**NATIONAL ASSEMBLY**
**QUESTION FOR WRITTEN REPLY**
**QUESTION NUMBER: 1664 [NW1876E]**
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**1664**. **Mr D J Maynier (DA) to ask the Minister of Finance:**

(1) Whether, in light of his interview on PowerFM on 26 June 2016, he and/or any other person from the National Treasury has met with representatives of Oakbay Investments (Pty) Ltd; if not, why not; if so, (a) what is the name(s) of the person(s) who represented the specified company, (b) who requested each such meeting, (c) what was the purpose of each meeting and (d)(i) when and (ii) where did each meeting take place;

(2) whether each meeting reached any resolution and established a channel for communication with the specified company; if not, why not; if so, what are the relevant details;

(3) whether he will make a statement on any such meeting that took place?

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**REPLY:**

(1) Yes, I as Minister of Finance met with the CEO of Oakbay Investments (Pty) Ltd, (hereafter referred to as 'Oakbay'), Mr Nazeem Howa on 24 May 2016. The meeting was at the request of Mr Howa in letters to me dated 8 and 17 April 2016. I am not aware of any other dedicated meetings between any person from the National Treasury and Oakbay. I will therefore only deal with the meeting with Mr Howa held on 24 May 2016.

I will not deal with the matter raised in the public statement made on 16 March 2016 by the Deputy Minister of Finance, Mr Mcebisi Jonas, detailing how he was approached by a shareholder of Oakbay who offered him the position of Minister of Finance to replace the then – Minister Nene.

(a) Mr Howa was accompanied by a member of Oakbay's finance department (name not known) who presumably reports to him. The Director-General (Mr Lungisa Fuzile) and three other officials, including the Treasury Legal Counsel, formed part of the Treasury delegation.

(b) The meeting was at the request of the CEO of Oakbay, Mr Nazeem Howa, who wrote to me on 8 and 17 April 2016 to request a meeting with him.

(c) The purpose of the meeting was to discuss Oakbay's request that the Minister of Finance intervene in its dispute with a number of banks so as to avoid possible job losses that

may arise as a result of the closure bank accounts held by Oakbay and its associated companies.

(d) (i) As stated above, the meeting took place on 24 May 2016.
(ii) The meeting took place at the National Treasury head office at 40 Church Square, Pretoria.

(2) The only purpose of the meeting was to hear the view of Oakbay on the closure of its accounts. The only decision out of this meeting was for Oakbay to provide the Treasury with any relevant information to support its allegations and to continue to engage in good faith.

I did take the opportunity to point out the legal framework operating for banks, and made the following points to Mr Howa:

(a) The banking sector is highly regulated, and any failure of our banks to comply with international regulatory standards could have devastating effects on the banking system, financial stability and the economy as a whole. Banks are subject to tough and intrusive international standards such as Basel III, 2003 United Nations Convention Against Corruption and anti-money laundering obligations. I attach the aide-memoire that I provided to Oakbay after our meeting, to explain the regulatory framework that applies to banks in South Africa (**Annexure A**).

(b) The Annexure explains that besides anti-money laundering and prudential objectives to make the financial sector more secure and resilient (following the 2008 Global Financial Crisis), banks are also expected to comply with market conduct standards, including treating customers fairly, financial inclusion and access objectives. The Memoire also references past cabinet decisions including Twin Peak reforms (Financial Sector Regulation Bill) approved by Cabinet and currently before Parliament for its consideration.

(c) There are legislative and regulatory impediments to any registered bank discussing client-related matters with the Minister of Finance or any third party. The Minister of Finance does not have the power to intervene in a bank-client relationship (and I pointed out that I am advised by legal opinion in this respect). The bank-client relationship imposes a duty on the bank to honour the confidentiality of the client.

(d) Oakbay (unlike banks) is free to provide to the Minister any reasons or information it has received from any bank when closing their accounts. Mr Howa stated that no bank had provided any reasons to Oakbay for the closure of their accounts. I requested copies of the letters from the banks to Oakbay from Mr Howa to verify whether reasons were provided or not, and to allow myself to take appropriate steps based on full and complete available information.

(e) I pointed out that the best, and only, course of action for any corporate client would be for the company to approach a competent court to seek the reasons for the closure of their accounts, and to establish its rights and to deal with any alleged transgressions of the law or of the Code of Banking Practice, which cover the process that banks have agreed to when closing accounts.

(f) I noted my concern for any loss of jobs at any time in our economy, be it at Oakbay, Exxaro or any other company;

(g) Oakbay agreed that attacks from individuals related to the company on the National Treasury were not helpful or in the national interest and should be avoided.

(h) Mr Howa also agreed to provide all the relevant information to my office, including the letters he received from banks when informing Oakbay of the closure of their accounts.

(3) My view that the only option available to Oakbay is to approach a competent court has subsequently been strengthened by what Mr Howa himself indicated on 19 June 2016 during an interview on Carte Blanche, where he confirms that one bank has in fact provided the following reason to Oakbay for the closure of its account:

*"….. South Africa's Companies Act, Regulation 43, Prevention of Organised Crime Act, Prevention and Combating of Corrupt Activities Act and the Financial Intelligence Centre Act, as well as the USA's Foreign Corrupt Practices Act and UK's Bribery Act, prevent us from having dealings with any person or entity who a reasonably diligent (and vigilant) person would suspect that such dealings could directly or indirectly make us a party to or accessory to contraventions of that law. "*

Mr Howa further indicated that the bank stated *"We have (conducted) enhance[d] due diligence of Oakbay entities and as required by the FICA and have concluded that continuing with any bank-customer relationship with them would increase our risk of exposure to contravention of the mentioned law to an unacceptable level."*

The reasons quoted by Mr Howa above are very serious, and it is in the interest of Oakbay that it goes to court if it has nothing to hide to correct any misperceptions that any bank may have about it, and to ensure it is being treated fairly. It should be borne in mind that the 2003 UN Convention Against Corruption requires banks in member countries like South Africa to take *preventive* action against corruption and money laundering, with the onus on all individuals and companies to explain any transactions that their banks may regard as suspicious.

Despite our agreement with Mr Howa to provide all relevant information and to continue to engage in good faith, Mr Howa has to date not provided me with the letter that he has quoted from.

So despite an exchange of further correspondence with Oakbay, it remains my view that I am unable to assist Oakbay in any way. I am advised that to do so would be legally impermissible. The best course of action would be for the company to approach a competent court so that it can establish the rights which it contends it has, rather than via a political or public media campaign. This will also allow banks to provide any reasons without transgressing their confidentiality obligations.