to the last address of a Trustee as made known to the Secretary of the Trust when appointed shall be valid;
- 9.5 Decisions are made by majority vote indicated by way of a show of hands;
- 9.6 A resolution in writing signed or approved by other written means, such as by email, by majority vote is valid and effectual as if it had been passed at a meeting of the said Trustees and shall be noted at the next meeting. Such a resolution is constituted at the time of the last signature or approval of the resolution and may consist of several documents in like form each signed by one or more of the Members. If a resolution is written by email, an actual signature is not required. Emails from the Trustees are sent

to the Director, who will then inform all the Trustees of the outcome of the resolution

- 9.7 The Trustees shall elect from amongst their number a chairperson who shall remain in office until he/she resigns as a Trustee or as chairperson or if the remaining Trustees remove him/her from office by resolution to that effect;
- 9.8 The Director shall provide written notice to the Director of Nonprofit Organisations of the names, physical business and residential addresses of the Trustees and Director of the Trust one month after any appointment or election of such persons, even if their appointment or election did not result in any changes to the persons occupying those positions , in accordance with section 18(1)(b) of the Nonprofit Organisations Act.
- 9.9 If the chairperson is absent from any meeting the remaining Trustees shall elect a chairperson for the purposes of that meeting;

10 DISPENSATION OF SECURITY

- 10.1 The Trustees or any of them shall not be required to furnish security for any reason or under any circumstances whatsoever for their duties as such and accordingly no person hereby or subsequently appointed or co-opted or to whom powers are delegated shall be required to furnish security to any state or any official under the provisions of any law which may now or which may in the future be in force. Insofar as it may be necessary, the said state or other official is hereby directed to dispense with the requirement that any Trustee or subsequent Trustees shall furnish security in terms of the Trust Property Control Act or any other law.
- 10.2 If despite the provisions of clause 10.1 hereof, security is lawfully required to be furnished, then the costs of providing the same shall be borne by the Trust.

11 VESTING, COLLECTION, UTILISATION OF FUNDS AND CONTRIBUTIONS

- 11.1 The Trustees are hereby empowered to accept for the purposes of the Trust any gift, bequest or payment of any nature whatsoever from any person which may be given or paid to them with the intention that it form part of the Trust Fund. Any assets so accepted shall be administered and dealt with subject to the terms of this Deed of Trust. All donations of the Trust shall be irrevocable and subject to the terms and conditions of the Trust.
- 11.2 Contributions may be collected in and from any portion of the Republic of South Africa and outside its borders provided that the contributions from outside the Republic of South Africa shall be actually received in the Republic of South Africa.
- 11.3 The funds of the Trust shall be utilised solely for investment or for the objects for which it has been established.

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11.4 No portion of the income or assets of the Trust shall accrue for the benefit of the Trustees, office bearers, or their relatives or any employee but nothing herein before contained shall limit the right of the trustees to be reimbursed in respect of any reasonable expenses incurred on behalf of the Trust or to be paid a reasonable remuneration for any services rendered on behalf of the Trust including under any contract of employment.

12. TAX ISSUES

If the Commissioner approves SAHA as a "public benefit organisation" , and for as long as such status is renewed, then the SAHA Trust will-

12.1 in the year of assessment preceding the year of assessment in which the donation is received, distribute at least 75% of its S18A (of the Income Tax Act, 1962) donations received;

12.2 issue a receipt for the donation on which the following details are provided-

12.2.1 the reference number issued by the Commissioner;

12.2.2 the name and address of the SAHA Trust;

12.2.3 the date of receipt of the donation;

12.2.4 the amount of the donation

12.2.5 the name and address of the donor;

12.2.6 a certificate to the effect that the receipt is issued for purposes of Section 18A of the Income Tax Act, 1962 and that the donation has been or will be used exclusively for the object of the SAHA Trust;

12.3 on dissolution transfer its assets to any similar approved public benefit organisations;

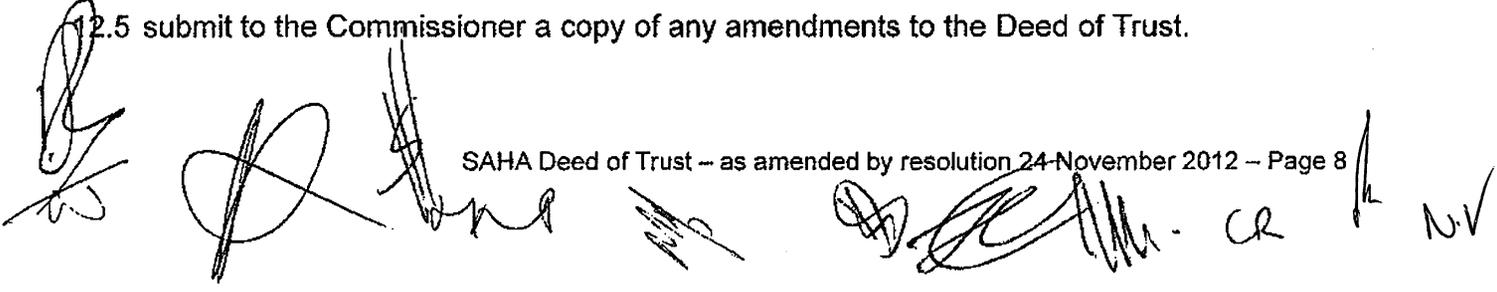
12.4 not accept any donation-

12.4.1 which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and;

12.4.2 conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; or

12.4.3 in circumstances where a donor has imposed conditions which could enable that donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation,

12.5 submit to the Commissioner a copy of any amendments to the Deed of Trust.

 SAHA Deed of Trust -- as amended by resolution 24-November 2012 -- Page 8

13 DUTIES OF TRUSTEES

13.1 The Director of SAHA and the members of the Management Committee accept the fiduciary responsibility of the organisation. In addition to any duties imposed upon them under law enforced from time to time, the Trustees shall have the following duties:

13.1.1 The Trustees shall appoint a person as Director. The Director shall have responsibility for the day to day management of the accounts of the Trust and such other responsibilities as delegated to the Director from time to time by the Trust. The Director shall be at all times subject to the direction and control of the Management Committee in the performance of their duties.

13.1.2 The Trustees shall take and maintain written minutes of the meetings held pursuant to the provisions of clause 9 above. An official minute book shall be retained at the Trust's principal office.

13.1.3 The Trustees shall, at the expense of the Trust, cause proper books of accounts to be kept, which books of account together with all other papers and documents connected with or relating to the Trust shall be kept as such place as may be agreed upon by the Trustees.

13.1.4 The Trustees at the expense of the Trust shall be entitled to cause accounts of the Trust to be audited by an auditor appointed by the Trustees from time to time, which auditor shall be charged with drawing up the financial statements of the Trust at the end of each and every year. The first financial statements of the Trust shall be prepared on 31 December following the date of resignation of this Trust Deed in terms of the Trust Property Control Act. The auditor may be one of the Trustees or a firm of which he is a member and he/she or his/her firm may charge their reasonable fee for such services.

13.1.5 The financial statement shall be prepared as at the last day of each succeeding year for this purpose every year shall commence on 1 January and shall end on 31 December of each succeeding year.

13.1.6 All monies received on behalf of the Trust shall be paid by the Trustees into a banking account or other account maintained by the Trustees at a registered commercial bank or building society or other financial institution in terms of the Financial Institutions (Investment of Funds) Act 1984 and all payments made on behalf of the Trust shall be drawn from such account. All withdrawals may be made on the signature of such persons as the Trustees may determine from time to time.

13.1.7 All charges, expenses and disbursements including reasonable travelling expenses reasonably incurred by the Trustees in or arising from their administration of the Trust (including the costs of attending meetings of the Trust) shall be a first charge on the income of the Trust and the Trust Assets and shall be paid on demand.

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14 INDEMNIFICATION OF THE TRUSTEES

14.1. Subject to the foregoing a Trustee shall in performance of his/her duties and in the exercise of his/her power act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another;

14.2 No Trustee shall be liable for any loss of the Trust arising by reason of any investment made on behalf of the Trust whether authorised in terms of the Trust Deed or not, or for negligence or fraud of any agent employed by such Trustee (although the employment of such agent was not strictly necessary or expedient) , or by any other Trustee or by reason of any mistake or omission made in good faith by any Trustee hereof or by reason of any matter or thing whosoever, except as is occasions by such Trustees own personal, wilful act of dishonesty.

14.3 The Trustees shall be indemnified out of the Trust Assets against all claims or demands of whatever nature that may be made upon them arising out of the exercise, purported exercise or omission to exercise any of the powers conferred upon them by this Deed of Trust. Nothing herein contained shall be deemed to exempt a Trustee from or indemnify him/her against liability for breach of trust where he/she failed to show the degree of care diligence and skill referred to above.

15 TRADING ACTIVITY

15.1 SAHA will not carry on any business undertaking or trading activity, otherwise than to the extent that-

15.1.1 if the undertaking or activity—

15.1.1.1. is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of "public benefit organisation " in section 30 of the Income Tax Act 1962 (as amended)¹;

15.1.1.2. is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and

15.1.1.3. does not result in unfair competition in relation to taxable entities;

15.1.2 if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;

15.1.3 if the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to—

15.1.3.1 the scope and benevolent nature of the undertaking or activity;

15.1.3.2 the direct connection and interrelationship of the undertaking or

1 <http://www.sars.gov.za/lnb/mylnb.asp?jilc/kilc/alrg/ulrg/vlrg/72k0a#ag>

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- activity with the sole or principal object of the public benefit organisation;
- 15.1.3.3 the profitability of the undertaking or activity; and
- 15.1.3.4 the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity; or
- 15.1.4 other than an undertaking or activity in respect of which item (aa) , (bb) or (cc) applies and do not exceed such amount as specified under the Income Tax Act 1962 or applicable legislation from time to time'

16. POWERS OF TRUSTEES

- 16.1 The Trustees in their discretion shall have plenary powers to perform all acts and execute all documents relevant to the carrying out of the objects of the Trust and the administration thereof. Without derogating from the generality of the foregoing, the Trustees shall have the power to open and operate any banking account and/or building society account and to draw and issue cheques and promissory notes and to endorse any of the same for collection. The Trustees shall determine the manner of operating the banking or other accounts of the Trust.
- 16.2 The Trustees shall be subject to a majority resolution, have the power to acquire, lease, renovate, restore immovable property in pursuance of the objectives of the Trust. In addition, to buy or sell and transfer Trust Assets and invest the proceeds (including dividends accruing on the Trust Fund) and sign and execute any agreement in regard thereto provided that the Trustees shall not have the power to:
- 16.2.1 enter into any transactions of a patently speculative nature in relation to property;
- 16.2.2 carry on business including inter alia ordinary trading operations in the commercial sense as well as the administration of any immovable property acquired by the Trust.
- 16.3 The Trustees shall have the power to:
- 16.3.1 hold the whole or any part of the Trust Fund or any investments made by them from time to time during the administration of the Trust in their own names or in the name of any person or institution which is nominated by them from time to time for that purpose or, in the name of the Trust; and
- 16.3.2 exercise the voting power attached to any share, stock or debenture in such manner as they may deem fit, exercise and take up or realise any rights of conversion or subscription appertaining to any or debenture forming part of the Trust;
- 16.3.3 From time to time to borrow such monies on such terms and conditions as they

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deem fit:

- 16.3.3.1 for the payment of any liability (including taxes payable in respect of the Trust); or
 - 16.3.3.2 which may be required from time to time for the protection or better or further investment of all or any of the Trust Assets; or
 - 16.3.3.3 generally for such other purposes in connection with all or any of the assets forming part of the Trust Fund.
- 16.3.4 Invest any funds that are not required for immediate use of the Trust, provided that investments may only be made in:
- 16.3.4.1 a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984;
 - 16.3.4.2 securities listed on a licensed stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985;
 - 16.3.4.3 in other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and Director of Non-Profit Organisations.
- 16.3.5 Obtain such legal advice from time to time as the said Trustees in their discretion require and in which event all costs of and in connection therewith shall be borne by the Trust.
- 16.3.6. Engage the service of financial advisers, brokers, property administrators, consultants, accountants, auditors, architects and experts of all kinds and to make payment of their fees.
- 16.3.7 Institute or defend any proceedings in any court of law or arbitration proceedings in the name of the Trust.
- 16.3.8 Decide (which decision shall be final and binding and shall not be subject to dispute or challenge) whether any monies or assets received by them from time to time as part of the Trust Assets constitutes "capital" or "income" and for the purpose they shall be entitled to make such apportionment in the Trust's account.
- 16.3.9 Apply all or any of the Trust assets or monies held by them towards payment of any tax levied on the Trust or the income of the Trust, if any.
- 16.3.10 Leave the capital of the Trust or any part thereof invested as it may be when it is handed over to them.

16.3.11 Sell, realise, call in or convert into cash so much of the Trust assets as the Trustees may from time to time deem fit and make such further investments of the same in such form and in such manner as the Trustees may determine from time

SAHA Deed of Trust – as amended by resolution 24-November 2012 – Page 12

to time vary any of such investments as the Trustees may determine.

16.3.12 Enter into contracts in the name of the Trust in furtherance of the interests of the Trust and to nominate one or more of them or to delegate their authority to any person selected by them for the purpose of management of the Trust and the execution of all documents or other activities of any nature relating to the carrying out of the purposes of this Trust, including documents in connection with the investment and realisation of the Trust assets which realisation shall be in whatever manner they deem fit.

16.3.13 Permit any premises owned by the Trust to be occupied free of rental or for a rental to be determined by the Trustees.

16.3.14 Engage and discharge employees and to set their terms and conditions of employment.

16.3.15 Do all things necessary to achieve the objects of the Trust.

17 BOOKS OF ACCOUNTS, RECORDS OR OTHER DOCUMENTS

17.1 Any books of account, records or other documents must be retained and preserved by SAHA for a period of 4 years –

17.1.1 after the date of the last entry in any book; or

17.1.2 after completion of financial transaction, acts or operations; and

17.2 Trustee may not without the written consent of the Master destroy any document which serves as proof of an investment, safe custody, control, administration, alienation or distribution of SAHA property before the expiry of a period of five years from the termination of the SAHA.

17.3 The Trust is to keep accounting records of its income, expenditure, assets and liabilities, and

17.3.1 Within six month after the end of its financial year, draw up financial statements, which must include at least

17.3.1.1 A statement of income and expenditure for that financial year; and

17.3.1.2 A balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

17.4 Within two months after drawing up its financial statements, the Trust must arrange for a written report to be compiled by an accounting officer and submitted to the Trustees stating whether or not-

17.4.1 The financial statements of the organisation are consistent with its accounting records;

17.4.2 The accounting policies of the organisation are appropriate and have been appropriately applied in the preparation of the financial statements;

Handwritten signatures and initials at the bottom of the page, including a large signature on the left, several initials in the center, and a signature 'CR' on the right.

and,
 17.4.3 The Trust has complied with the provisions of the Nonprofit Organisations Act and this Deed of Trust which relate to financial matters.

- 17.5 The Trust must, in writing, provide the Director of Nonprofit Organisations with
 17.5.1 a narrative report of its activities together with its financial statements and the accounting officer's report as set out in clause 17.4 above, within nine months after the end of its financial year; and
 17.5.2 a physical address in the Republic for service of documents and notices, and advice of any change of such address.

18 AMENDMENTS

- 18.1 A Resolution approved by at least two thirds of the Trustees then in office shall be required for any amendment to this Deed of Trust.
 18.2 Any amendments to this deed of Trust shall be submitted to the Commissioner of the South African Revenue Service.
 18.3 In addition, the Trust must send to the Director of Nonprofit Organisations a copy of the resolution and a certificate signed by a duly authorised office-bearer stating that the resolution complies with its constitution and all relevant laws.

19. TERMINATION OF TRUST AND DISTRIBUTION OF ASSETS

- 19.1 The Trust shall continue indefinitely but the Trustees shall have the right, in their sole and absolute discretion passed by two-thirds of the Trustees, to terminate the Trust.
 19.2 Upon its termination the remaining assets of the Trust, after satisfaction of its liabilities shall be given or transferred to one or more trusts or associations not for gain with objects similar to the objects of the Trust which have been approved in terms of section 30 of the Income Tax Act, 1962.
 19.3 The Trust must provide the Director of Nonprofit Organisations with at least two months' written notice of the intention of the Trustees to terminate the Trust.

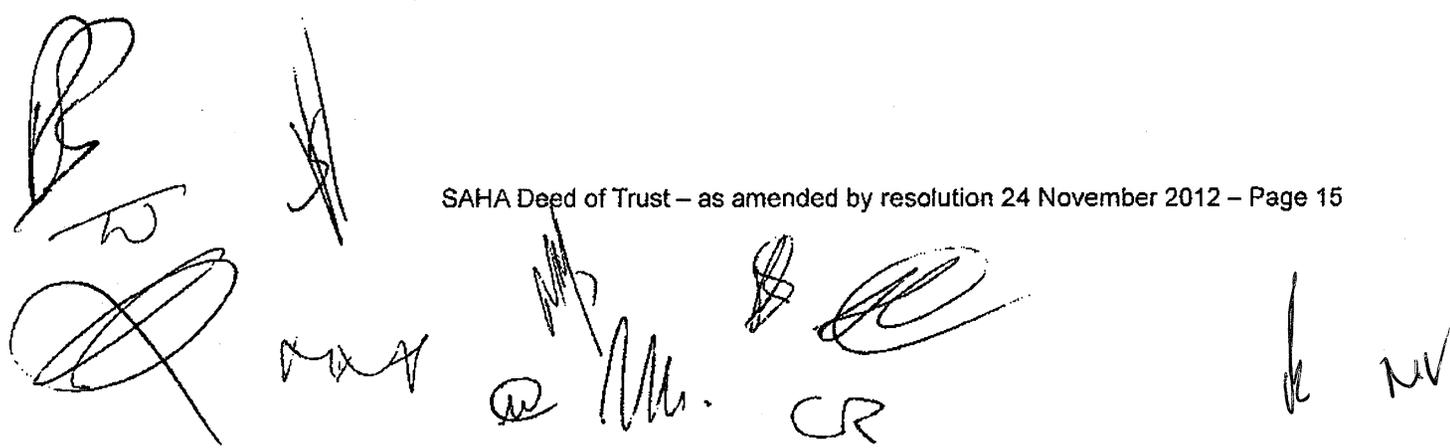
20 DISPUTES

Should any question arise as to whether the interpretation of this Deed or any of the provisions hereof as to the true construction thereof or as to the administration of the Trust or otherwise howsoever, the Trustees shall have the power to decide such questions either acting on their own judgement or upon the advice of attorneys and/or counsel and any such decisions shall be final and binding on all parties affected thereby and shall be carried into effect by them.

W
 MP
 CR
 NV

21 COSTS

All costs of and incidental to the negotiations and finalisation of this Deed of Trust and its registration in terms of the Trust Property Control Act shall be paid by the Trust out of the Trust assets.

A collection of handwritten signatures and initials in black ink, including a large stylized signature, a signature with 'W' below it, a signature with 'CR' below it, and several other initials and signatures.

ANNEXURE "A" : ORIGINAL TRUSTEES

HORST GERHARD HERMANN KLEINSCHMIDT
(BORN: 17/10/1945)

AND

SUSAN J BOOYSEN
(born: 17/9/1954)

AND

JEAN DE LA HARPE
(born: 3/9/1960)

AND

GIBSON THEMBA SIRAYI
(born: 12/10/1953)

AND

SAM MAHOSHA MKHABELA
(born: 23/10/1960)

AND

LULI CALLINICOS
(born: 10/11/1936)

AND

MICHELE PICKOVER
(born: 1/8/1959)

AND

NOEL FRANCIS STOTT
(born: 28/12/1958)

AND

JOHANNES MAFODI MANAMA
(born: 16/3/1949)

APPENDIX B: CURRENT TRUSTEES

HORST GERHARD HERMANN KLEINSCHMIDT

(born: 17/10/1945)

and

SPIRIDOULA WEBSTER (also known as LULI CALLINICOS)

(born: 10/11/1936)

and

MARLENE MERCER POWELL

(born: 07/27/1959)

and

DUMISA BUHLE NTSEBEZA

(born 31/10/1949)

and

CIRAJ SHAHID RASSOOL

(born 27/12/1961)

and

MOHAMED NOOR NIEFTACODIEN

(born 25/10/1964)

and

RAZIA SALEH

(born 08/08/1962)

and

ANTHONY ANDREW MANION

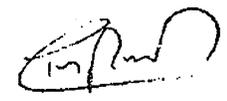
(born 13/04/1976)

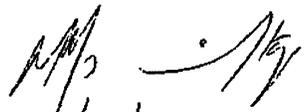
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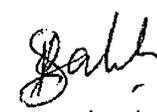
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Date: 6.12.2013

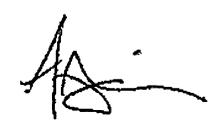
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Date: 07/12/2013

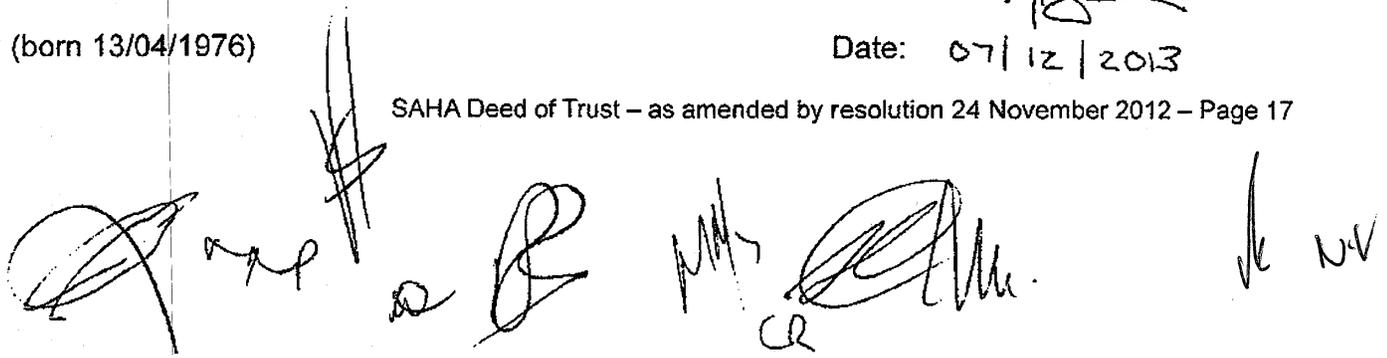
Signature: 
Date: 07/12/2013

Signature: 
Date: 07/04/2014

Signature: 
Date: 15/01/14

Signature: 
Date: 15/01/2014

Signature: 
Date: 07/12/2013



and

VERNE SHELDON HARRIS

(born 21/04/1958)

and

PIERS ASHLEY PIGOU

(born 30/05/1967)

and

SELLO KOOS HATANG – 7504285846089

(born 28/04/1975)

(hereinafter collectively referred to as "the Trustees")

Signature:



Date:

15/11/2014

Signature:



Date:

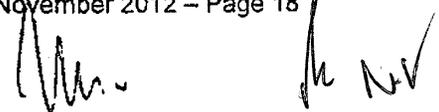
07/12/2013

Signature:



Date:

14/01/2014



FA 6
78WERKSMANS
ATTORNEYS

DELIVERED BY FACSIMILE

Lawyers for Human Rights
Attention: Mr David Cote
Telefax No: (012) 320 2949/7681

Johannesburg Office
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Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE: SL14/01/PTA
OUR REFERENCE: Mr N Kirby/Mr C Moraitis/hk/SOUT3267.44/#3183509v1
DIRECT PHONE: +27 11 535 8198
DIRECT FAX: +27 11 535 8698
EMAIL ADDRESS: nkirby@werksmans.com

14 August 2014

Dear Sirs

REQUEST FOR A RECORD IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT NO. 2 OF 2000 ("PAIA")

- 1 We refer to the above matter and our letter dated 29 July 2014.
- 2 We record that -
 - 2.1 our client is now in receipt of a total of 14 requests for information from your client;
 - 2.2 the requests have been dealt with as is indicated in your various letters addressed to our client dated 16 July 2014;
 - 2.3 the six requests received from your client dated 01 August 2014 have not, as yet, been dealt with by our client ("the August 2014 requests");
 - 2.4 the August 2014 requests concern documents that require our client to notify numerous third parties and thousands of pages of information.
- 3 We note that your client has lodged numerous requests for various records in circumstances where -
 - 3.1 it is not apparent why numerous requests are required to be lodged with our client;
 - 3.2 our client is concerned that the approach by your client to the deluge of requests for information is vexatious as it is a designed attempt to intimidate our client.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa
 Directors: DG Williams (Chairman), AL Armstrong, SA Arcenoli, DA Artz, T Bala, AR Berman, NBN Bhegu, L Bink, GT Boss, TJ Boswell, MC Brown, W Brown, P Burger, PG Celand, IG Cloute, PJJ Coetzee, C Cole-Morlan, D Corbett, IM de Villiers, GW Dryer, LJ du Preez, RJ Faenstra, S Fedor, SJ Gardiner, D Gewer, H Goolam, R Gookin, ID Gouws, GF Griesel, D Hertz, I Holsen, VR Hosiolosky, BB Hutz, MC Jacobs, TL Janse van Rensburg, H Jansen van Vuuren, G Johannes, S Jolly, J Kalmeyer, SLG Kayana, A Keny, BM Kew, N Kirby, FA Kotze, S Krige, P le Roux, NN Lessing, E Levenstein, JS Lechner, I Louw, JS Lubbe, BS Mabasa, PK Mahasa, PM Madala, MPC Manaka, PJG Mason, H Mazurda, C Moraitis, KO Motshwane, TA Mthiyane, J Nickig, JJ Niemand, GA Holt, BFF Olivier, WE Oosthuizen, M Parsegroux, CP Pauw, AV Piliay, T Potter, BC Price, AA Pyzikowski, RJ Routh, L Rood, BR Rothman, W Rosenberg, NL Scott, UK Silberman, JA Smik, JS Smil, CJ Stevens, PO Steyn, J Stockwell, JG Theron, D Truter, KJ Trudgoun, DN van den Berg, HA van Niekerk, FJ van Tonder, JP van Wyk, A Vatalidis, RH Wakefield, DC Walker, D Wapinski, N Wehahn, DC Williams, E Wood, BW Workman, Davies, Consultant JM Bortz

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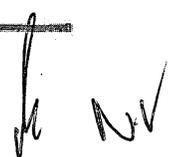
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- 4 In order for our client to consider properly the requests that have been made, kindly provide us with the reason/s why and purposes for your client seeks the information referred to in the requests should our client be inclined to grant the various requests received by it to date.
- 5 The information referred to above would be of great assistance to our client in the context of the current decision-making process in respect of the requests and we look forward to receiving your favourable reply.
- 6 Our client's rights remain reserved.

Yours faithfully


Weisknans Inc



FA 7
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LAWYERS FOR HUMAN RIGHTS

Strategic Litigation Unit
Kutlwanong Democracy Centre
357 Visagie Street, Pretoria 0002

Tel (012) 320 2943
Fax (012) 320 2949/7681
Web www.lhr.org.za

By fax and email

Please quote our file reference: SL14/01/PTA

26 September 2014

ATT: Mr. N. Kirby
Werksmans Attorney
155 5th Street
Sandton 2196

Fax: 011-535-8600
Email: / nkirby@werksmans.com
Your Ref: Mr Kirby / Mr Moraltis/hk/SOUT3267.44/#3183509v1

Dear Mr. Kirby:

RE: PAIA REQUEST – SOUTH AFRICAN HISTORY ARCHIVES

1. Your letters dated 14 August 2014 and 26 August 2014 refer.
2. We apologise for the delay in responding to you.
3. In your correspondence, you requested reasons for the requests for information that were put to your clients by the South African History Archives ("SAHA"), whom we represent.
4. At the outset, we point out that we are of the view that the South African Reserve Bank ("the SARB") is a public body for purposes of the Promotion of Access to Information Act 2 of 2000 ("PAIA"). PAIA provides in section 11(3) that a requester's right of access is not affected by the reasons given for requesting access nor by the public body's belief as to what those reasons may be. Our clients are therefore not required by PAIA to provide any reasons the requests for information made under that Act. However, they are willing, in a spirit of collegiality and without conceding that SARB is a private body, to provide you with the following reasons:
5. Our client is a non-profit, non-governmental organisation which seeks to archive and preserve records evidencing past and contemporary struggles for justice. Of particular importance to our client is ensuring public access to historical records relating to struggles for justice and to prevent the loss of such records. In this vein, our clients use the Promotion to Access to Information Act 2 of 2000 ("PAIA") as one of its primary tools to seek access to records.
6. The principle focus of our client's work is the preservation and archiving of documents relating to struggles for justice. SAHA has historically demonstrated an interest in records relating to the work of the Truth and Reconciliation Commission ("the TRC"). In this particular case the records requested relate to your client's work in an attempt to make records relating to the work of the TRC more widely accessible (something which was a specific recommendation of the TRC itself).
7. We deny that our client's requests were "vexatious" or aimed at "intimidating" your client. As a body with a clear responsibility to the South African public, we would expect that your client would be willing to assist in

endeavours to uncover corrupt practices which may have occurred in the years prior to our current democratic dispensation.

8. Our clients are of the view that the request falls squarely within the public interest considering the subject matter and the reasons for which it is being sought. Moreover, our client has taken steps, in so far as it was possible from the information available to them, to limit these requests. You will note that the requests are, wherever possible, limited both with respect to time periods and persons involved as well as with respect to types of records, as is apparent from each of those individual requests.
9. Further, our client is willing to send researchers, as they have done in the past in relation to PAIA requests submitted *inter alia* to the South African National Defence Force and the Companies and Intellectual Proprieties Commission, to inspect the records held by your client relating to these requests, in order to enable our client to further narrow their requests.
10. We trust that the above information has satisfied your client's concerns in order to proceed and approve the request.
11. If you require any further information, please do not hesitate to contact us. We look forward to your response to our application.

Yours sincerely,
LAWYERS FOR HUMAN RIGHTS
Per:

P.P. 
DAVID COTE

 NV

DELIVERED BY EMAIL

Lawyers for Human Rights
Attention: Mr David Cote
Per e-mail: David@lhr.org.za

Johannesburg Office
155 5th Street
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www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr N Kirby/Ms H Michael/SOUT3267.44/#3821209v1
DIRECT PHONE: +27 11 535 8198
DIRECT FAX: +27 11 535 8698
EMAIL ADDRESS: nkirby@werksmans.com

27 July 2015

Dear Sirs

SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE SOUTH AFRICAN RESERVE BANK - CASE NO.: 14466/15

- 1 We refer to the above matter and our exchange of correspondence on 6 May 2015, 15 May 2015, 18 May 2015 and 27 May 2015, respectively.
- 2 We set out below an update on the status of each of your client's requests for access to information in terms of the Promotion of Access to Information Act No. 2 of 2000 ("PAIA") dated 1 August 2014 ("the 2014 requests").
- 3 We deal separately below with each of the 2014 requests.
- 4 **SAH-2014-SRB-003**
 - 4.1 We confirm that our client is currently considering and complying with its obligations in terms of Chapter 5 of PAIA, which deals with third party notifications in respect of requests for access to records that might be records contemplated in section 34(1), 36(1), 37(1) or 43(1) of PAIA.
 - 4.2 In this regard, we confirm that our client –
 - 4.2.1 has been in contact with each of the companies listed in the document furnished to us by your offices on 27 May 2015 ("the relevant companies") regarding the request; and

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa

Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo C Moraitis KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

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- 4.2.2 has, in terms of section 48 of PAIA, requested that the relevant companies provide our client with representations as to why the request should be refused, alternatively, to provide our client with written consent for the disclosure of the records identified in the request ("the notifications").
- 4.3 To date, our client has received responses to the notifications from the following companies –
- 4.3.1 Allied Technologies Corporation;
 - 4.3.2 Allied Electronics Corporation;
 - 4.3.3 Anglo American Corporation;
 - 4.3.4 Barlow Limited;
 - 4.3.5 De Beers Group, including De Beers Consolidated Mines Proprietary Limited;
 - 4.3.6 Liberty Life Finance Proprietary Limited;
 - 4.3.7 Naspers Limited;
 - 4.3.8 Nedbank Limited;
 - 4.3.9 PG Group Proprietary Limited;
 - 4.3.10 SASOL Limited;
 - 4.3.11 South African Breweries Limited;
 - 4.3.12 Sun International Limited;
 - 4.3.13 Total South Africa Proprietary Limited;
 - 4.3.14 ABSA Bank Limited; and
 - 4.3.15 Volkskas Bank Limited.
- 4.4 Our client is in the process of considering the responses by the relevant third parties in order to prepare a considered reply to the above request. Our client is, however, still awaiting responses to the notifications from –
- 4.4.1 Old Mutual Life Assurance Company Limited;
 - 4.4.2 Rembrandt Group Limited;
 - 4.4.3 Sanlam Group Limited; and
 - 4.4.4 Engen Limited.
- 4.5 Kindly note that the companies listed in paragraph 4.4 have requested extensions of time for purposes of substantively replying to the notifications. However, our client expects to receive all of the companies' responses on or before 7 August 2015.

- 4.6 Additionally, we note that in so far as Gencor Limited has been dissolved and Premier Group Limited is currently in voluntary liquidation, our client has been unable to contact any representatives of the aforementioned companies for purposes of receiving their input on the above request. In so far as your client has any knowledge of whom our client may contact in this regard, we would be grateful if you would provide us with the relevant details.
- 4.7 In light of what is set out above, we have been instructed to request that our client furnish you with its considered response to the above request by no later than 14 August 2015, in order to ensure that our client is able properly to consider each representation made by the relevant third parties when responding to the request.

5 SAH-2014-SRB-004

- 5.1 In so far as the abovementioned request is concerned, we confirm that our client has endeavoured to locate the records referred to in the request. Our client is, however, experiencing great difficulty in locating the records in light of the overly-broad and ambiguous nature of the request. In this regard, we advise that -
- 5.1.1 the above request does not identify the specific records being sought by your client. Instead, our client is required subjectively to determine which records your client, in fact, seeks; and
- 5.1.2 the request is ambiguous in relation to whether or not the records sought in the request refer to records "obtained by [our client] at any time" or whether the records are limited to the period of 1 September 1985 to March 1995.
- 5.2 In light of what is set out above, we are of the view that that the above request does not, as it currently stands, comply with the procedural requirements contemplated in section 18(2)(a) of PAIA, which provides that a request in terms of PAIA must provide "sufficient particulars to enable an official of the public body concerned to identify the record or records requested ...".
- 5.3 Accordingly, we have been instructed to request, in terms of section 19 of PAIA, that your client address the procedural deficiencies in the request so as to enable our client adequately to address the contents of the above request.

6 SAH-2014-SRB-005

- 6.1 We confirm that the contents of paragraph 4 above apply equally to SAH-2014-SRB-005 in relation to the notification of the relevant third parties.
- 6.2 Additionally, we record that certain issues have also arisen regarding the particularity (or lack thereof) of the above request ("the particularity issue"). In this regard, we confirm that the particularity issue has been raised not only by our client but also by the relevant companies who have been notified of the request in terms of section 47 of PAIA. In this regard, we submit that -
- 6.2.1 the request is vague in so far as the request does not identify the specific records being sought by your client but instead requires our client subjectively to ascertain which records your client seeks;
- 6.2.2 the request is ambiguous in relation to whether or not the records sought in the request refer to records "obtained by the Reserve Bank at any time" or whether the records are limited to the period of 1 January 1980 to 1 January 1995; and

6.2.3 reference is made in the request to "substantial" contraventions and "significant" fraud. The request, however, fails to identify the threshold for either a "substantial" contravention or a "significant" fraud. Accordingly, our client and the relevant third parties, referred to in the request, are unable to identify the records requested.

6.3 We have accordingly been instructed to request further particulars in respect of the above request in order to enable our client adequately to respond to the contents of the request.

7 SAH-2014-SRB-006

7.1 In so far as above request is identical to the request in SAH-2014-SRB-005 (subject to the third parties referred to in the request and the applicable timeframe), we repeat our client's concerns regarding the particularity of the request, as recorded in paragraph 6.2 above.

7.2 Notwithstanding the above, we note that our client has undertaken an extensive search of its records and has been unable to locate fraud investigations, of any nature, pertaining to the following individuals referred to in in Part D of the request –

7.2.1 Dr E MRhoodie;

7.2.2 Dr P C (Connie) Mulder; and

7.2.3 Dr N J (Nico) Diederichs.

7.3 Accordingly, we have been instructed that our client is unable to furnish you with the records in the above request. We will furnish you with an affidavit deposed to by Dr J de Jager, our client's Deputy Information Officer, in this regard, as soon as we receive it from our client.

7.4 In light of what is set out above, we confirm that the above request is refused in respect of the persons mentioned in paragraphs 7.2.1. to 7.2.3 above in terms of section 23(3) of PAIA.

7.5 In so far as the request relating to Dr M Chiavelli is concerned, we would be grateful if you would furnish us with the necessary particulars in respect of the above request in order to enable our client adequately to respond to the contents of the request.

8 SAH-2014-SRB-007

We confirm that the above request is identical to SAH-2014-SRB-005 (subject to the third parties referred to in the request). Thus, the issues raised in paragraph 6.2 above regarding the particularity of the request apply equally to this request. We, accordingly, request that further particulars be furnished to our client in order to enable it to properly consider the above request. Whilst our client has limited information on the parties identified, our client is considering whether or not the information is relevant to the request. In some instances our client's records are voluminous and a great deal of time is required to retrieve and peruse the records. Please also note that invariably the information concerns third parties who need to be identified and consulted, some of which may no longer be in existence. Our client has furthermore also not been able to ascertain whether Mr R O Hill is still alive. Should your client be in a position to confirm Mr Hill's status, an indication of Mr Hill's whereabouts would be appreciated.



9 **SAH-2014-SRB-008**

- 9.1 In terms of the above-mentioned request, your client seeks records pertaining to "all investigations covering the period 1984-1998 into alleged illegal activities (including but not limited to the manipulation of the financial and dual currency system using forged Eskom bonds, involving **Mr Robert Oliver Hill** ... as involved in *South African Reserve Bank v Torwood Properties (Pty) Ltd* (626/94) [1996] ZASCA 104...".
- 9.2 We submit that your client has, once again, failed to include sufficient particulars in the request in order to enable our client to identify the precise records which are sought in the request, including particulars regarding the type of investigations requested as well as the "alleged illegal activities".
- 9.3 In light of what is set out above, we kindly request, in terms of section 19 of PAIA, that you client attempt to remedy its non-compliance with section 18(1) of PAIA, by providing our client with the further particulars that will enable our client to identify the precise records sought by your client.
- 10 In light of what is set out above, we have been instructed to request –
- 10.1 that our client be granted an extension until 14 August 2015 to provide its considered reply to SAH-2014-SRB-003;
- 10.2 further particulars in respect of SAH-2014-SRB-004, SAH-2014-SRB-005, SAH-2014-SRB-007 and SAH-2014-SRB-008, respectively, in order to ensure that your client complies with the procedural requirements contemplated in section 18 of PAIA. In this regard, in so far as your client fails to remedy its non-compliance with section 18 of PAIA, our client will be entitled to refuse your client's requests in terms of section 19(2) of PAIA; and
- 10.3 that the litigation in this matter continues to be stayed until such time as the above issues are resolved.
- 11 We look forward to receiving your considered reply.

Yours faithfully

Werksmans Inc.
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

A handwritten signature in black ink, appearing to be 'N.V.' with a flourish.

DELIVERED BY E-MAIL

Lawyers for Human Rights
Attention: Mr David Cote
Per e-mail: David@lhr.org.za

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Fax +27 11 535 8600
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enquiries@werksmans.com

YOUR REFERENCE: SAH-2014-SRB-0007
OUR REFERENCE: Mr N Kirby/Ms H Michael/hm/SOUT3267.44/#3988892v1
DIRECT PHONE: +27 11 535 8198
DIRECT FAX: +27 11 535 8698
EMAIL ADDRESS: nkirby@werksmans.com

28 October 2015

Dear Sirs

REQUEST FOR A RECORD IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT NO. 2 OF 2000 ("PAIA")

- 1 We refer to the above matter, your client's request for information referenced SAH-2014-SRB-0007 ("the relevant request"), our letters dated 27 July 2015, 26 August 2015 and 20 October 2015, respectively ("our previous letters") and your letter dated 22 October 2015.
- 2 In terms of the relevant request, your client seeks "any evidence obtained by [our client] at any time as part of investigations into any substantial contravention of, or failure to comply with, the law in terms of significant **fraud (including fraud through manipulation of the financial rand dual currency, foreign exchange or forging Eskom bonds), gold smuggling or smuggling of other precious metals from 1 January 1980 to 1 January 1995** in relation to the following persons [("the relevant individuals")]:
 - the late Mr Giovanni Giuseppe Mario Ricci (born 07/08/1929; ID#: 2908075136186; last known address: Bryanston / Midrand; died 16/07/2001)
 - the late Mr Stephanus Petrus (Fanie) Botha (former Minister of Labour / Manpower, born 05/05/1922; ID#: 2205055027083; died in Pretoria, 04/09/2010);
 - Brigadier Johann Philip Derk (Jan) Blaauw (born 14/10/1920, ID#: 2010145028004; believed to be dead)
 - Mr Paul Ekon (ID#: 5905265017082)

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa

Directors DG Williams (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata AR Berman NMN Bhengu L Bick GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetsier C Cole-Morgan D Corbett JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer H Goolam R Gootkin ID Gouws GF Griessel D Hertz J Hollesen VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew N Kirby HA Kotze S Krige P le Roux MM Lessing E Levenstein JS Lochner L Louw JS Lubbe BS Mabasa PK Mabaso PM Madala MPC Manaka PJG Mason H Masondo C Moraitis KO Motshwane TA Mthiyane J Nickig JJ Niemand GA Nott BPF Olivier WE Oosthuizen M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath L Rood BR Roothman W Rosenberg NL Scott LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans E Wood BW Workman-Davies **Consultant** JM Bortz

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- Mr Robert Oliver Hill (ID# 3907245021004, as involved in South African Reserve Bank v Torwood Properties (Pty) Ltd (626/94) [1996JZASCA 104; 1997 (2) SA 169 (SCA); [1996] 4 All SA 494 (A); (25 September 1996))
- Mr Vito Roberto Palazzolo (also known as Mr Robert von Palace Kolbatschenko; born 31/07/1947; currently serving a prison sentence in Italy for mafia association);
- Mr Craig Michael Williamson (born 23/04/1949; ID#: 4904235577003); and
- Dr Wouter Basson (born 06/07/1950)".

3 Having regard to the contents of the request, we have been instructed to record that -

3.1 as detailed in our previous letters, the relevant request is excessively broad and unduly vague in so far as the request does not provide our client with sufficient particulars in order, without unreasonably diverting State resources, to enable our client properly and specifically to identify the records requested by your client ("the relevant records");

3.2 notwithstanding your client's failure properly to identify the records in the requests, our client has, simply in an effort to assist your client in this matter, but without prejudice to our client's rights, conducted a search of its records in order to ascertain whether or not our client may be in possession of the relevant records, the identity of which our client has presumed (in light of the unduly vague nature of the requests) have been requested by your client;

3.3 in this regard, in so far as the relevant request refers to records relating to "any evidence ... of investigations into any substantial contravention of, or failure to comply with, the law in terms of significant fraud" in respect of the relevant individuals, our client has approached the request to mean a request for such records as -

3.3.1 were entered into the register of investigations by the Investigations Division of the formerly known Exchange Control Department of our client, now the Financial Surveillance Department ("FSD");

3.3.2 relate specifically and directly to the relevant individuals; and

3.3.3 constitute formal investigations conducted by the FSD into allegations of significant fraud in respect of the relevant individuals, as contemplated in the "request description" of the relevant request; and

3.4 in terms of the search conducted by our client, as contemplated in paragraph 3.3 above, our client has been unable to locate any entry in its records that relate to any investigations by the FSD into allegations of significant fraud relating to -

3.4.1 the late Mr Giovanni Giuseppe Mario Ricci;

3.4.2 the late Mr Stephanus Petrus Botha;

3.4.3 Mr Paul Ekon;

3.4.4 Mr Craig Michael Williamson; and

3.4.5 Dr Wouter Basson;



- 3.5 in light of what is set out above, our client is unable to furnish your client with the records presumably referred to in the relevant request which relate to the individuals referred to above in paragraph 3.4. We confirm that Dr J de Jager, the Deputy Information Officer of our client, will be signing an affidavit in terms of section 23 of PAIA confirming the aforementioned position during the course of tomorrow, 29 October 2015, which affidavit will be furnished to you upon receipt.
- 4 In so far as the records relating to Brigadier Johann Philip Derk Blaauw, Mr Robert Oliver Hill and Mr Vito Palazzolo, are concerned ("the remaining individuals"), we have been instructed that our client has refused the request in relation to the remaining individuals, as contemplated in section 27 of PAIA. In this regard, the following reasons have been provided by our client in support of its decision -
- 4.1 section 33 of the South African Reserve Bank Act No. 90 of 1989 ("the SARB Act") provides that -
- "33(1) No director, officer or employee of the [SARB] ..., shall disclose to any person ... -
- (a) any information relating to the affairs of -
- (i) the [SARB];
- (ii) a shareholder of the [SARB]; or
- (iii) a client of the [SARB],
- acquired in the performance of his or her duties or the exercise of his or her functions;
- (b) any other information acquired by him or her in the course of his or her participation in the activities of the [SARB] ..."
- 4.2 section 33 of the SARB Act thus deals with the preservation of secrecy of financial and confidential information and prohibits disclosure of any information relating to, *inter alia*, the clients and affairs of the SARB. In this regard, the affairs of the SARB include any investigations conducted by the SARB in relation to a contravention of the law;
- 4.3 in light of the contents of section 33 of the SARB Act, our client is precluded from disclosing the records requested by your client;
- 4.4 section 5 of PAIA stipulates that the provisions of PAIA apply to the exclusion of other legislative provisions that prohibit or restrict disclosure and that are materially inconsistent with the provisions of PAIA. In this regard, the provisions of section 33 of the SARB Act are undoubtedly consistent with the provisions of PAIA in so far as -
- 4.4.1 section 37(1) of PAIA stipulates, *inter alia*, that the information officer of a public body "must refuse a request for access to a record of the body if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement";
- 4.4.2 our courts have consistently recognised the duty of confidentiality owed by banks towards their clients in relation to clients' banking affairs;
- 4.4.3 in the recent judgment of *Stevens and Others v Investec Bank Limited and Others* [2014] JOL 31828 (GSJ), the court held at paragraph 10 of the judgement that "[t]here is no doubt that a banker-client relationship requires the highest *uberrimae*

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fides and that confidentiality is one of the essential aspects of such relationship of trust as between ... banker and client"; and

4.4.4 the duty of confidentiality between a bank and its clients has been held by our courts to be an implied or tacit term of the bank-client agreement arising either as a matter of law, or as representing the tacit consensus of the parties: *Densam (Pty) Ltd v Cywilnat (Pty) Ltd* 1991 (1) SA 100 (A) at 109G;

4.5 in addition to what is set out above and in so far as the affairs of the SARB are concerned, section 39(1)(b) of PAIA provides that a request for information may be refused if –

"the record contains methods, techniques, procedures or guidelines for—

(aa) the prevention, detection, curtailment or investigation of a contravention or possible contravention of the law; or

...

and the disclosure of those methods, techniques, procedures or guidelines could reasonably be expected to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence";

4.6 the records sought by your client in the request contain information of the nature described in section 37(1) and section 39(1) of PAIA. Any disclosure of such information by our client to your client would thus not only constitute a contravention of PAIA, but would also result in a contravention of section 33 of the SARB Act;

4.7 our client is further precluded from disclosing the records, which are presumably referenced in the request, on the following bases –

4.7.1 the disclosure of the information contemplated in the request could reasonably be expected to prejudice the future supply of similar information to our client by third parties (including informants) as contemplated in section 37(1)(b) of PAIA; and

4.7.2 our client will be required, unreasonably and substantially, to divert its resources in order, *inter alia*, to consider thousands of documents pertaining to the investigations which relate to the remaining individuals, in order to ascertain the status of the documents as well as the details of the third parties who will inevitably be required to be notified of the relevant request in terms of section 47 of PAIA. Upon identifying the relevant third parties, our client will then be required to consult with each third party in terms of PAIA. Our client is therefore entitled to refuse the request on the basis of section 45(b) of PAIA; and

4.8 finally, our client is precluded from disclosing the records relating to the remaining individuals on the following bases –

4.8.1 in terms of section 34 of PAIA, a public body must refuse a request for access to a record if disclosure of such record would involve the unreasonable disclosure of personal information about a third party, including a deceased individual;

4.8.2 the term "personal information" is defined in PAIA as information about an identifiable individual, including, but not limited to the criminal history of the individual or information relating to financial transactions in which the individual has been involved;



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- 4.8.3 in terms of section 34(2) of PAIA, a record may not be refused in terms of section 34(1) of PAIA, if the record consists of information about an individual who has consented, in writing, to the disclosure of the records. In this regard, we confirm that the remaining individuals have not been notified of the request in so far as the remaining individuals are believed either to be deceased (Brigadier Blaauw and Mr Hill) or currently incarcerated outside of South Africa (Mr Palazzolo);
- 4.8.4 whilst having regard to the fact that the remaining individuals have not made representations in terms of section 48 of PAIA, our client has elected, in terms of section 49 of PAIA, to refuse the request in relation to the records relating to the remaining individuals for the reasons set out above, and on the basis that the disclosure of the records contemplated in the relevant request will unjustifiably violate the right to privacy of the remaining individuals.
- 5 Finally, we note that the provisions of 46 of PAIA do not apply to the relevant request in so far as the public interest in the disclosure of the information does not clearly outweigh the harm contemplated by the provision of the information to your client
- 6 As previously advised, our client does not have an internal appeal process. Accordingly, should your client be dissatisfied with the decision, your client may make an application to a competent court to appeal against the decision, pursuant to section 25(3)(c) of PAIA, read with Part 4 of Chapter 2 of PAIA.
- 7 Our client's rights remain reserved.

Yours faithfully

Werksmans Inc

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

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STATEMENT

I, the undersigned,

JOHANNES JURGENS DE JAGER

do hereby state as follows -

- 1 I am an adult male employed by the South African Reserve Bank (SARB), with my address, for purposes of this statement, at the SARB's principal place of business at 370 Helen Joseph (formerly Church) Street, Pretoria, Gauteng.
- 2 I am duly authorised to depose to this statement on behalf of the SARB.
- 3 The facts contained in this statement are within my own personal knowledge and are both true and correct.
- 4 I depose to this statement pursuant to the provisions of section 23 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (PAIA).
- 5 I am employed as General Counsel and Deputy Information Officer for the SARB. In this regard, the Information Officer of the SARB has, in terms of

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section 17(3) of PAIA delegated his powers and duties in terms of PAIA to me as a Deputy Information Officer for the SARB.

6 In my capacity as Deputy Information Officer, I received various requests for information from the South African History Archives Trust (SAHA) dated 1 August 2014 (the requests). In this regard, the requests which are relevant for purposes of this statement are SAHA's requests referenced SAH-2014-SRB-0005, SAH-2014-SRB-0006 and SAH-2014-SRB-0007, respectively.

7 In terms of SAH-2014-SRB-0005, SAHA requests the following records (the SAH-0005 records) –

Copies of any and all records, or part of records, of any evidence obtained by the bank at any time as part of investigations into any substantial contravention of, or failure to comply with, the law in terms of significant fraud (including fraud through manipulation of the financial rand dual currency, foreign exchange or forging Eskom bonds), gold smuggling or smuggling of other precious metals from 1 January 1980 to 1 January 1995 in relation to the following organisations:

- *Altech – Allied Technologies Corporation*
- *Altron – Allied Electronics Corporation*
- *Anglo American Corporation*
- *Barlow Rand / Barlow Limited / Barloworld*

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- *De Beers Group (including De Beers Consolidated Mines)*
- *Gencor Ltd (formerly General Mining Union Corporation Ltd)*
- *Liberty Life (formerly Liberty Life Association of Africa Ltd and more recently part of The Liberty Life Group held by Liberty Holdings)*
- *Naspers (formerly Die Nasionale Pers)*
- *Nedbank (formerly Nederlandsche Bank voor Zuid-Afrika, Nederlandse Bank in Suid-Afrika Beperk/Netherlands Bank of South Africa Limited, Nedcor Bank Limited, Nedcor Investment Bank, Nedcor Group, and most recently Nedbank Group Ltd)*
- *Old Mutual (formerly The Mutual Life Assurance Society)*
- *PG Group*
- *Premier Group Ltd (formerly Premier Group Holdings, since liquidated)*
- *Rembrandt Group (formerly Voorbrand, then Rembrandt Ltd, later split into Remgro Ltd and Rlichemont)*
- *Sanlam Group (Suid-Afrikaanse Nasionale Lewens Assuransie Maatskappij Beperk; including Santam – Suid-Afrikaanse Nasionale Trust en Assuransie Maatskappij, Federale Volksbeleggings, and Sankor)*
- *SASOL*
- *South African Breweries (The South African Breweries Ltd, formerly Castle Breweries, now a wholly owned subsidiary of SAB Miller)*
- *Sun International (formerly part of the Southern Sun Hotel Company)*

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- *Total South Africa Pty Ltd (formerly Total Oil Products (Pty) Ltd; with subsidiaries Total Refining South Africa and Total Exploration South Africa)*
- *Trek Holdings /Trek Beleggings (subsequently known as Engen Ltd)*
- *Trust Bank (part of the Bankkorp group, subsequently as acquired by ABSA;*
- *Volkskas Bank (also Volkskas Beperk, later merging with others to become ABSA)*

8 In terms of SAH-2014-SRB-0006, SAHA requests the following records (the SAH-0006 records) –

Copies of any and all records, or part of records, of any evidence obtained by the bank at any time as part of investigations into any substantial contravention of, or failure to comply with, the law in terms of significant fraud (including fraud through manipulation of the financial rand dual currency, foreign exchange or forging Eskom bonds), gold smuggling or smuggling of other precious metals from 1 January 1955 to 1 January 1994 in relation to the following deceased persons [noting that as these deaths occurred over 20 years ago, this request is not a request for personal information as defined in the Promotion of Access to Information Act, 2000]:



- *The late Mr Marino (or Mario) Benito Chiavelli (born 06/09/1927; ID#: 2709065080107; died in Johannesburg 07 or 08/01/1993);*
- *the late Dr Eschel Mostert Rhodie (born 11/07/1933, ID#: 3307115056000; last known address: Smyrna, Georgia, USA; died 17/07/1993)*
- *the late Dr Petrus Cornelius (Connie) Mulder (former Minister of Information, born 05/06/1925; died 12/01/1988)*
- *the late Mr Nicolaas Johannes (Nico) Diederichs (former Minister of Finance / State President, born 17/11/19031 died in Cape Town 21/08/1978).*

9 Finally, in terms of SAH-2014-SRB-0007, SAHA requests the following records (the SAH-0007 records) –

Copies of any and all records, or part of records, of any evidence obtained by the bank at any time as part of investigations into any substantial contravention of, or failure to comply with, the law in terms of significant fraud (including fraud through manipulation of the financial rand dual currency, foreign exchange or forging Eskom bonds), gold smuggling or smuggling of other precious metals from 1 January 1980 to 1 January 1995 in relation to the following persons:

- *The late Mr Giovanni Giuseppe Mario Ricci (born 07/08/1929; ID#: 2908075136186; last known address: Bryanston / Midrand; died 16/07/2001)*

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- *the late Mr Stephanus Petrus (Fanie) Botha (former Minister of Labour / Manpower, born 05/05/1922; ID#: 2205055027083; died in Pretoria, 04/09/2010);*
- *Brigadier Johann Philip Derk (Jan) Blaauw (born 14/10/1920, ID#: 2010145028004; believed to be dead)*
- *Mr Paul Ekon (ID#: 5905265017082)*
- *Mr Robert Oliver Hill (ID# 3907245021004, as involved in South African Reserve Bank v Torwood Properties (Pty) Ltd (626/94) [1996JZASCA 104; 1997 (2) SA 169 (SCA); [1996] 4 All SA 494 (A); (25 September 1996))*
- *Mr Vito Roberto Palazzolo (also known as Mr Robert von Palace Kolbatschenko; born 31/07/1947; currently serving a prison sentence in Italy for mafia association);*
- *Mr Craig Michael Williamson (born 23/04/1949; ID#: 4904235577003); and*
- *Dr Wouter Basson (born 06/07/1950).*

10 As has already been communicated to the lawyers representing SAHA, the SARB is of the view that the above requests are vague in so far as the requests do not provide the SARB with sufficient particulars in order, without unreasonably diverting its resources, to enable the SARB properly and specifically to identify the SAH-0005 records, the SAH-0006 records or the SAH-0007 records (collectively referred to as the investigation records).

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- 11 Notwithstanding what is set out in paragraph 10 above, the SARB has, where possible and within the timeframe agreed to by SAHA, substantially and unreasonably diverted its resources in order to consider a great quantity of (investigation) records in order to ascertain, whether or not the records which the SARB has assumed (in light of the unduly vague nature of the requests) are the records actually sought by SAHA, are in fact in the SARB's possession.
- 12 In this regard, in so far as each of the above requests refers to records relating to "investigations into any substantial contravention of, or failure to comply with, the law in terms of significant fraud" in respect of the particular parties specified in Part D of the requests, I confirm that the SARB has approached the requests to mean such records as –
- 12.1 were entered into the register of investigations by the Investigations Division of the formerly known Exchange Control Department of the South African Reserve Bank, now the Financial Surveillance Department (FSD). In this regard, the aforementioned records consist of a register of investigations (both in hard copy format and for later investigations, in electronic format (Online Risk Management system));
- 12.2 relate specifically and directly to the parties specified in Part D of the requests; and

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12.3 constitute formal investigations conducted by the FSD into allegations of "significant" fraud in respect of the parties listed in Part D of the requests, as contemplated in the requests.

13 I confirm that the SARB took all reasonable steps to locate the investigation records as contemplated in section 23 of PAIA. The aforementioned steps included extensive searches conducted by Mr Alexander Ellis (Ellis), a Specialist Legal Counsel for the SARB, of the existing records of the FSD. In this regard, in so far as I depose to allegations of and concerning Ellis then those allegations are confirmed by the confirmatory affidavit deposed to by Ellis which is attached to this statement.

14 Notwithstanding Ellis's extensive investigations, he was unable to locate any entry in the records of the FSD that relate to any investigations by the FSD (as contemplated in paragraph 12 above) into the conduct of -

14.1 Altech – Allied Technologies Corporation;

14.2 Altron – Allied Electronics Corporation;

14.3 Anglo American South Africa Limited;

14.4 Barlow Rand / Barlow Limited / Barloworld;

14.5 De Beers Group (Including De Beers Consolidated Mines);

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- 14.6 Gencor Limited (formerly General Mining Union Corporation Limited);
- 14.7 Liberty Life (formerly Liberty Life Association of Africa Limited, and more recently part of the Liberty Life Group held by Liberty Holdings);
- 14.8 Naspers (formerly Die Nasionale Pers);
- 14.9 Nedbank (formerly Nederlandsche Bank voor Zuid-Afrika, Nederlandse Bank in Suid-Afrika Beperk/Netherlands Bank of South Africa Limited, Nedcor Bank Limited, Nedcor Investment Bank, Nedcor Group, and most recently Nedbank Group Limited);
- 14.10 Old Mutual (formerly The Mutual Life Assurance Society);
- 14.11 PG Group;
- 14.12 Rembrandt Group (formerly Voorbrand, then Rembrandt Limited, later split into Remgro Limited and Richemont);
- 14.13 Sanlam Group (Suid-Afrikaanse Nasionale Lewens Assuransie Maatskappij Beperk; including Santam – Suid-Afrikaanse Nasionale Trust en Assuransie Maatskappij, Federate Volksbeleggings, and Sankor);

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- 14.14 SASOL;
- 14.15 South African Breweries (The South African Breweries Limited, formerly Castle Breweries, now a wholly owned subsidiary of SAB Miller);
- 14.16 Sun International (formerly part of the Southern Sun Hotel Company);
- 14.17 Total South Africa Proprietary Limited (formerly Total Oil Products Proprietary Limited; with subsidiaries Total Refining South Africa and Total Exploration South Africa);
- 14.18 Trek Holdings Incorporated / Trek Beleggings (subsequently known as Engen Limited);
- 14.19 Trust Bank (part of the Bankorp group, subsequently as acquired by ABSA Bank Limited);
- 14.20 Volkskas Bank (also Volkskas Beperk, later merging with others to become ABSA Bank Limited);
- 14.21 the late Mr Marino (or Mario) Benito Chiavelli (born 06/09/1927; ID#: 2709065080107; died in Johannesburg 07 or 08/01/1993);
- 14.22 the late Dr Eschel Mostert Rhoodie;

- 14.23 the late Dr Petrus Cornelius (Connie) Mulder;

- 14.24 the late Mr Nicolaas Johannes (Nico) Diederichs;

- 14.25 the late Mr Giovanni Giuseppe Mario Ricci (born 07/08/1929; ID#: 2908075136186; last known address: Bryanston / Midrand; died 16/07/2001);

- 14.26 the late Mr Stephanus Petrus (Fanie) Botha;

- 14.27 Mr Paul Ekon;

- 14.28 Mr Craig Michael Williamson (born 23/04/1949; ID#: 4904235577003); or

- 14.29 Dr Wouter Basson.

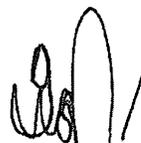
15 Ellis was also unable to identify any evidence which indicates that the investigations records pertaining to the third parties referred to in paragraph 14 above ("the relevant records") do, in fact, exist.

16 In light of what is set out above and as contemplated in section 23 of PAIA, I confirm that -

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- 16.1 the SARB has taken all reasonable steps to locate the relevant records;
- 16.2 reasonable grounds exist for believing that the relevant records do not exist as contemplated in section 23(1)(b)(i) of PAIA;
- 16.3 I have given a full account of all steps taken to locate the relevant records including all communications with every person who conducted the search; and
- 16.4 in light of what is set out above, I am unable provide SAHA with the relevant records.



JOHANNES JURGENS DE JAGER

The deponent has acknowledged that he knows and understands the content of this statement and believes it to be true and correct.

This statement was affirmed before me and the deponent's signature was placed thereon in my presence at PRETORIA on this 29TH day of OCTOBER 2015.



COMMISSIONER OF OATHS

Name:
Address:
Capacity

DAVID HERCULES BOTHA
PRACTISING ATTORNEY
NEWTONS INC
BANK FORUM BUILDING
337 VEALE STREET
BROOKLYN, PRETORIA
012 - 425 0200



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AFFIDAVIT

I, the undersigned,

ALEXANDER ELLIS

do hereby make oath and say -

- 1 I am an adult male employed as a Specialist Legal Counsel for the South African Reserve Bank ("SARB"), with my address, for purposes of this affidavit, at the SARB's principal place of business at 370 Helen Joseph Street, Pretoria, Gauteng.

- 2 I am duly authorised to depose to this affidavit on behalf of the SARB.

- 3 The facts contained in this affidavit are, unless the contrary appears from the context, within my own personal knowledge and to the best of my belief true and correct.

4. I have read the statement deposed to by Johannes Jurgens de Jager and confirm the truth and correctness of the contents of the statement in so far as


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the contents relates to me.

Ellis

ALEXANDER ELLIS

I certify that this affidavit was signed and sworn to before me at *PRETORIA* on this the *29TH* day of *OCTOBER 2015* by the deponent who acknowledged that he knows and understands the contents of this affidavit, has no objection to taking this oath, considers this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

[Signature]

COMMISSIONER OF OATHS

Name:
Address:
Capacity

DAVID HERCULES BOTHA
PRACTISING ATTORNEY
NEWTONS INC
BANK FORUM BUILDING
337 VEALE STREET
BROOKLYN, PRETORIA
012 - 425 0200

[Signature]
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[Signature]

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

CASE NO.

In the matter between:

SOUTH AFRICAN HISTORY ARCHIVES TRUST

Applicant

and

SOUTH AFRICAN RESERVE BANK

First Respondent

**GOVERNOR OF THE SOUTH AFRICAN
RESERVE BANK, L KGANYAGO**

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

HENDRIK VAN VUUREN

hereby make oath and state:

- 1 I am a Senior Research Associate at the Institute for Justice and Reconciliation situated at 105 Hatfield Street, Gardens, Cape Town.
- 2 As part of my work, I am involved in the Open Secrets Project. This research project aims to construct an evidence-based narrative on why corruption

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persists in public life in contemporary South Africa. It aims to do this through an investigation of how key institutions within the public and private sector were criminalized during the period of contravention of mandatory United Nations Sanctions. This includes investigating the international networks that sustained apartheid and facilitated the externalisation of South African funds in this period.

- 3 The facts set out herein are within my personal knowledge, unless stated otherwise or indicated by the context, and are to the best of my knowledge and belief both true and correct.
- 4 As part of my research into corruption during Apartheid, I discovered information relating to the individuals named in the request for access to information made by the South African History Archives ("SAHA") and as identified in the Notice of Motion.
- 5 This information has been included in the founding affidavit. I do not have personal knowledge of the individuals or the truth of the information relating to each of the individuals named in the founding affidavit. However, the information on each individual was obtained from a careful and comprehensive process of academic research. The information is included in the founding affidavit, not for the truth thereof but to show that there are serious allegations in the public domain that each of the named individuals was actively involved in contravening the law. Given the nature of the international transactions

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involved, disclosure of the requested information could expose a crime.

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DEPONENT

I hereby certify that the deponent stated that she knows and understands the contents of this affidavit, and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at **CAPE TOWN** on this the 09th day of FEBRUARY 2016. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

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COMMISSIONER OF OATHS

Full names: *[Handwritten: Mr. J. de G. ...]*

Address: *[Handwritten: 93 Victoria Road]*

Capacity: *[Handwritten: SA PS]*



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