



EXHIBIT QQ (d)

**ADDITIONAL
INFORMATION**

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SUBMISSION TO THE JUDICIAL COMMISSION OF ENQUIRY INTO
STATE CAPTURE
EVIDENCE PREPARATION

Notes on evidence before the Judicial Commission of Enquiry into State Capture (**the Commission**) on 18 November 2019.

Key message on international dimension

Para 5, 6, 8,9, 19, 28, 38

States para 30 – source of shame para 40 –

Ultimate Beneficial Owners (UBO) / Shell companies / Front Companies

- **Shell companies** can also be described as front companies. Essentially, these companies are used to hide/obfuscate who the ultimate owners of the companies' assets are.
- For example, the shareholder of a UK company might be a company that is registered in the Cayman Islands. The shareholder of the Cayman company might be a BVI company, that is then held by another company registered in the BVI, Cyprus or Vanuatu, whose sole director is then found to be deceased. This exemplifies the lengths that some beneficial owners will go to in order to hide their interest.
- Therefore, understanding who sits at the top of a structure / "family tree" of companies may be difficult and time consuming to determine.
- Further, the information held by **company registries as to ownership of a company may not be accurate**. For example, in 2018 UK authorities successfully prosecuted an individual who had been

forming companies and making MPs directors and shareholders of said companies, without their knowledge.¹

- It has been widely documented in the press that the **Guptas used shell companies** across Dubai, Hong Kong, and beyond in order to hide and move their assets.
- This obfuscation of ownership is **assisted by professional enablers** (e.g. lawyers, accountants etc.) who are paid by the owner to create complex company structures in this way (often a legitimate reason is given to the professional enabler, such as lawful tax avoidance). Some professional enablers have "off the shelf" companies that they have previously incorporated and can simply be transferred in to a client's company structure for a fee.

UBO (Ultimate Beneficial Owner) register para 44

- A UBO register would be an incredibly helpful step towards transparency, as it would ensure transparency around ownership in relation to government contracts. It would also assist in determining whether a company or its owners have the appropriate experience to carry out a project. The Commission need look no further than the Estina Dairy Farm to see that the **ultimate owners** behind that project, the Guptas, had **no dairy farm experience and were plainly inappropriate** for the project.
- Up until such a register is created, I recommend that the Commission and the SA government adopts **a policy that it will not engage with companies that are unable or unwilling to demonstrate who their UBO is**. If companies have nothing to hide, then they will have nothing to fear in this regard.

Unexplained Wealth Orders (UWO)

- Unexplained wealth orders are an asset recovery tool that can be sought through the court. **UWO's have allowed the NCA in the UK to seize assets** if the owner cannot prove that they were purchased legitimately (rather than the regulator having to prove that the owner purchased the assets illegitimately) In the context of Sahara Computers, where court files have recently shown that 98 percent of

¹ Kevin Brewer made Vince Cable MP a director and shareholder of a company without his knowledge (and did the same to various others other people). <https://www.gov.uk/government/news/uks-first-ever-successful-prosecution-for-false-company-information>

Sahara's profits came from payments made by a bogus IT company², a UWO would have been a powerful tool in seizing assets that could plainly not have been purchased as a result the company's legitimate activities.

Banks

- **Digital footprint para 41**
- **Reserve Bank audits Para 45**

Information Sharing Point JMLIT

- Various institutions and bodies are **frequently in possession of different parts of the puzzle** (i.e. have different information regarding individuals and companies). If they **pooled their knowledge** where they have suspicions, they would have the full picture. Without a mechanism, like **the JMLIT**, which permits sharing information of this nature, institutions are unable to do so and criminals are able to exploit the resulting information gaps. **Para 55**
- **SA should establish a comparable body – para 46, 55**

Joint Money Laundering Steering Group (JMLSG)

- Set up within South Africa in the next 12 months **para 53**

Corporates

- The implementation of an **EITI equivalent in the state-procurement sector (paras 62-64)** would enable greater transparency around the awarding of government contracts (e.g. the UBOs, the agreed price of licences, signature bonuses, deliverable targets etc.).

² <https://www.fin24.com/Companies/the-barren-sahara-a-lesson-in-money-laundering-20190905>

BEE (paras 66-68, also 25, 26, 27, 29)

FATF Financial Action Task Force paras 76, 77

- FATF (Financial Action Task Force) membership alone is not enough; states need to enforce the recommendations of the FAFT. This should be embraced, particularly by states that lack the expertise and infrastructure themselves to carry out such a review. This point should be of particular interest to South African regulators, given the FATF is currently in South Africa conducting an evaluation of its anti-money laundering practices.

MLAT (Mutual Legal Assistance Treaties) para 80, 81, 84

- In order to prevent criminals from escaping justice by relocating themselves and their assets to other jurisdictions, states must work together to ensure criminals are held to account, wherever they are in the world.
- Paragraph 84 of report succinctly describes the key point in this regard concerning the Guptas - *"For example, whilst the extradition agreement and MLAT between South Africa and the United Arab Emirates is a positive step forward in bringing those responsible for the state's capture to justice, it has taken eight years of negotiations and the Guptas have yet to be extradited and are currently free to spend their billions, reducing any amount that will later be returned to South Africa. Why not? In my view, either the government under the Ruler of Dubai, Sheikh Mohammed bin Rashid Al Maktoum, is wilfully sheltering a family that has looted astronomical amounts from South African taxpayers, or the South African authorities do not have the capability/political will to insist that the Guptas are arrested and returned to South Africa to face trial."*

Zondo follow-up

- Actions needed quickly – fast changing environment with new digital methods – crooks wise-up
- What will be the follow through?
- Should there be a levy on global corporates?

Asset recovery

- My concern is that the SA Government is not pursuing asset recovery, and although they may not themselves have the resources to take on this task, they do not appear to be pursuing other means of doing so.
- It has been done by the Nigerian government, though its civil action in the English courts against Shell, ENI and JP Morgan expected to recover \$1.2 billion Why not in SA?

Sanctions

- Why are the UK not replicating USA sanctions against the Guptas?
- Why not India, Dubai, Hong Kong? Have SA Government asked for this?



Financial Action Task Force (FATF)

- **Who:** Inter-governmental body, with 37 member countries and 2 regional organisations (Link to list of members [here](#))
- **Focus:** Combatting money laundering, terrorist financing and other related threats to the international financial system.
- **What it does:**
 - o A "policy making body" which aims to bring about national legislative and regulatory reforms in the above areas.
 - o It has developed the FATF Recommendations, which are the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction.
- FATF conducts independent country reviews providing public recommendations and criticisms - often leading to change/pressure for change.

Source: <https://www.fatf-gafi.org/about/whoweare/>

Joint Money Laundering Steering Group (JMLSG)

- **Who:** Consists of the leading UK Trade Associations in the Financial Services Industry, including:
 - o Association of British Insurers
 - o Association of Foreign Banks
 - o UK Finance
 - o Link to full list of members [here](#)
- **Focus:** To spread good practice in banks in countering money laundering and to give practical assistance in interpreting the UK Money Laundering Regulations
- **What it does:**
 - o Publishes industry guidance and regularly reviews the guidance to make changes and additions as required
 - o Provide regular updates on the various Money Laundering Regulations in force.

Source: <http://www.jmlsg.org.uk/what-is-jmlsg>

Joint Money Laundering Intelligence Taskforce (JMLIT)

- **Who:** Partnership between law enforcement, the government and the financial sector, including
 - o The Financial Conduct Authority
 - o The National Crime Agency
 - o CIFAS
 - o Over 40 financial institutions (JP Morgan, RBS, HSBC etc)
- **Focus:** To share public/private information relating to money laundering and wider economic threats
- **What it does:**
 - o Allows banks to work with law enforcement to detect money laundering threats by Sharing confidential information between banks and between the banks and regulators

- o Improves financial institution's prioritisation of risks, and strengthening bank systems and controls
- o law enforcement can help Establish a comprehensive understanding of a case they are investigating because they can join the dots between money laundering or money laundering attempts at different banks

Source: <https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre>



Derick de Beer

From: Paul P. Pretorius
Sent: 18 November 2019 07:20
To: Derick de Beer
Subject: Fwd: Passporting and non extradition please print for me

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----- Forwarded message -----

From: "Peter Hain" <peter@peterhain.org>
Date: Sun, Nov 17, 2019 at 9:35 PM +0200
Subject: Passporting and non extradition please print for me
To: "Paul P. Pretorius" <PaulP@commissionsc.org.za>
Cc: "Mabongi M. Masilo" <MabongiM@commissionsc.org.za>

Passporting

Within Banks and Professional Enablers

51. Banks and professional enablers must consolidate data across their organisations (i.e. information should be shared across different product departments and geographical areas). This will help prevent 'passporting', whereby criminals gain access to a financial institution's multinational network through a less regulated jurisdiction or product area. Banks and professional enablers should not be allowed to claim ignorance of the activities of branches placed in jurisdictions in a bank's multinational operations where anti-money laundering policies and procedures are not as rigorous, or where there are opaque banking and corporate structures. Criminals need banking services to move, hide and invest their stolen gains. Many of the services they need are complicated and best provided through a large or global bank eg opening up of off-shore trust accounts.

The best way of accessing such services is not to go directly to the HQ of the bank - as their anti-money laundering checks may now be quite good. Rather a criminal will open up a basic account in a part of the bank that has not effectively implemented AML checks (eg a high risk country with poor infrastructure) and use that account as a passport to accessing much more complex banking arrangements.

Because banking HQ can say it has Relied on its subsidiary to perform AML checks, and keep them up to date, if anything goes wrong they simply blame the local branch of the bank. That is not ok - the only way to make global banking work is for banks to control internal passporting and share best practice and information much more freely internally and also with other banks and regulators. Criminals are clever and banks need to be much cleverer still.

Extradition free

There are very few is any countries with absolutely no extradition treaties but it quite common for some countries to rarely if ever extradite their own nationals eg France and Russia. There are also many many countries with whom SA has not current extradition treaties (see attached) and where SA has to proceed using an ad hoc (and non-enforceable) request. These are slow and can allow plenty of time for a criminal to either flee again or evade justice for many years.

