THE AUDITORS

Corporations and Economic Crime Report
(Volume 2)

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As the world stumbles from one crisis to the next, its economy precarious and its core financial markets inadequately reformed, it won’t be the accountants who pay the price of their failure to hold capitalism to account. It will once again be the millions who lose their jobs and their livelihoods.
INTRODUCTION

South Africa remains the most stubbornly unequal society in the world. It is, in fact, the only country where the inequality between its richest and poorest citizens mirrors the global inequality between the richest and poorest countries. This reflects domestic and global economic systems that favour the wealthy and powerful, enabling them to escape accountability and the rules that bind the rest of us.

While the reasons for the chasm between the 1% and the poor are many, the crucial factor is a globalised economy, built and maintained by mega-corporations, that entrenches the privilege of the rich. Under a mantle of “confidentiality” and “tax planning”, corporations and the super-wealthy contract financial-services firms to help them avoid paying taxes on their income as the rest of us do. The same contracts are often used to shift and hide the proceeds of grand corruption and corporate fraud – again enabling the theft of resources from people and states across the globe. In the words of economist Thomas Piketty: ‘Financial opacity is one of the key drivers of rising global inequality’. 

INEQUALITY

Between 2011 and 2015, the real income of the bottom 10% of South African earners fell by 25%, while the earnings of the top 1% went up by 48%. Wealth inequality is even starker, with the wealthiest 3500 South Africans owning more than the poorest 32 million. Inequalities of income, wealth and opportunity also remain deeply gendered and racialised. Between 2017 and 2018, the billionaires of the world increased their wealth by around $2.5 billion (R35 billion) per day. While these individuals can choose whether to place (or shield) their wealth in art, property, or luxury yachts, more than 2 billion people around the world suffer from malnutrition.
There are perhaps no more important cogs in this system than the Big Four accounting firms. KPMG, PwC, Deloitte, and Ernst & Young (EY) are corporate giants that employ around one million people in roughly 3,000 global offices, including numerous satellite offices in tax havens. The Big Four posted combined revenue of $134 billion in 2017. While the economic impact of Covid-19 will impact them like much of the private sector, they are cushioned by years of sustained and avaricious profit-taking.

While the Big Four are known by most people as auditing firms, the largest source of their revenue is actually consulting services. In practice, this means that their big money-spinner is providing advice to multinationals on how to set themselves up in secrecy jurisdictions to avoid tax and transparency requirements they might not like. At times, they also advise governments on how to police the multinationals that avoid tax, without a hint of concern for conflicting interests.

They are particularly good at giving this advice because they are embedded in most of the bodies that make the tax laws in the first place. An investigation in Europe found that, despite the extensive evidence of the Big Four being central to facilitating and profiting from corporate tax-avoidance strategies, they continue to be treated in policy-making circles as neutral and legitimate partners. Never mind the revolving door of professionals moving between the Big Four and state regulators and tax authorities.

There is also evidence that, while the Big Four increasingly make their cash from their consulting work, their ability (or desire) to provide accurate auditing services is in decline. We will consider some of the most significant examples of corporate fraud in South Africa, from Steinhoff to the VBS Bank and a range of Gupta-linked companies: in each instance, the audit firms consistently shrugged their shoulders and said that it is not their job to identify fraud. In reality, the firms happily accepted millions in fees to sign off financial statements with glaring irregularities. They are, in many instances, part of the underlying problem.

It is for all these reasons that this volume of the CECR focuses on the Big Four. While they appear prominently at the scene of many illicit schemes in the private and public sectors, these firms largely escape scrutiny and accountability for their actions. This report flips this script and places them at the centre of these stories.
In each case, the report studies the role of one or more of the Big Four firms, the human cost of the scandal, and the extent to which there has been accountability for the wrongdoing involved.

The report concludes by exploring why the current system fails to provide accountability for these mega-firms and their leaders, as well as making recommendations for the reforms required to change this.

The CECR series draws from research previously undertaken by Open Secrets, including its investigative report *The Enablers*, which examined the role of bankers, lawyers, accountants, and consultants in enabling state capture. Co-authored with Shadow World Investigations, *The Enablers* was submitted to the Zondo Commission of Inquiry in February 2020.

This volume of CECR also relies on the brave work of other activists, researchers, and investigative journalists who have consistently exposed corporate criminality and its human cost. Given the absence of accountability for the most powerful corporations and their executives, this report is intended to support a call to action. It demands equality before the law – and that those with the most power in our society be the focus of far greater scrutiny than is currently the case.
THE BIG FOUR: A CARTEL AT THE HELM OF THE GLOBAL ECONOMY

EXTREME CONCENTRATION

Of the 500 companies on the 2017 S&P 500 index, 497 used the auditing and consulting services of one of the Big Four. That amounted to 99.4% of the market share of the top 500 publicly-traded companies on the New York Stock Exchange and NASDAQ.¹ They hold a similar monopoly on the London Stock Exchange: in 2018, all top 100 companies on the FTSE were audited by one of the Big Four.²

There are several important reasons for this concentration in the industry. For one, the Big Four have the capacity to audit state institutions and large multinational corporations. Moreover, because auditing is a legal requirement almost everywhere in the world, the Big Four operate as a sort of ‘state-guaranteed cartel’.³

Many large corporations also enjoy a cosy long-running relationship with their audit firms. They might not change audit firms over decades – and sometimes more than a century – leaving new firms the nearly impossible task of finding substantial work. There is also a revolving door between auditors and their clients.

In 2016, in South Africa, 25% of the JSE’s top 40 companies appointed individuals who were previously employed by their external auditors as chairperson of their audit committees.⁴
KPMG, EY, PwC and Deloitte also do an increasing amount of consulting work for the corporations they audit, as well as for governments. They advise on anything ranging from organisational restructuring to taxation, nuclear energy, and military spending. They are also regularly seconded into the institutions they consult for. Though this has resulted in multiple conflicts of interest, their role as “independent appraisers” makes them appear indispensable.

This insider influence has led some to describe the Big Four as ‘quasi-cartels capable of influencing the paths of entire countries through their intimate connections to the centres of power and decision-making’. Professional bodies and charters of accountants, and the appearance of regulation, grant the profession a veneer of legitimacy.

Nevertheless, this legitimacy is under siege, given the mounting scandals linked to the Big Four. To understand this growing crisis of confidence, it is important to understand the genesis of the Big Four, their chequered past, and how they are likely to help shape the future for billions of people.

**EVOLUTION OF THE BIG FOUR’S MANDATE**

Perhaps the first big turn in accountancy was the evolution from humble “bean-counters” to the facilitation of global industrialisation and international trade. These accountants would spread double-entry bookkeeping as an essential component of capital. The impetus behind the establishment of the first accounting firms was the first industrial revolution in the 19th century, which created the need for manufacturers to develop company valuations to sell stock and create a financial market.

However, modern accounting and auditing also developed as a means to guard against corporate malfeasance and fraud. Accountants took on the role of independent auditors after widespread fraud and “creative accounting” caused the creation and collapse of Britain’s railway mania in 1849. William Welch Deloitte, to whom the present-day Deloitte traces its origins, was the independent accountant called in to audit Britain’s Great Western Railway. Several accounting firms emerged at this time, particularly in the City of London, in a so-called ‘golden era of accountancy’.

These firms’ accounting methods were then transmitted throughout the British empire. In 1880, Queen Victoria issued the first Royal Charter for Accountants. In 1894, South Africa acquired its own charter and the South African Institute of Chartered Accountants (SAICA) was established in Johannesburg. This process was part and parcel of colonisation and served to subject Britain’s colonies to British laws in order...
to protect their economic interests. Accountants thus ‘directly helped the process of accumulation of capital in favour of the capitalist interest in colonial societies.’

Accounting firms have always been central to accumulation strategies of the powerful. In the modern financialised economy, they have become even more important. As they increasingly took on additional functions, particularly as consultancies, they have moved further and further away from the mandate of deterring malfeasance.

After a period of state-led economic policy following World War II, characterised by high tax rates, government spending, and regulation, the 1980s saw a resurgence of free-market ideologues led by Margaret Thatcher and Ronald Reagan. Their policies at home rapidly slashed corporate taxes and regulations. These ideas were also proliferated throughout the global South by the policies of the IMF and the World Bank, opening up markets for Western corporations to profiteer, often at the expense of public services.

These radical free-market ideas, coupled with new technology and the ease of moving money, prompted the rapid financialisation of the global economy.

In a financialised world, accountants are indispensable. They provide consulting services, including tax advice, financial risk management, and financial management advice, amongst other things. They act as both monitors and spurs of the financialised global economy.

**AUDITORS**

The Big Four are primarily known for providing auditing services. South Africa’s Independent Regulatory Board for Auditors (IRBA), separates auditor’s services into three categories:

- **internal audit services.** Internal auditors work in-house. They develop risk and compliance services, and review and monitor internal financial controls and policies. Internal audit services may or may not be outsourced to a Big Four firm.

- **external audit services.** External auditors are brought in from outside, and are responsible for reviewing a company’s financial statements; providing assurance services, such as ‘regulatory reporting, sustainability, compliance and performance reporting’, and signing off whether the financial statements fairly reflect the financial reality of the company.

- **forensic audit services.** These services are procured when an audit is deemed unsatisfactory, often on the suspicion of malfeasance of some sort. The main role of forensic auditors is to investigate irregularities and alleged fraud, and to consider whether audit systems have failed and if laws and regulations have been breached. Forensic audits often involve one member of the Big Four investigating the questionable work of another member.

In this way, external auditors are responsible for publicly declaring whether a company’s financial statements are legitimate. Investors and the public rely on these declarations to judge the state of a company and make investment decisions. The gravity of auditors’ failures in this duty is best illustrated by the losses experienced by investors – including pensioners and pension funds – in firms such as Steinhoff, where external auditors missed glaring inaccuracies in the financial statements.
The role of internal auditors requires equal scrutiny. Internal auditors are much closer to the management and governance systems of the company, and thus are better placed to spot fraud and weak internal controls. Yet there are essentially no legal requirements to ensure that internal auditors are held accountable. There may also be conflicts of interest where the firm providing internal audit services might avoid “rocking the boat” with a client who employs their other services and pays lucrative fees. Given that internal auditors are required to assess and develop the efficacy of internal governance and controls, their failure can have grave consequences, as will be discussed in the case study of SAA.

CONSULTANTS

The core business of the Big Four has increasingly moved to “professional services”. It is their role as consultants and tax advisors that has cemented their place in the global financial economy. These services may also include the establishment of secretive trusts to obscure the link between people and their assets, the setting up and selling of shell companies, and advice about secret jurisdictions and tax havens. Despite the obvious loopholes for malfeasance and tax evasion, such trusts and other offshore services are usually legal.

The latter half of the 20th century saw the rise of global “secrecy jurisdictions” – countries and cities that created legal frameworks for wealthy individuals and corporations to escape both taxes and the rule of law in their own countries. These secrecy jurisdictions have become havens not just for tax-dodging multinationals, but also for a global criminal elite of fraudsters and kleptocrats. In South Africa, we know too well that the proceeds of the crimes of state capture have long been siphoned through Dubai and Hong Kong on behalf of the Guptas’ enterprises by local branches of global banks.

According to the Tax Justice Network’s Financial Secrecy Index, between $21 trillion and $32 trillion of private financial wealth is located, untaxed or lightly taxed, in secrecy jurisdictions around the world. This drains resources from poor countries and channels it to wealthy ones. Foreign aid receipts are eclipsed by the resources lost to tax avoidance and grand corruption. This system that siphons money out of developing countries into the hands of private shareholders has been described as ‘colonisation by other means’.

Accountants are not unwitting participants in these dubious schemes. Research by the Financial Action Task Force (FATF) in 2018 found that accountants who were involved in setting up corporate vehicles to obscure beneficial ownership were most likely to be directly and knowingly complicit in the scheme to disguise ownership to obscure a crime. The study found that ‘accounting professionals represented the highest proportion of scheme designers and promoters in the case studies, and were more likely to promote their own scheme to prospective clients than to simply facilitate a scheme designed by their client.’
In every tax haven, the Big Four ‘are the constant feature… Without one of those firms or all of those firms being present, you really will not have a tax haven’. This reality is borne out by the implication of these firms in countless public scandals.
An instructive example is the $456 million (nearly R10 billion) fine imposed on KPMG in 2005 for “tax-shelter fraud”. Between 1996 and 2003, according to the United States Department of Justice, KPMG defrauded the US tax authority by designing, marketing and implementing illegal tax shelters. KPMG concocted transactions for wealthy individuals and filed false and fraudulent tax returns that claimed phoney tax losses. KPMG personnel also failed to register the shelters with the US tax authorities, as is required by law. According to the firm, this scheme generated at least $11 billion (over R200 billion) in fake tax losses.

A former KPMG partner admitted to the scheme and to senior partners’ knowledge of it, stating:

‘I wilfully aided and abetted the evasion of taxes... to help wealthy taxpayers significantly and illegally reduce their tax liability to the U.S. Internal Revenue Service so that they could keep the money for themselves instead of paying the taxes they owed, and also so that KPMG and other entities could earn significant fees ... [Schemes] were... designed and approved by senior partners and leaders at KPMG and other entities to allow wealthy taxpayers to claim phony losses on their tax returns through a series of complicated transactions.’

Despite this damning admission, KPMG received a deferred prosecution and paid a sum far smaller than the profits they made from the scheme. This slap-on-the-wrist approach to accountability for unlawful conduct by the Big Four is typical, and it entrenches a system of impunity.

It should, therefore, be no surprise that similar stories implicating other members of the Big Four are common. Ernst and Young (EY) paid $123 million to US regulators in 2013 after admitting that, between 1999 and 2004, its senior partners had been involved in developing, marketing and defending tax avoidance schemes to dodge taxes worth $2 billion.

Also in 2013, Action Aid revealed a confidential Deloitte document that encouraged investors to use Mauritius to escape taxes. The document, titled ‘Investing in Africa through Mauritius’, makes clear Deloitte’s plans to reduce the tax burden of its wealthy clients at the expense of African states, including reducing capital gains tax to zero.

In 2014, PricewaterhouseCoopers (PwC) was found to have negotiated over 500 deals with the tax authorities in Luxembourg, a notorious tax haven, on behalf of over 300 multinational companies. These secret deals allowed for loans to be directed to shelf companies that were specially set up by PwC in Luxembourg to allow the companies to pay tax at a rate below 1%.

These examples illustrate a culture of institutional behaviour that has normalised skirting the rules and placing profit above principle for the sake of consulting clients. Poor practices thrive when organisational incentives are incongruent with the public interest. This is one of the findings of the Auditing for Accountability report, based on a 2020 investigation by a group...
of European academics into the causes of audit failure in the United Kingdom. The authors note that the primary incentives for professionals in the industry prioritise firm performance (predominantly linked to consulting revenues) and maximise the related bonuses for partners.  

The Big Four

THE HUMAN COST

These tax avoidance schemes of the Big Four detrimentally impact both the poorest countries and those who live in poverty in wealthier nations. In both instances, the loss of tax revenue constrains state spending on social development and essential services, undermining elected governments and depriving people of jobs and access to services such as healthcare, education and pensions. Despite this, their work is cloaked in the language of legitimacy: ‘The language that is used offshore is very euphemistic, terms like “tax minimalisation”, “neutral taxation” … [I]t actually means “no tax”… [A]ll this language is used to make people feel comfortable. As though they are managing the environment and making choices that are legitimate and proper. Actually, they are trying to get around the law’.  

THE INDEPENDENCE CONUNDRUM

Putting aside for a moment the deleterious effects of the ‘consulting’ work described above, there is a further consequence of the growing importance and profitability of the advisory side of the Big Four’s business.

With consultancy now making up around two-thirds of their income, these firms have to strike a balance to avoid facing an “independence conundrum”. That is, the commercially lucrative consultancy services ought not to compromise the credibility of the auditing side of the firm. Unfortunately, evidence increasingly suggests that the Big Four have repeatedly failed to strike and maintain this balance.

A notable decline in the quality of audits performed by the Big Four illustrates the shift towards professional services. In 2019, the UK’s regulator, the Financial Reporting Council (FRC), reported that none of the Big Four had surpassed the 90% target that classifies audits as good quality. The quartet’s inability or reluctance to flag suspicious financial statements has resulted in job losses, the failure of several large corporations, and vast losses for pensioners and other investors. Deloitte’s conduct at Steinhoff and Tongaat Hulett, as discussed in the next section, are South African examples of a global phenomenon.

In some cases, audit failure has contributed to corporate implosion and global financial crises. In 2001, the collapse of US energy giant Enron revealed massive corporate fraud. Its auditor, Arthur Andersen, had become deeply embedded in Enron but failed to report the company’s overstated profits and money-laundering by executives. When US investigators started closing in on the vast fraud at Enron, Arthur Andersen’s senior audit partner on the project ordered the immediate destruction of physical and electronic documents. Enron filed for bankruptcy in 2001, costing employees and investors billions. Its insolvency was so complex that PwC’s administration of the firm only ended in 2015. For its part, Arthur Andersen was convicted in 2002 of obstruction of justice linked to the destruction of documents. This was overturned by the US Supreme Court on a technicality in 2005, but by then the one-time accounting heavyweight was defunct.
Despite what should have been a crucial learning curve for the auditing industry and their regulators, audit firms have continued in many instances to rubber-stamp inaccurate financial statements, aiming to please clients rather than preserve the interests of shareholders and, ultimately, of the economies in which the public and private companies they audit operate.

This was the case in 2008, when the Lehman Brothers investment bank declared bankruptcy. From 2001 until its collapse, Lehman Brothers employed EY as its independent external auditor. However, because the firm maintained a long-term relationship with the bank, EY also provided advisory services. During its tenure at Lehman, EY oversaw a process in which the bank began using “Repo 105”, an unorthodox financing transaction that allowed the bank to look like it was in better financial health than it really was. EY not only failed to disclose this to the board of Lehman but failed to flag impaired assets in its liquidity pool. EY also did not inform the bank’s audit committee of a crucial whistle-blower’s concerns about their finances.

Along with other financial institutions, Lehman was involved in the sub-prime mortgage scandal that precipitated the global financial crisis, as well as the repossession of the homes of millions of people who were swindled by the banks. Lehman’s collapse, which resulted in 25,000 jobs lost in the US and its international offices, was a key event in the economic downturn and the government’s eventual massive bailouts to prevent further bank failures. The financial contagion led to extensive job losses, an economic downturn, and enforced austerity across the globe. Lehman Brothers became a symbol of the interconnectedness of the global economy and the unbridled impact of mega-corporations on the livelihoods of ordinary people.

Neither EY nor Lehman has been sufficiently held to account for their conduct. EY settled one case, with the New York attorney-general, for $10 million, and another class-action suit brought by investors for $99 million. Despite these payments, EY has not admitted any wrongdoing and has not divulged the full extent of its advisory services for Lehman Brothers.

These examples provide insight into the devastating consequences of audit failure. In many instances, the failures were made by auditors who had become deeply embedded in their client’s firms and provided a range of non-audit services. We will return to the issue of splitting the auditing and consulting arms of these firms in the recommendations at the end of this report.

EY IMPLICATED IN ANOTHER SCANDAL

In April 2020, a UK court ordered EY to pay $11 million to Amjad Rihan, a former EY partner, after it found that Rihan was forced to resign after exposing money-laundering and compliance failures by EY client, Kaloti, the largest gold refinery in the United Arab Emirates. According to the judgement, ‘EY colluded with Dubai authorities to cover up the damaging findings that Kaloti Jewellery International was involved in laundering billions of dollars in cash’.
FAILURE BY ONE, BONANZA FOR ANOTHER

While the failure of an auditor to identify fraud and irregularities can have awful consequences for the public, it is an opportunity to cash in for those selected to clean up afterwards. **Indeed, there is perhaps no clearer evidence of the Big Four's monopoly than this recurring pattern in which one Big Four firm is brought in to pick up after another member of has made a “mistake” or been implicated in criminal activity – regardless of whether it has an identical track record.**

For example, and as discussed in the case studies below, PwC was contracted to undertake forensic investigations at both Steinhoff and Tongaat Hulett after Deloitte failed to report suspicious activities and fraud at both corporations. PwC earned millions in fees for this work. Yet, PwC itself has been implicated in nearly identical failures elsewhere. Notably, in 2007, PwC was fined $225 million for failing to flag an overstated profit of $5.8 billion at Tyco, the former security systems company. When it was brought to light, the fraud ultimately cost investors an estimated $10 billion.

On some rare occasions, none of the Big Four can be hired for the forensic investigation – because they are all implicated. In what is considered the biggest financial crime of the century, Danske Bank's Estonian branch was found to have laundered over €200 billion for corrupt and organised criminal groups, mostly from Eastern Europe.

In February 2019, allegations surfaced that Swedbank was implicated in the Danske scandal. It hired EY to investigate some of these allegations. Five days later, it had no choice but to fire EY when it emerged that the latter was under investigation for its own role in the Danske scandal. EY had allegedly failed to alert authorities to irregularities in Danske Bank's 2014 annual report. Swedbank would learn that it could not rely on the services of any of the other Big Four firms.

Between 2010 and 2014, Danske Bank itself had switched between Grant Thornton, PwC, KPMG, Deloitte and EY, ostensibly to ensure quality by rotating auditors. Not one of these firms identified or reported the extensive evidence of money laundering and suspicious transactions through Danske's Estonian branch. They all signed off unqualified audits. When challenged, many argued that their job is not to look for laundering. But regulators and financial experts responded that the Bank's extensive money-laundering systems resulted in the kind of massive profit margins and rapid transactions at small branches that should raise the suspicion of any competent professional auditor.

The systemic problems that define the auditing industry have been described here with global examples. South Africans have felt the consequences of such failures much closer to home. Each of the Big Four firms has been implicated in South Africa's most infamous economic crimes, from corporate fraud to the grand corruption that defined state capture. We turn to these case studies now.
THE AUDIT RAP SHEET

96% OF ALL COMPANIES LISTED ON THE JSE ARE AUDITED BY ONE OF THE BIG FOUR, WHICH HAVE BECOME SOME OF THE BIGGEST COMPANIES IN THE WORLD. YET THEY ARE ALL IMPLICATED IN SCANDALS IN SOUTH AFRICA AND AROUND THE WORLD.

• PwC acted as auditor and consultants for Sonangol, the Angolan government owned oil company which was used by Isabel dos Santos to secret away billions from the Angolan fiscus through a network of 400 shell companies.

• In 2014, PwC was found to have negotiated over 500 deals with tax authorities in Luxembourg which allowed companies to pay tax at a rate below 1%.

• In 2007, PwC was fined $225 million for failing to flag an overstated profit of $5.8 billion at US firm Tyco. This fraud ultimately cost investors an estimated $10 billion.

• PwC failed to identify major misstatements while the external auditors at SAA. PwC and its partner, Nkonki, earned R19 million for their work at SAA, but were only fined R200 000 for failing to disclose SAA’s non-compliance with legislation.

• In 2013, a Deloitte document was leaked. It encouraged investors to use Mauritius to escape taxes, as part of a package to reduce the tax burden of its wealthy clients at the expense of African states.

• Deloitte failed to report suspicious activities and fraud at both Steinhoff and Tongaat Hulett. The Steinhoff fraud resulted in an overnight loss of R120 billion, to the detriment of 948 pension funds. The Government Employees Pension Fund (GEPF) alone lost over R21 billion. Tongaat’s “accounting irregularities” meant that the company’s assets were overstated by R10 billion.

• Deloitte’s audit of African Bank failed spectacularly in 2014. Deloitte missed red flags in the overstated future cash flow predictions for the Bank and ignored the red flags raised in their own internal reports.

• Deloitte earned R207 million in fees for an Eskom tender based on an irregular contract. In March 2020, Deloitte agreed to pay back R150 million, which allowed them to keep over R57 million earned between April 2016 and September 2017.
Sometimes, all of the Big Four are implicated in a single scandal. Each of the Big Four acted as external auditors for Danske Bank at some point between 2010-2014. This was the period in which the bank was used to launder 200 billion euros for organised criminals and authoritarian governments in Eastern Europe. They all gave unqualified audits.

- EY paid $123 million to US regulators in 2013 after admitting that, between 1999 and 2004, its senior partners had been involved in developing, marketing and defending tax avoidance schemes to dodge taxes worth $2 billion.

- EY acted as auditors and consultants for Lehman Brothers and did not raise red flags over questionable accounting practices at the bank nor act on a whistle-blower’s report. The fraudulent practices led to Lehman’s collapse in 2008, viewed as one of major catalysts of the Great Recession.

- In April 2020, a UK court ordered EY to pay $11 million to Amjad Rihan, a former EY partner. Rihan was forced to resign after exposing money-laundering and compliance failures by EY client, Kaloti, the largest gold refinery in the United Arab Emirates.

- KPMG was fined $456 million (nearly R10 billion) in 2005 for “tax-shelter fraud”. Between 1996 and 2003, it concocted transactions for wealthy individuals and filed false and fraudulent tax returns that claimed phoney tax-breaks. The scheme cost the US fiscus $11 billion (over R200 billion).

- KPMG auditor, Sipho Malaba, failed to raise any red flags in VBS statements and provided a falsified regulatory audit opinion. VBS’s failure had catastrophic consequences for its poorest depositors, stokvels, and municipalities.

- In 2015, KPMG produced the erroneous and fictitious “rogue unit report” for SARS. This report was used to fire over 50 senior SARS officials and it was a contributory factor in diminishing SARS’ capacity.

- KPMG provided tax-advisory services to and audited Linkway Trading, a Gupta shell company. Linkway was used to launder money from the Estina Dairy Farm. KPMG earned R40 million rand for its work.
Every year for 20 years, Deloitte concluded that Steinhoff’s financial statements ‘fairly present, in all material respects, the financial position of the company’. Until 2017, they were apparently oblivious to the billion-rand hole in the company’s finances. When they finally did refuse to sign off the statements in November 2017, thereby precipitating exposure of the true extent of the rot at Steinhoff, it was too late.
“Accounting irregularities.” This phrase can cover all manner of sins. On 5 December 2017, the board of retail giant Steinhoff announced they had discovered “accounting irregularities requiring further investigation”. We now know that a subsequent PwC investigation uncovered sophisticated schemes perpetrated by former CEO Markus Jooste and his friends to grossly enrich themselves while defrauding the company and its shareholders, including nearly 1 000 pension funds. Steinhoff had misrepresented its financial position to investors and the public for years. At the announcement of the so-called “irregularities”, R120 billion in value disappeared overnight, as investors frantically sold their stock in the company. Millions of South African pensioners lost out.
The story of how Markus Jooste pulled off South Africa’s largest corporate fraud is deeply linked to the secretive offshore havens of the financial world. While the details are complex, the basic story is that Jooste was the beneficiary of deals between Steinhoff and numerous companies in which he had a hidden stake. In many cases, he had obtained his hidden stake in the company just before Steinhoff purchased it at a premium. In others, Steinhoff sold properties to companies linked to Jooste or his friends, and then overpaid to buy them back. For at least a decade, these “self-dealing” transactions made a fortune for Jooste and his friends, including members of the Steinhoff family. According to the book Steinheist, written by Financial Mail editor Rob Rose, ‘Insiders agreed the likely upshot was that the friends got rich and Steinhoff’s balance sheet was artificially inflated.’

Jooste was able to hide his interest in the companies involved because the corporate vehicles were set up and fronted in tax havens and secrecy jurisdictions like the British Virgin Islands (BVI). Jooste’s fixers even bought a shelf company in Bermuda from the notorious Panamanian law firm and corporate services provider Mossack Fonseca, which was exposed in the Panama Papers as being at the centre of secretive offshore finance. Because the ownership of these companies was secret, their dealings with Steinhoff would not be reported as being between “related parties”, as they should have been.

WHERE WERE THE AUDITORS?

A subsequent forensic investigation by PwC concluded that ‘a small group of Steinhoff Group former executives and other non-Steinhoff executives, led by a senior management executive, structured and implemented... fictitious and/or irregular transactions,’ and that these practices went back ‘at least a decade’ and helped ‘boost profit’ by over R100 billion. Steinhoff was described by investor Karin Richards as ‘in effect just a giant Ponzi scheme’. So how did the auditors not spot what was going on?

Steinhoff listed on the JSE in September 1998. From then on, Deloitte (at the time, Deloitte & Touche) was the company’s external auditor, signing off the annual financial accounts. Every year for 20 years, the Report of the Independent Auditors held Deloitte’s assurance that Steinhoff’s financial statements ‘fairly present, in all material respects, the financial position of the company’.

Until 2017, they were apparently oblivious to the billion-rand hole in the company’s finances. When they finally did refuse to sign off the statements in November 2017, thereby precipitating exposure of the true extent of the rot at Steinhoff, it was too late.
In its dramatic reconstruction of the week that Steinhoff’s board first discovered Jooste’s deception and the company collapsed, Rob Rose’s *Steinheist* captures some remarkable insights into Deloitte. For one, when Deloitte first told Steinhoff chairperson Christo Wiese that they suspected fraud and misrepresentations in the company accounts, Wiese immediately pointed out that most of the evidence had been available in the previous years’ accounts, on which they had signed off. Had they been wrong then? They could only admit they probably were. The Steinhoff board later found that both the 2015 and 2016 financial statements needed to be restated.

Secondly, Deloitte had demanded that Steinhoff institute a forensic investigation before it would sign off the accounts. Wiese summoned Markus Jooste to the meeting and, after an hour or so of smooth talking, Deloitte’s representatives were willing to withdraw their demand, subject to being given certain documents. Although they changed their minds a day later, the momentary willingness to back down – despite what must have been significant evidence of wrongdoing – is instructive. This window into the relationship between a company and its auditors reveals factors seen in countless examples of auditing failure. Deloitte was entrenched in a decades-long relationship with a corporate giant run by a small group of executives who were happy to settle deals with a handshake at the expense of effective governance and accountability. It only acted and refused to sign off financial statements when the evidence was overwhelming.

In 2018, Deloitte stated that, while they accepted the need for an investigation by the Independent Regulatory Board for Auditors (IRBA), they remained ‘confident in their conduct’ at Steinhoff. Deloitte defends itself on the basis of the questions they raised about the 2017 accounts. It should be noted that this only occurred after a criminal investigation related to possible fraud had commenced in Germany and other evidence of fraudulent transactions was overwhelming.

Another defence – one that the Big Four trot out every time they are caught in a crisis – is that they rely on the honesty of their corporate clients. If this is the case, it is hard to see what function an auditor plays: the public does not need an auditor to report what a CEO says about the company. The dilemma for firms like Deloitte is to admit either their complicity in corporate fraud and governance failure or that they were hoodwinked by the executives. Neither fills the public with confidence or explains why their work generates such extortionate fees.

Given what is now public knowledge, it is hard to accept that an alert external auditor, using the proper standard of professional scepticism and common sense, and with insight into all of Steinhoff’s accounts, should not have raised red flags earlier.
While investors and pensioners suffered huge financial losses in the Steinhoff debacle, it has been a bonanza for another member of the Big Four and a range of other consultants. In 2018, Steinhoff paid R2.4 billion in advisory fees alone, much of which went to ‘creditor advisers’. It paid another R1.3 billion in 2019, over 10% of which went to PwC for the forensic investigation and other accounting fees. Steinhoff expects these fees will continue.

Despite the PwC report, efforts to hold anyone to account – Jooste, other executives, or the auditors – have been slow. When Jooste eventually did appear before parliament in September 2018, he was evasive and refused to accept any responsibility or to answer questions about those who assisted in setting up his offshore network. He had clearly come ‘well prepared to obfuscate and deflect blame from himself’.

South Africans are increasingly frustrated with the ability of corporate titans like Jooste to avoid accountability. One crucial factor is the manner in which the state institutions tasked with accountability for economic and financial crimes have been gutted by interference by political and corporate elites in recent years. The obstruction of political will and technical capacity in the police service’s Directorate for Priority Crime Investigation (the Hawks) is just one example. Such institutional weakness is a windfall for former Steinhoff executives and other corporate crooks.

It has been confirmed that the IRBA is investigating Deloitte’s conduct at Steinhoff, although the investigation was paused pending the restatement of the financial reports. However, the sanctions imposed by the IRBA are notoriously light compared to the cost of the errors. It is also very rare for the audit firm, as opposed to the individual auditor, to face any hard accountability.

Steinhoff’s European investors may well be the first to demand that Deloitte account for what happened at Steinhoff. VEB, a Dutch shareholders association, has filed a lawsuit against Deloitte in a court in the Netherlands. They are claiming damages from Deloitte, alleging that the auditor ‘seriously failed in its statutory task’ by signing off the financial statements prior to 2017.

TONGAAT HULETT: DÉJÀ VU

In 2019, as Deloitte was facing tough questions about its work at Steinhoff and African Bank, a third corporate scandal broke. It was eerily similar to the Steinhoff story, and not just because Deloitte was the auditor.

The South African sugar company Tongaat Hulett is a corporate giant. More than 120 years old, it employs 40,000 people in six countries in southern Africa. In March 2019, it announced it was reviewing financial statements because it had identified – yes, you guessed it – “irregularities”. By June, the share price had

AFRICAN BANK

Deloitte also faces allegations of wrongdoing in an IRBA investigation related to its auditing of African Bank, which failed spectacularly in 2014. The IRBA claims that Deloitte auditors not only missed red flags in the financial statements that massively overstated future cash flow predictions for the Bank, they also ignored the red flags raised in their own internal reports. At this writing, the IRBA’s disciplinary matter against two Deloitte partners is still proceeding and Deloitte is vigorously fighting the case.
fallen over 80% and Tongaat suspended trading on the JSE as it became clear that the financial statements were inaccurate and would have to be restated. Several executives, including the CEO of fifteen years, Peter Straude, have left the company and Tongaat has announced it will pursue both civil and criminal action against many of them.\(^{27}\)

This was announced on the back of a forensic report, again commissioned from PwC. The investigation revealed that, as with Steinhoff, executives made numerous incorrect and likely fraudulent misrepresentations in the financial statements. This included misstating the value of assets; incorrectly listing expenses as assets; declaring income from the sale of land that had not yet been sold, and then, when some of those deals fell through, failing to declare that.\(^{28}\) All of these misrepresented the amount of profit being earned. Again, it was a catastrophic failure of corporate governance.

PwC described all of this conduct under the nebulous and inappropriate phrase ‘undesirable accounting practices’.\(^{29}\)

In December 2019, Tongaat confirmed that these ‘undesirable’ practices led to the 2018 financial statements being wrong to the tune of nearly R12 billion and that the company’s assets were overstated by R10 billion.\(^{30}\)

As with Steinhoff, and as is common across the globe, Tongaat had used the same auditors for a long time. In this case, Deloitte had provided its services to the company for more than 15 years. Since the story broke, Deloitte has replaced all the auditors who worked on Tongaat’s financial reports, including a senior partner. Yet the firm is still quick to defend their work, saying that, ‘at this stage, we have no reason to believe that any current or previous Deloitte partner or staff member may have acted outside of professional standards’.\(^{32}\) Again, they do not explain how acting within professional standards could miss such extreme misrepresentations in financial statements.

The IRBA is also investigating Deloitte’s conduct at Tongaat. This make’s the decision of IRBA’s board at the end of April 2020 to appoint Jenitha John as the new CEO all the more concerning. John was the non-executive director who headed Tongaat’s audit committee for nine years up to May 2019, precisely the period when Tongaat’s accounts were a fiction and investors were lied to.\(^{34}\) The conflicts of interest are serious. John must now lead an organisation tasked with investigating the Deloitte auditors that reported to her as head of the audit committee. It also remains possible that SAICA (the South African Institute of Chartered Accountants) will investigate John for her role in during this period.\(^{35}\) While Finance Minister Tito Mboweni has announced that he will review the process that led to John’s appointment, John took up the position on 1 June 2020.
“I don’t sleep – I’m constantly thinking about my lost money and worrying about the future. I feel like I could just die because of the pain I’m feeling right now. I’m heartbroken.”

Tshinyalani Mudau
59-year old breadwinner who may never recover R500,000 saved over 25 years that she lost to the VBS heist.
VBS: AUDIT FAILURES ENABLE A BANK HEIST

LOOTED UNTIL THERE WAS NOTHING LEFT

VBS was also a case study in *The Bankers*, the first volume of CECR, published in 2018. Grand corruption and crime are often enabled by bankers, lawyers and accountants, but VBS was a case of banking executives themselves looting the bank. And not just creaming some money off the top, either – the entire bank was essentially stolen. Now that we know the full extent of what some have termed an ‘industrial-scale looting exercise’, a crucial question lingers: how did the professional internal and external auditors not spot conspicuous irregularities in the financial statements?

VBS was set up as a building society in 1982 in what was, under apartheid, the Venda Bantustan and became a mutual bank in 1992. By the time of its implosion, it served tens of thousands of depositors in Limpopo province, including many poor and working-class people. It was placed under curatorship as a result of a liquidity crisis in March 2018, but some hoped the bank could still be saved. By November, these hopes were dashed and the final liquidation order was granted by the High Court.

The bank could not be saved because it had been looted into insolvency. An independent report, commissioned by the South African Reserve Bank and authored by senior advocate Terry Motau, found that 53 individuals and other entities had benefited from VBS money to the tune of just under R2 billion.
In November 2019, the bank’s liquidator announced that R800 million more than initially thought was stolen – making the total as much as R2.7 billion. The deposits of everyday South Africans had been looted by bank executives to pay for luxury cars, multiple properties and various personal vanity projects.

Stolen cash was also used to bribe those who were responsible for oversight to look the other way. Two officials of the Public Investment Corporation (PIC), Ernest Nesane and Paul Magula, were placed at VBS as non-executive directors for the specific task of guarding the PIC’s investment at the bank. Instead, the two accepted nearly R30 million in cash and loans in exchange for their silence.

In order to plug the holes left by the looting, cash-strapped municipal officials also received “inducements” to unlawfully place municipal deposits with VBS. These municipalities – themselves in desperate need of funds for the provision of key services to their residents and to pay their staff – lost around R1.6 billion. Former Chief Financial Officer at VBS, Philip Truter, is also alleged to have generated fictitious deposits in the bank’s IT system while the real deposits were being siphoned out. Between 2015 and 2018, Truter received at least R5.8 million in cash, bonds and vehicle finance from VBS bank.

BRAVE CFO DOES RIGHT
Mariette Venter was the acting chief financial officer of the Capricorn Municipality in Limpopo. Taking a stand against suspicious and unlawful conduct, she forced VBS to return the municipality’s funds, despite being subjected to bullying by the mayor, amongst others, and was afterwards unfairly suspended. But Capricorn, unlike many Limpopo municipalities, was not financially crippled when VBS failed. Venter told journalists:

“As a chartered accountant, you get one chance. One chance to do the right thing. Once you have thrown that away, it is gone.”

STOLEN FUTURES, SLEEPLESS NIGHTS
In early 2019, former VBS chairperson Tshifhiwa Matodzi was allegedly trying to hide his Ferrari from liquidators and to stop them selling his R7 million mansion. They had already secured and were planning to sell at least four other luxury vehicles Matodzi owned. It is little surprise he was sitting on so many luxury assets: Motau’s report alleges that Matodzi was the number one beneficiary from the looting of VBS – taking R325 million.

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At the same time, Tshinyalani Mudau was having sleepless nights for very different reasons. The 59-year-old breadwinner lives in Tshulungoma, a small village in Limpopo. She told journalists,

“I don’t sleep – I’m constantly thinking about my lost money and worrying about the future. I feel like I could just die because of the pain I’m feeling right now. I’m heartbroken.”
Mudau opened a savings account with VBS in 1993. Working as a machine operator, she saved R600,000 in 25 years. She planned to use it for her children's university fees and to complete renovations on her house. She has only been able to recover R100,000, and does not know if she will ever get the balance of her savings returned to her.

This is the situation of many VBS depositors. The assets of five executives have since been sequestrated to recoup some of the stolen funds, but there have been no prosecutions to date. The government provided relief to the most vulnerable by guaranteeing the first R100,000 for individual and small retail depositors. However, this was not only a further burden on the strained fiscus; it also meant that these victims of the VBS looting were compensated with taxpayers' money.

In addition, more than 300 of the retail depositors with balances above the R100,000 ceiling were small savings clubs, burial societies and stokvels, whose members rely on them for a range of expenses and may have urgent need to access their money. Now they must wait with all the bank's other creditors for the recovery process to conclude, and the Reserve Bank has confirmed it is uncertain as to whether and how much they will ever receive.

KPMG AND PWC: WHERE WERE THE AUDITORS?

The primary beneficiaries of the looting of VBS were its executives and their friends, including politicians. However, as noted by many financial commentators, this was an unsophisticated heist. Not only was money looted straight out of the bank's cash reserves, but payments were made to obviously related parties without the necessary reporting. This required VBS to publish fraudulent misrepresentations in their 2017 annual statements and their monthly regulatory reports to the Registrar of Banks.

The annual financial statements were signed off as an accurate representation by KPMG. At the time, in 2018, KPMG was reeling from the avalanche of evidence showing that it had not only failed to report irregularities at Gupta firms implicated in state capture for a period of 10 years, but had helped one firm to hide a payment for the infamous Sun City Gupta wedding using public funds from the Vrede Dairy Project in the Free State. We will return to this below.

In March 2018, the minister of finance placed VBS under curatorship. The appointed curator immediately found that the bank could not confirm the existence of nearly R1 billion in cash deposits. He also flagged deficiencies in the management of the financial systems, as well as fraudulent transactions between VBS and related parties. He could not understand how a senior KPMG auditor had signed off the financial statements without reporting a single transaction to the IRBA or raising any other red flags. The annual financial statements had to be withdrawn as they were completely inaccurate.

It turned out that this was not a case of an auditor being hoodwinked by its client. KPMG's lead auditor on the VBS account, Sipho Malaba, is alleged to have covered up the crimes. Motau's report concludes that Malaba 'gave an unqualified audit opinion in circumstances where he knew the financial statements were misstated. He also gave a regulatory audit opinion which he knew to be false.' In plain words, Malaba lied.
Malaba was a long-time KPMG employee, having completed his articles at the firm nearly two decades prior and then rising to become a partner. Although he earned around R2.5 million a year (after tax, and including profit share from KPMG), he apparently wanted more. It is estimated that he reaped up to R34 million in exchange for assisting in the cover-up at VBS.\(^{22}\)

This was done predominantly through loan facilities that were extended to Malaba’s companies and to himself in his personal capacity. This included loans for three luxury vehicles through VBS’s special financial scheme for employees and shareholders, for which Malaba did not qualify. The loans turned into gifts as Malaba would invariably reverse the debit orders, and VBS would not follow up to pursue repayment.

Under the weight of the evidence presented by Terry Motau, Malaba eventually admitted that he had indeed ‘unduly benefitted’ from his relationship with VBS.\(^{24}\) Malaba later slammed Motau’s report as ‘biased’ and ‘inaccurate’, indicating in October 2018 that he would challenge the report.\(^{25}\) We have found no public record that he has indeed followed this course.

Malaba and another partner, Dumi Tshuma, resigned from KPMG as soon as the allegations emerged, and KPMG later reported Malaba to the police and said that they supported criminal action against him.\(^{26}\) KPMG also stated that “Lessons have been learned and decisive action has been taken”.\(^{27}\) Given the recidivist history of firms such as KPMG (consider their complicity in alleged crimes of state capture discussed below), it is unclear what lessons have indeed been learned.

In 2019, Malaba and Tshuma sued KPMG for R30 million each for damages they claim emanated from the firm’s statements about their conduct.\(^{28}\)

**JUNIOR AUDITOR SHUT DOWN**

KPMG may wish to shield themselves from scrutiny in this case by claiming that only a few individuals acted illegally. Motau’s investigation points to a more complicated story. In what is now a recurring theme in auditing failures around the globe, one junior auditor did in fact spot trouble at VBS. He soon learned that silence was the order of the day, even if the irregularities could not be explained.

Zondi Nduli, a third-year audit clerk at KPMG, was simply doing his job when he compared the amount of cash that VBS claimed in their draft financial statements with the amount reflected in the actual bank statements. He found a R700 million overstatement in the financial statements.\(^{29}\) When Nduli asked VBS to provide documents to explain this, the bank’s officials were, of course, unable to.\(^{30}\) Sipho Malaba, the senior auditor, was called in to clean up the situation.

Testifying under the promise of immunity, Nduli told Motau that, when he saw the audit signed off by Malaba, he realised that no further work had been done to clarify the glaring problem he had seen in the cash accounts.\(^{31}\) Confused and worried that he would be implicated in wrongdoing, he admits
to going back and deliberately altering his original audit note to say that ‘specific procedures were performed by the Partner and CEO respectively.’ Nduli also testified that he spoke about his concerns with both his counselling partner and counselling manager at KPMG, but received ‘little assistance from them.’ Motaú’s report criticises the audit manager for failing to take the opportunity to challenge Malaba on his suspicious conduct regarding this audit.

As is apparent from this account, there was a team of KPMG auditors working on the VBS financial statements in 2017. There may have been a rogue auditor, but there was also a collective failure to exercise the professional scepticism and accountability that is required of auditors.

ACCOUNTABILITY?

In November 2018, the IRBA announced an extensive investigation into the conduct of KPMG and Sipho Malaba at VBS. This is an important step toward accountability. However, it remains to be seen whether the ultimate sanction will match the severity of the misconduct. The IRBA’s CEO Bernard Agulhas admitted as much, but notes that they are also constrained by government regulation:

‘The limits to sanctions are up to R200,000 per charge. The public has expressed its dissatisfaction and termed it a slap on the wrist. We agree. The amount is far too low and so the act amendments currently underway include an important change which will allow the Minister of Finance to set the upper limit to sanctions from time to time. This will allow the IRBA to apply sanctions which are more appropriate to the scale of the negligence.’

As we discuss later in this report, providing the IRBA greater and more intrusive powers and ensuring its ability to enforce stronger sanctions are essential to ensuring greater accountability for the profession. Still, the IRBA cannot deliver criminal prosecutions. For that, we must rely on state institutions to urgently re-build their capacity to effectively prosecute corporate criminals.

WHAT ABOUT THE INTERNAL AUDITORS?

According to PwC COO Fulvio Tonelli, their task as internal auditors at VBS was ‘the consideration of VBS’s risk management, internal control and governance processes.’ Identifying fraud may not have been within their scope, but the facts of the case suggest that PwC’s consideration of risk, control and governance processes at VBS fundamentally failed to assist the bank. This may be why the curator immediately asked PwC to stop its work at VBS after his preliminary discovery of the truth about the bank. The IRBA has confirmed that it is also investigating the internal auditor from PwC.
SAA: HOW THE ACCOUNTABILITY COOKIE CRUMBLES

In February 2014, commercial baker Simon Mantell was pleased to receive an email from Air Chefs, South African Airway (SAA)’s catering subsidiary, that awarded his company a tender for the provision of savoury crackers to the national carrier. Mantell runs Mantelli’s, a South African biscuit factory in operation since 1988, and he had personally submitted the tender 10 months earlier. It was a small deal in the context of SAA’s then R25 billion procurement budget, but it was significant for Mantelli’s.

His excitement was short-lived. When he responded to finalise the supplier agreement, Air Chefs made a brisk and unexplained about-turn. Martin Kemp, the company’s acting CEO and Head of Strategic Procurement, told Mantell that the process was never supposed to be a tender and that Mantelli’s had been placed on a panel of suppliers for possible contracts in the future. The tender remained with CIRO, a subsidiary of the conglomerate holding company Anglovaal Industries (AVI) and a long-time supplier to SAA.

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Despite the best efforts of executives at SAA and Air Chefs to blow Mantell off, the baker – a chartered accountant by training – was determined to get to the bottom of the suspicious reversal. His efforts prompted internal investigations at SAA, several external forensic investigations, an investigation by Treasury, and an investigation by the Public Protector. These findings in turn allowed him to launch complaints to the regulatory bodies for both internal and external auditors, and the Legal Practice Council.

While many of these investigations were flawed or compromised, the combined findings provide a searing indictment not only of SAA’s executive management but, as importantly, of the army of auditors, accountants and lawyers working for and on contract to SAA, that systematically failed in their professional and legal duties. These actors enabled malfeasance and allowed poor controls at the national airline to continue unabated. While the likes of former chairperson Dudu Myeni have much to answer for when it comes to governance failure at SAA, she was flanked by a squadron of enablers who did little to stop the rot.

The current Covid-19 pandemic will undoubtedly lead to massive changes at SAA, not least because the state can ill-afford the airline’s appetite for endless bailouts. This is little consolation to South Africans who have seen tens of billions in public money disappear into the airline due to gross mismanagement and corruption, with little benefit accruing to the country. In his budget speech in February 2020, Finance Minister Tito Mboweni confirmed another R16.4 billion would go to settle some of SAA’s debts while it was in voluntary business rescue, saying that ‘the SAA sword of Damocles has now fallen on us.’

In this story, not one of these actors offered the protection and social functions they were supposed to provide. Instead, they created the ideal enabling environment for corruption and, ultimately, state capture.

In the Roman legend, the sword hanging above Damocles is held in place by a single hair from a horse’s tail. The South African public and its airline should not have been in such a precarious position. Internal governance and external oversight were meant to ensure the sustainability of the enterprise. A responsible board of directors staffed with skilled professionals should be supported by internal and external auditors who identify and report misstatements. If the systems fail, then governance structures call in forensic investigators to assist in cleaning up areas of the organisation that require it.
After the abrupt withdrawal of the tender award to Mantelli’s, Simon Mantell did the obvious thing and checked with SAA and the winning bidder that they had submitted a bid. Air Chefs’ Martin Kemp refused to answer. AVI similarly refused to confirm or deny whether CIRO had submitted a valid tender. It would take a year for AVI’s lawyers at Bowmans to provide a simple yes. This delay remains unexplained and Mantell still questions whether the tender was valid, given that the tender register was backdated by a week, which could have allowed for the inclusion of late bidders.

In April 2014, with the baker breathing down its neck, SAA said that their chief audit executive would conduct an internal investigation and they would procure an external forensic investigation – and share the findings with Mantell - in order to “restore confidence” in the process. It took just two weeks for the SAA internal investigation to give the tender the all-clear, finding that it did not in any way contravene the Public Finance Management Act (PFMA).

The report by Indyebo Consulting, the small firm tasked with the external investigation, did not absolve SAA of blame, but its drafting suggests possible meddling by SAA. The oddly formatted independent report includes SAA’s own arguments copied into the text between Indyebo’s findings. These sections, usually in bold and underlined, are labelled ‘management comments’ and ‘legal comments’ and generally defend the tender. Mantell says that Nondumiso Medupe, Indyebo’s CEO who signed off the investigation, told him that they had come under ‘unbelievable pressure’ from SAA and that some of her staff had been ‘bullied’. This may have led to the inclusion of these sections.

Despite that, the report to which Open Secrets has gained access clearly concludes that the tender was irregular and that Air Chefs’ CEO had violated Section 51 of the PFMA. This section requires a procurement system to be ‘fair, equitable, transparent, competitive, and cost-effective’. Wilfully or grossly negligently failing to comply with Section 51 is a criminal offence and an accounting authority found to have done so can face up to five years in prison. Further, SAA management failed to disclose this significant breach in the 2014 annual financial statements.

SAA seemed dead set against revealing the content of the Indyebo report to Mantell at the time. Mantell says that he and his lawyer were invited to meet with SAA’s legal team in Johannesburg on 8 October 2014. There they were handed an almost entirely redacted version of the report. Viwe Soga, the head of SAA legal at the time, allegedly told them that he was an officer of the court and so Mantell would have ‘have to trust him’ that the Indyebo report had found ‘no wrongdoing at all’. Soga had chaired first Bid Adjudication Committee on the tender in 2013.
Although Soga, a former attorney with ENS, was correct to assert that one should be able to trust officers of the court, in this instance he seemingly did little to engender trust. The Indybo report, despite its flaws, clearly found that the Air Chefs tender had breached the provisions of the PFMA. Could this have been a deliberate misrepresentation by Soga to cover up what the external investigation had found?

Mantell laid a formal complaint related to this conduct and the matter is currently before the Gauteng Legal Practice Council. Soga faces charges of misconduct or alternatively bringing the attorney’s profession into disrepute. He is contesting the charges and the final hearings are due later in 2020.

Subsequent investigations of the Air Chefs tender – by the National Treasury in 2015 and the Public Protector in 2020 – have confirmed numerous problems, including poor specifications, unfair scoring and the failure to disqualify tenders that clearly should have been. It is worth noting that the Treasury also recommended awarding a portion of the tender and signing a service level agreement (SLA) with Mantelli’s, but this has never been done.

It would be easy to dismiss Mantell as an aggrieved baker who lost out on a tender. However, we present this case to illuminate a problem that seems systemic: internal and external professionals, those who should have prevented, corrected, detected, and reported corporate corruption at SOEs, have been asleep at the wheel.

**SAA’s Internal Auditors**

Because the airline’s budget has been disproportionately spent on procurement, any deficiencies and malfeasance in this area pose a very high risk to the business. This fact should be flagged and given attention by SAA’s internal and external auditors. We now turn to how they failed in this important mandate.

When financial misrepresentations are discovered, external auditors are first in the firing line. It is their professional obligation to report any material irregularities and to provide public assurance that financial statements are a fair representation. However, the roles of internal auditors and the chief audit executive at state entities are also of great importance and often overlooked. After all, the health of internal governance processes is determined first by internal auditors.

**The Role of Internal Auditors**

Internal auditors should be sufficiently independent of the entity where they work, and their central task is to evaluate and improve ‘the effectiveness of risk management, control, and governance processes’. Where there are deficiencies in these systems, the internal auditor should assist management to improve them. In turn, the organisation’s audit committee, under the chief audit executive, is ultimately responsible for providing oversight and support to build an effective and independent audit function. This is essential to fulfil the requirements of the board, in terms of the PFMA, to maintain an effective and transparent system of financial risk-management and control.

At the time of the dry-snack tender, Siyakhula Vilakazi was the chief audit executive at SAA. He was also the audit professional tasked with leading the internal investigation into the tender in May 2014. It took him just weeks to confirm that the tender had
complied with the PFMA. After both the Indybo and National Treasury reports found the opposite and confirmed that the tender process was beset by flaws, Mantell filed a complaint against Vilakazi at the Institute of Internal Auditors South Africa (IIA SA). The IIA SA is a professional body that ‘upholds and supports the fundamental tenets of the profession – the Code of Ethics and the International Standards for the Professional Practice of Internal Auditing’.  

Open Secrets has seen the sworn affidavit submitted by Vilakazi to the IIA SA and what it reveals is shocking. Vilakazi confirms that SAA only insourced the internal audit function in 2012 and it was still wholly inadequate in 2014. This was confirmed by an external review undertaken by Outsourced Risk and Compliance Assessment (ORCA). A few of the most outrageous failures, also confirmed by Vilakazi, include the following:

- Internal audit staff used different computer programmes to prepare audit papers, while many were simply handwritten. The internal audit file on the dry-snack tender was one of these;
- Many handwritten notes and manual audit files excluded key findings or did not even indicate who had worked on that file. The working papers in the Mantell’s file were inadequate, like most files from 2012–2015;
- There was no system for archiving audits at SAA, meaning that documents could be accessed and changed by anybody without Vilakazi’s knowledge;
- SAA had no policy regarding the timeframes for changing working papers, and this could be done at any time;
- In the case of this tender, Vilakazi had thrown away the working papers from 2014 and reconstructed and replaced them in 2016. However, he backdated the file to 2014, justifying this by saying that the findings had not changed, and no additional investigation had been done.

Given this chaotic state of controls and oversight, it is not surprising that SAA suffered financially for so many years. Yet despite these admissions and the evidence contained in the Treasury report on the tender, the disciplinary committee chaired by chartered accountant and long-time IIA SA director Robert Newsome found that there was insufficient evidence to sanction Vilakazi in any way.

But it would not be long before Newsome himself was in hot water about his conduct in the investigation. Shortly after the hearings into the matter started, Newsome had been appointed as a director of ORCA, the company that had undertaken the quality-assurance review of Vilakazi’s work and later received a glowing review from Vilakazi. ORCA sat on an SAA supplier
panel and its biggest client at the time was the SAA subsidiary Mango.\textsuperscript{27} Despite recommendations from colleagues to do so, Newsome never declared this conflict of interest while chairing Vilakazi’s hearing.

SAICA asked a disciplinary committee to suspend Newsome for five years and to pay R100,000 in legal costs. The committee would eventually uphold the complaint and rule that Newsome had been unprofessional and should have disclosed the conflict of interest.\textsuperscript{28} However, they refused to publish any details of the ruling or sanction.\textsuperscript{29} When the finding was later leaked, it emerged that Newsome had in fact only been reprimanded and given a R50,000 fine that was suspended on the condition that he receive training on conflicts of interest and did not commit a similar offence.\textsuperscript{30} At the time this ruling was handed down, Newsome was earning R2.5 million a year – as the acting head of risk and compliance at SAA.\textsuperscript{31}

The IIA SA has since indicated that the Vilakazi case should be heard afresh because of Newsome’s conflict.\textsuperscript{32} There has been no apparent movement in this regard. Unfortunately, the conflicts of interest that inevitably arise when professionals swing between positions in industry and regulatory bodies is a familiar and unresolved story.

**PWC: THE EXTERNAL AUDITORS**

As external auditors, it was incumbent on PwC to consider the state of internal audit controls and governance at SAA. The external auditor’s job is to ascertain whether the financial statements put forward by the board contain misstatements due to error or fraud. This requires them to identify risks in internal accounting and control processes, to exercise professional scepticism, and to plan their audit accordingly.

PwC must have known of the poor state of internal controls at SAA. Deloitte was SAA’s external auditor prior to PwC, and their 2011 report clearly stated that they had observed serious ‘control deficiencies’, particularly with regards to procurement and contract management.\textsuperscript{33} Because of this, they could not establish that the company was compliant with Section 51 of the PFMA.

In 2012, PwC and its partner Nkonki Inc replaced Deloitte as the external auditor, and suddenly these concerns disappeared. The annual reports from 2012 onward claim that the entity was fully compliant with the PFMA and the efficacy of internal control processes had been addressed. PwC signed off these reports without identifying any reportable irregularities in the financial statements or raising any red flags about the internal processes. This does not match up with facts that are now public record.

ORCA’s review in 2014, which revealed systemic deficiencies of control and internal management, was presented to SAA’s audit and risk committee. The chief audit executive, Siyakhula Vilakazi, says that he ‘took the hiding’\textsuperscript{34} from the committee for all of the internal audit problems. He admitted that the audit working papers were completely inadequate in 2011, 2012, 2013 and 2014, which caused him to go back and re-write scattered handwritten papers.\textsuperscript{35} As the external auditors, PwC would have taken part in this meeting, and thus have been aware of these problems.
Simon Mantell, still doggedly pursuing the matter, complained about PwC's conduct to the IRBA. PwC director Pule Mothibe forcefully defended the firm in a letter to the IRBA, asking them to completely disregard the complaint. Mothibe’s letter seems to defer to SAA management, indicating that the board had told PwC that Mantell’s initial complaint was ‘spurious’ and merely a reaction to his unsuccessful bid to win the tender.

Mothibe also claimed that ‘no matters were brought to our attention that highlighted a heightened risk of fraud or error in procurement processes at SAA’.

Most startling, however, is the letter’s statement that, ‘[i]n August 2014 the joint auditors received the Indyebo Consulting report (dated 08 August 2014). The Indyebo Consulting report generally supported the conclusions reached in the SAA internal audit findings.’ This is simply untrue. The Indyebo report found that, contrary to the SAA internal audit, the provisions of the PFMA had been infringed.

Rejecting PwC’s plea, the IRBA investigated Mantell’s complaint and found that the auditors had indeed failed in their professional and legal duties. The regulator concluded that PwC ‘did not appropriately respond to the risk related to procurement in terms of the requirements of international standards on auditing. In addition, the respondent failed to disclose noncompliance with legislation regarding procurement in the joint audit.’ PwC was given the maximum fine - a paltry R200 000 - of which R50 000 was suspended. Nkonki received the same fine.

While this finding seems encouraging, the fine is just a rap across the knuckles compared to the R19 million that PwC and Nkonki were paid for their work at SAA. Since then, PwC has abandoned its earlier protests and announced that they have ‘used the opportunity to effect the necessary remediation as important lessons are learnt.’ Yet again, the cost of PwC’s education is paid by South African taxpayers who bear the brunt of SAA’s failures, while the firm’s partners pocket their proceeds.

In 2017, with the airline in crisis, the auditor-general (AG) took over the external audit function at SAA. Presenting a qualified opinion on the financial statements, the AG found that PwC and Nkonki had not identified eight major misstatements and that the board had failed to identify and report irregular and fruitless expenditure and failed to accurately account for inventory and maintenance of aircraft.

The AG also confirmed that SAA was clearly in breach of the PFMA.
The public needs the IRBA to be more forceful, particularly now that it has expanded its investigation into PwC’s work at SAA over a much wider period. The expanded case was due to be tabled with the IRBA in late 2019, and the first hearings were expected in May 2020. Unfortunately, these were delayed due to the failure of Tito Mboweni to appoint a new board of IRBA. This has left it unable to form disciplinary committees and begin proceedings. The Minister’s delay has thus slowed the process to hold PwC to account. No reasons have been given as to why there has been this delay which has resulted in a vacuum in leadership at the IRBA.

ENS: THE FORENSIC INVESTIGATORS

Forensic investigators dig through the muck of a scandal where other auditors have failed. But they also play an important preventative role: rigorous forensic reports help to guide external auditors by identifying serious risk areas. Either way, it is essential that the highly paid forensic investigators do a thorough job. In the case of the SAA tender, one of the last parties to be called in was ENS Forensics.

In November 2014, Simon Mantell wrote to the SAA board with all of the evidence that the tender had been unlawful. This fell into Nico Bezuidenhout’s second short stint as acting group CEO for SAA, which ran from November 2014 to July 2015. He was quick to offer Mantell a meeting in early 2015 to address his concerns. In the months that followed, Bezuidenhout sent him a series of emails that claimed the CIRO bid was valid and that there was nothing untoward in the tender process.

In May 2015, however, the National Treasury report concluded that Mantelli’s was in fact the only valid tender. At this point, SAA appointed ENS Forensics to conduct an investigation into whether CIRO’s bid was valid.

SAA and its executive management both have a long history with ENS Forensics and its parent company, ENSafrica, the mega law firm which proclaims itself as ‘Africa’s biggest law firm’. At various points over the last decade, ENS Forensics has been called in to investigate fraud and corruption at the airline. In some instances, they have set out serious concerns, only to have their recommendations ignored by SAA’s management. In 2015, ENS recommended that SAA lay criminal charges against ‘a complainant in a tender process who, in the end, did not have a legitimate company or an aircraft to lease’. The board sat on the report for months until it was leaked to the press.
In 2017, while SAA was paying ‘for the services of two of ENSafrica’s most experienced lawyers, Steven Powell (director of forensics) and George van Niekerk (director of dispute resolution)’, SAA board chair Dudu Myeni had nonetheless hired Nick Linnell as an adviser to the board, at R167 000 a month, to deal with various legal issues. City Press revealed that Linnell billed for, amongst other things, liaising with ENSafrica. ENS also represented Dudu Myeni in court, including defending an application to have her declared a delinquent director, before dropping her as a client in June 2019.

It is thus not surprising that Steven Powell was copied in to correspondence between Bezuidenhout and Mantell from early 2015, and that ENS was selected to investigate the tender and prepare a report for Myeni as board chair. In June 2015, ENS Forensics director Steven Powell invited Mantell to provide input to assist the investigation, assuring him that ENS would conduct a ‘warts-and-all investigation’ and get to the bottom of the matter. A draft report was quickly put together – dated 29 July 2015 – and Mantell was again invited to ENS to discuss it on 4 September. He said that the draft report fell far short of a proper investigation and left numerous questions unanswered. Steven Powell agreed and committed this view to email. On 9 September, he wrote to Mantell that the investigation had been done with ‘clearly insufficient oversight and guidance from me’ and that the firm’s busy schedule did ‘not excuse what has been a superficial investigation’.

Three months later, and only after intervention from the Chief Executive of ENS Law Mzi Mgudlwa, Mantell received the firm’s transcripts from that September meeting. Crucially, they indicate that Powell and his investigators conceded at that point that the tender process was inherently flawed and that Mantelli’s should have received the tender award. However, the ENS people were also of the opinion that, despite the irregularities, there was no fraud or corruption, and that ‘the PFMA is never followed out at state entities’ and that backdating tender registers happens often. This is a disturbingly jaded view of lawyers conduct that amounts to serious violations of the law.

ENS did promise to remedy the preliminary draft report with a rigorous follow-up. Further emails from Powell to Mantell included a guarantee that ENS would ‘cure’ the deficiencies. At this point, the relationship became frostier. Despite earlier assurances, ENS refused to grant Mantell access to their updated report. The first he saw of it was at the Zondo Commission of Inquiry at the beginning of 2020, when it was handed to him following his engagement with the Commission on these issues.

The ‘updated draft report’ was dated 13 October 2016, more than a year after the sketchy preliminary draft. It is not clear whether a final report was ever prepared. If so, it is not publicly available. Despite more than a year between them, the updated draft report is startlingly similar to the earlier one. It is not the forensic report that one would expect from a firm that advertises itself as ‘highly skilled in complex, large-scale investigations into white-collar crime across Africa and beyond’.

The list on the next page shows the issues of concern with the 2016 ENSafrica Forensics report, its process and its findings.

Myeni was declared a ‘delinquent director’ by the High Court in Pretoria in May 2020, and the matter was referred to the NPA. Agreeing with the application by the Organisation Undoing Tax Abuse (OUTA) and the SAA Pilots’ Association, the court ruled that ‘Ms Myeni’s actions as chairperson of the board caused SAA immense harm. She was a director gone rogue - she did not have the slightest consideration for her fiduciary duty to SAA... Her actions did not constitute mere negligence but were reckless and wilful’.

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The report indicates that a key objective was to interview SAA staff and obtain sworn affidavits 'where necessary', but there are no affidavits from key people who stand accused of making misrepresentations to Mantell. For example, the report lists interviews with both Viwe Soga and Siyakhula Vilakazi, but there is no detail of what was discussed in these interviews and their names do not appear again.

Another stated objective was to ‘analyse relevant employee mailboxes’, but this analysis was only done in August 2016 and for only four employees. According to ENS, the reason for the delay was a ‘dispute between SAA and the IT service provider’. Further, the method of analysis was a keyword search that included the names of the parties and the words ‘kickback, corrupt, corruption, fraud, cracker and biscuit’. This cannot be considered an extensive search, nor does it seem likely that wrongdoers would use this language in emails. Added to the long delay, it is unclear how meaningful this process could be.

The report alludes to a review of the Indybo and National Treasury reports. Yet it does not include their central findings, including the alleged violation of the PFMA. The ENSafrica report concurs with the Treasury that the tender should not have been granted to CIRO, but expresses their legal opinion that Treasury’s recommendation to grant a portion of the contract to Mantelli’s was not in fact lawful.

The closest the ENS report comes to the systemic problems revealed by this tender is a recommendation that Air Chefs ‘retain the services of a procurement specialist’ and that corrective training should be provided. The overall approach skirts the most fundamental issues: namely, the alleged contraventions of the PFMA and the systemic deficiencies in internal control and governance at SAA and its subsidiaries.

The failure of the forensic investigators to at least acknowledge these concerns in their report is an important omission both for the financial governance at SAA and for the future guidance of other auditors and lawyers. It is not clear where this reluctance comes from. Although ENS has a long relationship with SAA, we certainly do not suggest any deliberate attempt to obscure these matters. It may be that their mandate in this case – to test the validity of the CIRO tender – was too narrow for them to reasonably take up the greater context. However, this jars with their early promise of a ‘warts and all’ investigation.

This raises another systemic issue. The scope of external investigations is set by people who may themselves be implicated in wrongdoing, or have a personal interest in hiding certain elements. Moving this function to an independent body could be an important remedy and will be discussed in the recommendations below.

**ENS RESPONDS**

We asked ENSafrica Forensics a series of questions regarding this matter: whether the October 2016 report was the final version of the report; whether they were satisfied with the quality of their investigation in this matter; what concerns, if any, it had raised for them about governance at SAA; how much fee income they had received from SAA between 2010 and 2020; and whether they had any further comment.

Steven Powell responded as follows:
FAILURE UPON FAILURE

It is remarkable that a simple tender for dry crackers could generate so many investigations and such a long and protracted battle. It is also deflating to recognise that, while these investigations have generated healthy fees for the auditors, consultants and lawyers involved, little was achieved to ensure accountability or to fix the systemic issues in SAA’s long and costly decline. Would there have been any accountability at all if Mantell himself had not doggedly pursued the matter with the relevant regulators? Even there, the sanction has been inadequate.

What emerges most forcefully from this story is the lie that professionals in the financial-services sector are let down by a “few bad apples”. One professional failure was repeatedly compounded by the failures of others. A stream of accountants, lawyers and auditors – each paid millions per year – had unique insight into a dysfunctional system at SAA that permitted wrongdoing and was unfit for its purpose of protecting public funds and ensuring compliance with the law. All of these professionals had the duty, both professionally and legally, to report irregular and unlawful conduct when they saw it. Their repeated failures have instead ensured that a culture of impunity thrives.
Charging exorbitant fees for the opaque services they provided, these companies profited from state capture while diminishing the service delivery capacity of SOEs like Eskom, and Transnet.
The costs of contemporary state capture in South Africa have been disastrous, if hard to quantify. Taking into account the money lost directly to corruption, low or non-existent economic growth, lost jobs, and an explosion of public debt and borrowing costs, estimates range from the conservative R500 billion to R1.5 trillion.1 And the austerity measures enforced to appease credit-ratings agencies have hit vulnerable South Africans the hardest.

These estimates cannot fully cover the consequences of the destruction of institutional independence and capacity throughout the state, including crucial institutions like the National Prosecuting Authority (NPA) and the South African Revenue Service (SARS). The loss of state capacity to investigate and prosecute complex financial crime has in turn entrenched impunity for the corrupt corporate and other elites.

Yet the story that contemporary state capture has been perpetuated by the actions of a few corrupt political actors in service of the Gupta family is an unfortunate myth. This obscures the role of the global financial economy in laundering the proceeds of these crimes so that the beneficiaries can continue to benefit from them.2 It also ignores the role of auditors and consultants in enabling capture. Global consulting firms were key participants in the state capture enterprise. One need only think of Bain’s complicity in the attack on SARS that resulted in an estimated R100 billion decline in desperately needed tax revenue.3 Or of McKinsey’s extraction of billions from Eskom.4
The truth is that South Africa’s state-capture era presents clear examples of the deleterious effects of the Big Four and the broader professional-services industry on a country’s economy and its people. Charging exorbitant fees for the opaque services they provided, these companies profited from state capture while diminishing the service delivery capacity of SOEs like Eskom and Transnet. The effects are felt in the constant bailouts of SAA and Eskom, the interrupted train services of PRASA, and the persistence of load-shedding.

The following examples of this industry’s complicity in state capture are not exhaustive. They only serve to illustrate the pervasiveness of their corruption and the failure and reluctance of regulators to rigorously and energetically hold powerful industry players to account.

KPMG

KPMG is the firm that comes to many people’s minds as an example of the private sector enabling and profiting from state capture. When KPMG finally issued a public apology for its role in facilitating some of the most egregious state capture corruption – from SARS to VBS and the Estina Dairy Project – the fallout posed an existential threat to the firm’s South African office. It lost over 1 000 staff and saw an exodus of key clients.

A ROGUE INVESTIGATION AT SARS

KPMG’s role in state capture first garnered public attention in the infamous KPMG “rogue unit” report it completed in 2015 at the behest of then SARS Commissioner Tom Moyane. The evidence now shows that KPMG’s report was filled with inaccuracies and plagiarism. A subsequent investigation into Moyane’s conduct by the Nugent Commission of Inquiry concluded that he had made a concerted effort to take control of the revenue service by, amongst other things, side-lining key executives.

Moyane used KPMG’s rogue unit report to ensure the firing, early retirements of and criminal and other inquiries into the conduct of Ivan Pillay, Pravin Gordhan and Johann van Loggerenberg, amongst others. These moves were widely perceived as attacks on an ‘anti-Zuma’ faction which opposed the deepening corruption within state organs such as the NPA. KPMG would eventually retract the report and apologise to those affected; in 2020, all criminal charges were withdrawn by the NPA.

In 2007, a special investigative and enforcement unit was created within SARS by a joint agreement between SARS and what was then the National Intelligence Agency (now the State Security Agency). SARS obtained three legal opinions at the time on the legality of the unit – all gave the green light to proceed.

Two months after his appointment as SARS commissioner by Jacob Zuma in September 2014, Tom Moyane enlisted KPMG to conduct a forensic investigation into allegations of a covert unit
at SARS that was allegedly spying on Zuma and Julius Malema, the leader of the Economic Freedom Fighters party.\textsuperscript{11}

Given the importance of the issue in the public interest and in safeguarding the integrity of the revenue service, South Africans expected that a leading forensic firm would undertake a thorough and careful investigation. This was not the case.

The KPMG report found that the unit was breaking the law and was thus ‘rogue in nature’.\textsuperscript{13} However, the report had striking similarities to earlier investigations by Advocate Muzi Sikhakhane and the law firm Mashiane Moodley and Monama (MMM) which had been commissioned by former acting head of SARS Ivan Pillay. A later examination revealed that KPMG had plagiarised sections of the MMM report, including even grammatical and spelling errors – it was literally a copy-and-paste exercise.\textsuperscript{14}

Roy Waligora, head of KPMG forensics, led the internal investigation into the report. Waligora found that the lead auditor on the KPMG report, who insisted that his team’s investigation had been ‘comprehensive’,\textsuperscript{15} had been ‘unprofessional and lazy’,\textsuperscript{16} leading to an inaccurate report.

In October 2014, the Sunday Times began two years of sustained reporting on what it termed the ‘rogue unit’.\textsuperscript{12} The newspaper has since retracted all of its reporting on the unit, admitted that it was inaccurate, and apologised to those affected by this breach of journalistic standards.

Advocate Dumisa Ntsebeza, who chaired the SAICA inquiry into the saga, went further and concluded that the KPMG auditor’s conduct had been ‘an act of absolute dishonesty’.\textsuperscript{17}

KPMG later admitted that there had been no internal partner review of the investigation, calling this ‘substandard’ quality control.\textsuperscript{18} Ntsebeza’s report found that there was a prima facie case that KPMG staff had violated SAICA’s professional code of ethics.

KPMG’s report, alongside those of Sikhakhane and MMM, was used to justify the dismissal of around fifty senior officials at SARS, and investigations into Pillay, Gordhan and van Loggerenberg.\textsuperscript{19} This, coupled with a coordinated restructuring of SARS by Moyane and management consultant Bain and Co., had an undoubtedly negative effect on SARS’ capacity to generate revenue. In the first quarter of 2017 alone, the agency failed to meet its revenue target by R13 billion.\textsuperscript{20} The total cost of state capture at SARS would rise much higher.

Although the lawyers, consultants and auditors involved in the investigations into the “rogue unit” during the Moyane years have denied that their findings were politically motivated, many have been implicated in enabling other aspects of state capture. KPMG also played a critical role in one of the most audacious and iniquitous state-capture stories to date.\textsuperscript{21}

THE GUPTA CASH COW

Billed by then KPMG CEO Moses Kgosana as ‘an event of the millennium’,\textsuperscript{22} the 2013 wedding of Vega Gupta and Aakash Jahajgarhia cost South African taxpayers R30 million.\textsuperscript{23} The lavish wedding and the arrival of some guests through the Waterkloof Air Force Base catalysed a number of investigations by Treasury and the Public Protector which revealed a vast network of Gupta enterprises that were set up specifically to extract rents from public procurement processes for the benefit of the Gupta family.\textsuperscript{24}
It emerged later that the wedding was connected to another scandal: public money that was intended to benefit local dairy farmers in the Free State had instead been laundered into the pockets of Gupta companies to meet the costs of the Sun City wedding.

The Vrede Dairy Project was a public-private project between the Free State government and BBBEEE company, Estina. It was meant to establish a productive dairy farm near the town of Vrede that would create local jobs and opportunity. Local beneficiaries were to receive 51% of the shares in the project through a special purpose vehicle. The Free State government would provide R342 million to the project, while Estina would inject R220 million of its own funding: R570 million that, judiciously spent, would nurture a fledgeling dairy industry in one of the neediest districts of the Free State.

From the beginning, the project was beset with irregularities that violated procurement and public finance regulations. A former head of the provincial department of agriculture later told the National Treasury’s inquiry that ‘no procurement process was followed in appointing Estina’ and that he ‘did not procure the services of Estina through a competitive bidding process.’

The #GuptaLeaks revealed that the project, from its conception, was set up to loot the Free State agriculture department. According to an investigation by Shadow World Investigations, the bulk of the R280.2 million paid by the Free State government to Estina was transferred into accounts held by the Gupta enterprise. R229 went to Gateway Limited, a Gupta-controlled company based in Dubai and 18% to the Guptas’ local vehicle, Vargafeld. SARS received 11% for VAT costs.

KPMG was centrally involved in assisting the Gupta enterprise to launder stolen Estina funds onto the books of Linkway Trading, another Gupta company. KPMG provided both auditing and tax advisory services to Linkway, the South African firm that invoiced Dubai-based Accurate Investments R30 million for organising the extravagant wedding. Accurate Investments was one of four offshore companies in the Gupta’s UAE-based “laundromat.”

Linkway Trading was 53% owned by Islandsite Investments. The shares in Islandsite were split equally between Atul Gupta, Tony Gupta, Chetali Gupta and Arti Gupta. Ronica Ragavan, a vital Gupta lieutenant, owned 25% of Linkway Trading. Linkway drew up an invoice addressed to Accurate Investments on 31 July 2013 that provided a detailed breakdown of costs related to the wedding. Linkway received $3 333 000 from Accurate Investments in two payments, in August and September 2013.

Jacques Wessels, then an auditor partner at KPMG, managed Linkway’s accounts. His management failed several standards for the auditing profession.
A competent auditor should have been able to pick these up, and one did. A junior auditor at KPMG voiced concerns to Wessels that the wedding expenses had nothing to do with Linkway’s real business. 36 However, these concerns were brushed aside.

One possible reason the junior auditor was shut down was the close relationship between senior KPMG partners and the Gupta family. Despite what would appear as an overt conflict of interest, which the IRBA later criticised, senior KPMG partners attended the wedding – including Jacques Wessels, who led the Linkway account, 37 and CEO Moses Kgosana, who attended with his wife and subsequently wrote a gushing thank-you email to Atul Gupta. 38

As the details of KPMG’s role in this story emerged, the IRBA initiated an investigation into Wessels’ conduct on the Linkway account. On 28 March 2019, the regulator made a ruling striking Wessels off the auditor’s register, ordering him to pay part of the IRBA’s legal costs, and instructing that Wessels’ name, KPMG’s name, and the findings were made fully publicly available. 39

The IRBA’s detailed findings noted that Wessels displayed ‘egregious dishonesty’ and had been an ‘active participant in the subterfuge’. 40

While the finding against Wessels was a rare and welcome dose of accountability, it is notable that the focus of such investigations is the individual auditor responsible for the account. They rarely, if ever, explore the systemic governance and accountability issues that enable and permit such a failure to occur in the firm.

KPMG has since spent a lot of time apologising to South Africans and the institutions they harmed. They also agreed to pay back R23 million in fees from SARS and pledged to donate the R40 million it earned in fees from Gupta-linked entities. 41 It is unclear how these meagre offers are supposed to provide restitution for the dairy farmers, or for the billions lost in tax revenue and the near-collapse of several state institutions.

Moreover, KPMG has insisted that these dealings were the result of a few rogue elements and that they have transformed. 42 We should be cautious in accepting such promises. KPMG’s failure to exercise independence and professional scrutiny is typical of an industry whose ethical conduct has been in steady decline. It is also indicative of an industry riven with structural problems and deficiencies in governance that will continue to produce major conflicts of interest.
DELOITTE’S WORK AT ESKOM

The spiralling debt and diminishing capacity of the nation’s public electricity utility have been a constant cause of consternation for South Africans. Eskom’s rolling blackouts, repeated bailouts, and onerous debt-servicing costs collectively pose a fundamental threat to South Africa’s economy. This will be heightened by the expected economic downturn caused by the Covid-19 pandemic.

As with much analysis of the capture of state-owned enterprises, there are many calls for Eskom to be privatised, as if public-sector management were solely responsible for its embattled position. Nevertheless, there is extensive evidence of the role of private consultants and service providers in extracting rents from Eskom.

One obvious example is the unlawful contract that led to Eskom paying a hefty R1 billion to the US management consulting firm, McKinsey and Company. McKinsey’s global head Kevin Sneader admitted that they had overcharged Eskom and needed to implement stricter controls, including ‘real recognition that there has to be clarity on what performance means’. McKinsey’s BBBEE partner on this contract, Trillian (a Gupta-linked firm) was paid R700 million by Eskom, despite no contract being in place and no work being done.

McKinsey did eventually become nervous about Trillian and told Eskom that the partnership would not continue. Eskom management approved payments to Trillian anyway. Eskom insiders told investigative journalists from amaBhungane that, ‘when McKinsey dumped Trillian, Eskom officials started giving McKinsey the cold shoulder’.

Enter Deloitte.

In June and September 2016, Eskom procured the services of Deloitte’s ‘CFO [Chief Financial Officer] Transition Laboratory’ in the SM002 and SM004 tenders, which called for strategic, business and management consulting. Deloitte describes its CFO Transition LabTM as ‘an experience’ that helps ‘newly appointed CFOs, including those with prior CFO experience, make an efficient and effective transition’ into their expanded ‘leadership’ roles as strategic partners to boards and CEOs.

Deloitte was appointed by Eskom CFO Anoj Singh and senior executive Prish Govender. According to Eskom’s then chairperson Jabu Mabuza, in a court application to recover the funds from Deloitte, the tenders for the value of R207 million were ‘pure corruption’.

The manner in which Deloitte secured these Eskom contracts is suspicious for several reasons:

- Deloitte submitted proposals before the tender process was opened (such unsolicited bids to SOEs were common in the state capture period). The CFO tender – much like other suspicious tenders in which Anoj Singh participated when he was at Transnet – was a closed bidding process, which is used when there is an urgent need for the services. It remains unclear why the CFO Laboratory was so urgently necessary.
- New evidence unearthed by an amaBhungane investigation indicates that Deloitte was already conducting extensive work for Eskom on unsolicited bids “at risk”, meaning the company would not be paid unless a formal contract was concluded. This implied that over 42 Deloitte staffers, including senior partners and at least one director, were working full time for five months without a contract to guarantee payment. Eskom had not even issued a request for quotation (RFQ).
Industry insiders suggested that it was absurd that a company would do work worth R50 million on an at-risk basis.\(^53\)
- Deloitte used ‘off-the-record briefings’ with Eskom to submit proposals. Eskom management now alleges this made the process uncompetitive, untransparent and inequitable.\(^54\)
- Eskom’s agreements with Deloitte were simple 100-word documents which stated that Eskom would except the ‘scope’ and ‘budget’ of whatever Deloitte proposed.\(^55\)
- When a tender process was finally opened, Deloitte was granted these contracts despite their proposals being up to five times more expensive than their competitors. This constituted a clear violation of the Preferential Procurement Policy Framework Act (PPPFA).\(^56\)

A final irony, and possibly one of the more audacious elements of Deloitte's conduct, is that Deloitte's proposals apparently bore 'striking similarities' (particularly in wording) to proposals that McKinsey had submitted. It is alleged that the email servers of Singh and Govender revealed that many of McKinsey's proposals were shared and discussed with Deloitte's director, Shamal Sivasanker.\(^57\) Given McKinsey's own role in extracting up to R1 billion from Eskom, one journalist quipped that ‘it was a case of there being no honour among thieves – the scammers being scammed’.\(^58\)

In a media statement after the amaBhungane pieces were published, Deloitte denied any wrongdoing, stating ‘we specifically deny any association or involvement in “state capture” or corruption'.\(^59\) They also indicated that they would contest Eskom’s allegations in court.

Responding to questions by journalists from amaBhungane, Deloitte Consulting’s managing director for Africa, Thiru Pillay, said:

‘I do feel we were led down a path by Eskom, and we tried to cooperate and do the best that we could… The world is in a very different place today. When you look at what was happening in 2016; our environment is very, very different. In hindsight, when you look at it, you wish you had done things differently, but the question is, “Did we add value?” and I think we did. And what was our intent? Was our intent to go and defraud and exploit Eskom? Definitely not.’\(^60\)

This account is perplexing. Deloitte was no doubt aware of the legal requirements around public procurement in 2016 as the Public Finance Management Act (PFMA) had been in existence since 1999.
On 20 March 2020, in an about-turn, Eskom and Deloitte announced that they had reached an out-of-court settlement. Deloitte agreed to pay back R150 million, which allowed them to keep over R57 million earned between April 2016 and September 2017. In the statement announcing the settlement, Deloitte and Eskom agreed that:

1: Investigations completed by Eskom and Deloitte showed no evidence of state capture or corruption;

2: Eskom benefited from the services that Deloitte Consulting rendered during the period of engagement, and Eskom continues to benefit from these services;

3: There were technical irregularities within the procurement process, and Deloitte Consulting accepts that it participated in this irregular procurement process; and

4: Deloitte Consulting is entitled to compensation for the value it delivered to Eskom.

Disturbingly, detailed findings of these ‘investigations’ have not been made public, nor is it clear if external investigators were consulted. This makes it difficult to understand the basis on which Eskom has abandoned its allegation of ‘pure corruption’. It also leaves unresolved many of the serious allegations of irregularities made by Eskom and outlined in amaBhungane’s reporting. These were not merely technical in nature, but involved allegations of collusion with Eskom staff, possible plagiarism of McKinsey’s work, the choice to partner with a Gupta-linked firm, and violations of procurement law.

It was not announced at the time of the joint statement, but Deloitte has since confirmed to amaBhungane that both Thiru Pillay and Shamal Sivasanker resigned in the wake of the Eskom scandal. The firm has said that the two senior directors ‘have acknowledged that the events related to the Eskom matter occurred on their watch. They have taken leadership accountability and have withdrawn from the Firm’. Again, they carefully sidestep any mention of actual wrongdoing.

It is also clear that the oversight and accountability functions of both state regulators and professional bodies have been inadequate in most instances. Instead of hefty fines and auditors being struck from the register, regulation by light touch ensures that meaningless apologies and promises to change are the order of the day.
This is again indicative of a pattern where large consultancies and audit firms are implicated in wrongdoing at state-owned enterprises. Directors and partners quietly exit their firms and some or all of the illegitimate fees are paid back, but there is no hard accountability for those responsible. Inadequately regulated, these professionals systematically diminish the capacity of the state to provide services while cashing in on the feeding frenzy around providing financial and consulting services to the state. They do so ultimately to the detriment of an already deeply unequal and divided society. In the words of a consultant interviewed by amaBhungane: ‘This is what immiserates our country and bankrupts it.’
The continued role of the Big Four in enabling grand corruption and other economic crime is unsurprising, given that they largely enjoy impunity even when caught red-handed. Rarely do they face sufficient sanction to truly discourage misconduct. Commenting on PwC’s treatment by the IRBA after their work at SAA, veteran journalist Ann Crotty summed up a key flaw in the IRBA’s oversight of the industry:

‘Remarkably, if an audit firm is found guilty at the end of what should be a daunting process, there is nothing more than an inoffensive reference to the issue in the IRBA’s quarterly newsletter and a modest fine. No mention is even made of the audit firm or the client that suffered the inappropriate audit service. It is nothing that might discourage noncompliance.’"
The South African situation reflects a global reality: the Big Four continue to generate enormous profit regardless of the number of scandals they are implicated in. In this relentless pursuit of profit and bonuses, the social utility of the audit function is obscured. South African civil society must continue to advocate for accountability from this sector. As the Auditing with Accountability report argues, the problem is an underlying gap in accountability: ‘the shortfall between what the wider public might legitimately expect auditors to do and what the audit process currently delivers’.

**TOO FEW TO FAIL, TOO POWERFUL TO JAIL**

In the current world order, many financial-sector firms are deemed too big to fail. The 2008 global financial crisis highlighted the primacy of banking in the global economy. The rescue of banks through US government bailouts, while ordinary citizens suffered through debt and job losses, highlighted an innate plutocracy.

Ironically, as the Big Four grow ever larger and further embedded in a financialised global economy, governments are now fearful that the collapse of any of them would lead to the tighter monopoly of a "Big Three". As one report notes:

‘When so few actors occupy such a large part of the market, the chances of collusion dramatically increase, and it becomes very difficult for governments to regulate them. If one of them collapsed, it would lead to a crisis in the audit market because there are no real alternatives.’

Thus, we see mounting criticism of the Big Four but few calls for the complete overhaul of the industry. Suggested changes refer to the need for reform. Mandatory rotation of audit firms by public companies has become a favourite reform. This is intended to maintain more independent relationships between clients and their auditors, rather than hundred-year mutually beneficial partnerships.

South Africa’s Independent Regulatory Board for Auditors introduced mandatory rotation in 2016, though it will only come into effect in 2023. While laudable, it is unlikely that mandatory rotation will have much impact, given the small number of players in the market.

**CAPTURED REGULATORS**

The public largely relies on professional associations and bodies to regulate these professions and provide accountability. In South Africa, the IRBA regulates auditors and SAICA has professional authority over chartered accountants, associate general accountants, trainee accountants and accounting students. IRBA regulations stipulate extensive norms and
standards that ought to guide auditors to ensure professional independence and scepticism.\textsuperscript{7} There is significant overlap in the fields of accountancy and auditing, and so the bodies regularly work together.

Since the first Royal Charter for Accountants in 1880, many professional standards have been formulated for integrity, ethics, and professionalism. \textbf{The stereotype of accountants as “bean-counters” pictures a zealous pursuit of accuracy down to the last bean. This is arguably not true of today’s accountants, who are the high rollers of the global financial economy, earning seven-figure packages and enjoying significant political access. Asked how he would improve the accounting profession, a former Big Four professional answered, ‘[M]ake it boring again.’\textsuperscript{8}}

This is made increasingly difficult, however, by the role that accountants play in setting the standards that they violate repeatedly. The Big Four’s ability to escape regulation and punishment is partly due to their ability to “capture” regulators. This applies to legislators and professional bodies. The Big Four are notoriously powerful in policymaking circles, where they can promote and protect their and their clients’ interests. This creates a sort of elite financial capitalism that feeds their long-term interests.\textsuperscript{9} A former auditor also revealed that political connections can keep scandals from being pursued legally.\textsuperscript{10}

These firms regularly lobby governments, sponsor political-party campaigns and are drawn into consultation for the drafting of legislation. In 2013, the UK’s Public Accounting Committee highlighted the incestuous relationship between the Big Four and legislators. According to the PAC’s findings, the Big Four seconded staff to the UK Treasury to advise on the drafting of tax legislation and routinely flooded the email inboxes of the UK’s tax authority, HM Revenue & Customs, with advice on taxation.\textsuperscript{11} With their insider knowledge of legislation, these firms then go on to advise their private clients and companies on tax avoidance schemes. Effectively, they use their expertise to legally rob the HMRC of its revenue.\textsuperscript{12}

In 2018, it was reported that PwC, Deloitte and EY earned \(€10.5\) million as consultants to the European Commission’s Directorate-General for Taxation and Customs Union. They had earned a similar fee in 2016 for consulting on European tax policy, raising serious concerns about conflicts of interest.\textsuperscript{13}

Karthik Ramanna, a professor on governance at Oxford University, noted that this was first and foremost a failure of the regulators to recognise the conflict:

‘Of course this makes the Big Four look bad. But it’s hardly news these days to call out the Big Four on ethics violations. The folks who look really silly are the European Commission. \textbf{They should know better than to invite the foxes to consult on henhouse security measures.’}
The revolving door between the Big Four and government regulators applies for industry regulators, too. Four of the seven members of IRBA’s former board were working for or previously had worked for the Big Four auditing firms. Nearly half of the board members of the EU’s European Financial Reporting Advisory Group are current or former Big Four employees. The US’ Public Company Accounting Oversight Board has five board members, two of whom as former employees of the Big Four.

**PENALTIES: DETERRENT OR ANOTHER BUSINESS COST?**

Where the Big Four do get into a bother with regulators, the most common sanctions are fines. There is little evidence that these are an effective deterrent of poor conduct.

Firstly, the size of the fines may appear significant to ordinary members of the public, but they are usually insignificant compared to the profits these firms continuously amass, or even to the amount made from the contract in question.

Secondly, there is often insufficient follow-up by the regulator after a firm has paid its fine. It is not currently industry practice to place offenders under a higher level of scrutiny for a certain period after the fine has been levied. In South Africa, there is little evidence that the IRBA monitors sanctioned auditors to ensure improved conduct in the future.

A final concern is the lack of transparency and public access to information about accountability in the sector. Except in a few exceptional circumstances, the IRBA does not publicly list the names of auditors and auditing firms found guilty of misconduct. Companies and government departments thus do not have access to information that would help them decide whether or not to work with a particular firm or auditor that may have been censured for noncompliant behaviour.
In essence, the Big Four routinely make the rules, fail to play by them, and exonerate themselves.

More effective and intrusive state regulation is essential, along with refocusing and rebuilding the capacity of state agencies tasked with investigating and prosecuting financial and economic crimes.

It also demands radical intervention to change the structure and nature of the Big Four firms themselves.
If we are going to reform auditing, then there’s one lesson to learn from the financial crisis:Don’t trust the auditors to do it.
RECOMMENDATIONS

The status quo must be disrupted. As the Big Four become larger and more powerful, it becomes ever more difficult to reform and regulate them effectively. Yet without radical changes, the continued role of these mega-firms in corporate fraud, grand corruption and other crimes will continue apace.

By examining the patterns of complicity and the failures of accountability, the areas for urgent reform become clear. While there is no single change that can reform the industry and restore public trust in these firms, these recommendations together offer some ideas for challenging the impunity of the Big Four and changing their role in the global economy.
SEPARATE AUDITING FROM CONSULTING

This report argues that the “independence conundrum” facing the Big Four is a crucial problem and that it arises from conflicts of interest created by providing services that are ‘fundamentally incompatible’.

These firms offer auditing services that are meant to assure financial probity and compliance with the rules while simultaneously offering highly lucrative consulting services that are ‘often specifically aimed at gaming the very systems and rules for which they are also supposed to assure compliance’.

With the recurring scandals related to such conflicts of interest, there are calls in many countries to separate the auditing and consulting functions of the Big Four. The United Kingdom’s parliamentary business committee recently completed a comprehensive review of the industry after several corporate implosions in which auditors were either negligent or at fault. The cross-party committee recommended that the auditing and consulting arms of these firms be legally split in order to ‘improve standards and transparency in book-keeping after audit failures’.

As the crisis of confidence in these firms grows, and the costs of their failures mount, South African authorities should also require this split. Moreover, given the public importance of audit functions and the public cost of audit failure, activists have called on government to consider ‘nationalising’ certain audit functions. In the South African context, this would require significant resourcing and support to the auditor-general’s office. At the least, government should consider establishing an independent body that would select auditors for companies.

POWER TO THE REGULATORS AND TRANSPARENCY FOR THE BIG FOUR

The Big Four are not publicly listed companies. As a result, they are not required to reveal their inner workings and are not subject to the same public scrutiny. This makes the role of state regulators and professional bodies even more important.

The IRBA has recommended that firms voluntarily submit transparency reports from 2020. These will require firms to disclose their approach to, amongst other things, ‘audit quality’; ‘leadership, culture and ethics’; ‘risk management practices’; ‘independence’; and ‘external and internal inspection and monitoring results to assist audit committees’.

Unfortunately, there is little evidence anywhere that voluntary standards deliver the kind of accountability that is urgently required in this industry. It is concerning that the IRBA continues to take a soft approach with firms that have consistently flouted professional standards. This new initiative does not mention
the IRBA gaining the ability to probe the reports that the firms submit.

To their credit, the IRBA has admitted that they need far greater powers of investigation and sanction to deliver effective accountability for auditors. In addition to demanding mandatory rotation of audit firms in 2016, the IRBA and National Treasury made recommendations in early 2019 to amend legislation to grant it greater subpoena and search-and-seizure powers, and to allow the minister to increase the limit of sanctions imposed on auditors.\(^8\)

In his budget speech in February 2020, Minister of Finance Tito Mboweni indicated that a draft amendment bill that would increase the powers of the IRBA would soon be introduced to parliament. The Bill notably grants the IRBA the power to issue a warrant, to ‘enter and search premises and to subpoena persons with information required for an investigation or disciplinary process’, as well as creating a duty to disclose information.\(^9\) It also allows for higher sanctions which may serve as greater deterrents.\(^10\)

These are welcome additions, but the public will need to monitor whether the IRBA uses these powers to ensure accountability and acts independently of the industry it regulates. The IRBA also must commit to improving its own transparency and information-sharing, including the names of individual auditors and their firms found to have engaged in misconduct. Vague newsletters and the refusal to name names – a recurring theme in the case studies in this report – undermines the sanction and prevents other actors from making informed decisions when selecting service providers.

A GREATER ROLE FOR THE AUDITOR-GENERAL

The SAA case study raises serious concerns about the role of private auditors at public entities. When the auditor-general’s office took over the audit function at SAA in 2017, they immediately noted a series of fundamental problems in the airline’s finances and governance that had either been missed or ignored by previous auditors PwC and Nkonki. The SAA case also demonstrates the obvious drawbacks of board members hiring and setting the scope for investigations in which they themselves may be implicated. In both instances, the private audit and forensic firms face conflicts of interest if they hope to provide more services – including lucrative consulting contracts – for that public entity.

As an independent Chapter 9 institution with the requisite skills, the AG is well placed to take greater responsibility for the audit function at public entities. Further, where an independent forensic investigation is required, the AG should set the mandate...
and scope of that investigation. Resources to enable this should be made available. This would ensure that well-paid firms are answerable to the AG for the quality of their work, and they would also depend on the AG’s office for repeat work rather than looking to executives of the entities they investigate.

PREPARE FOR THE PUSH-BACK

Finally, as public discussions on these and other possible reforms take shape, it is important to anticipate and prepare for the push-back by the Big Four themselves.

Around the world, the Big Four have slammed proposed reforms, especially recommendations to split the audit and consulting arms of their business. In the UK, the firms ‘vented their fury’, arguing that reforms would harm them, the economy, and the status of the city of London as a financial centre. 11 In South Africa, the Big Four have been similarly outraged by proposals for legislative reform and recommendations to bolster the power of the IRBA. The parliamentary committee on finance received “comment” from Deloitte and PwC that demanded the right to appeal against attempts to amend the legislation and pushed back hard on the proposed new powers, particularly those related to search and seizure. 12

This is unsurprising. The status quo works perfectly for these firms. With their dominant position in the global financial-services market, the Big Four are exceedingly profitable, powerful, and well resourced. They are also increasingly influential in policy-making spaces. If they are not kept in check, this combination allows them to game the system for the benefit of their clients, some of whom will be engaged in financial crimes, aided and abetted by delinquent auditors who can bend and break the law with little fear of penalty.

Auditing should be understood as a social utility, given that it is a vital check on accounting abuses to protect the public at large. We should therefore reject the argument that public anger at audit failures is misplaced because the public expects more than auditors can deliver. The “expectations gap” is better understood as the auditors’ failure to deliver on legitimate expectations that it is their job to assure corporate financial probity – there is an accountability gap. 13
DON’T TRUST HENHOUSE SECURITY TO FOXES

The Big Four will also try to capture the reform process. Given the complexities of the financial-services industry, governments will be tempted to look to the firms themselves to help in the process. The US did just this after the Enron scandal and it led to a piece of legislation ‘sometimes pejoratively referred to as the “Accountants’ Full-Employment Act”, for its proclivity to create busy work (and more fees) for the industry.’¹⁴

Research in the UK has noted the same pattern of audit firms using their links to policymakers and access to political spaces to push back against reforms that would make them more accountable. In addition, auditors have technical knowledge and expertise in a field that is largely opaque to outsiders, which allows them to dominate discussions.¹⁵ These factors come together to make regulatory capture more likely.

This problem is arguably prevalent throughout the financial sector. Recent painful experience of the 2008 financial crisis should remind us not to rely on the financial sector to address its own problems:

‘Recall how eagerly we accepted the help of bankers in 2008. No surprise, they bailed themselves out, first and foremost. If we are going to reform auditing, then there’s one lesson to learn from the financial crisis: Don’t trust the auditors to do it.’¹⁶

This challenge requires a vigorous engagement by civil society and activists in the processes of reforming the audit industry. We hope that this edition of the CECR series makes a small contribution. It has highlighted the social utility of the audit function and the vast public cost of audit failure, as well as the key role of the Big Four in grand corruption, the massive social injustices incurred as a result, and the failure of state and professional regulators up to now to hold these highly paid professionals to account.
The failures and crimes of the auditing industry have huge consequences for all of us. This requires a vigorous engagement by civil society and activists in the processes of reforming the audit industry. We hope that this edition of the CECR series makes a small contribution.
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APARTHEID GUNS AND MONEY: A TALE OF PROFIT
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THE BOTTOM LINE:
WHO PROFITS FROM UNPAID PENSIONS?
This investigative report is the culmination of a year-long investigation by Open Secrets into role of corporations in the erroneous cancellation of pension funds between 2007-2013. The Bottom Line focusses on the role played by the big corporations who administer these funds, such as Liberty Corporate and Alexander Forbes. The report also looks into the role of the regulator in creating an enabling environment for the ‘Cancellations Project’.

THE ENABLERS:
THE BANKERS, ACCOUNTANTS AND LAWYERS THAT CASHED IN ON STATE CAPTURE.
This investigative report focuses on the role of banks, accounting firms, consultants and lawyers in facilitating criminal conduct that formed part of the state capture enterprise. The report shows that the systems that enable grand corruption and state capture are global in nature, and that private sector elites are central to the problem. It is intended to provide the evidence and analysis to assist Justice Zondo and the State Capture Inquiry with this pressing task in 2020.
CORPORATIONS AND ECONOMIC CRIME REPORT (VOLUME 1)
The Corporations and Economic Crime Reports (CECR) explores the most egregious cases of economic crimes and corruption by private financial institutions, from apartheid to the present day. In doing so, we aim to highlight the key themes that link corporate criminality across these periods of time, focusing on the role of the private sector, a critical blind spot in the discourse around economic crime. This first volume of the series focuses on the role of banks and other financial sector actors in corporate criminality.

JOINT SUBMISSION TO THE ZONDO COMMISSION:
AN AGENDA FOR ACTION
This Agenda for Action is based on detailed submissions made to the Zondo Commission by organisations of the Civil Society Working Group on State Capture (CSWG) covering the widespread impact of state capture on lives of people in South Africa. Open Secrets acts as the secretariat of the CSWG. Editors: Naushina Rahim, Zen Mathe and Hennie van Vuuren.

JOINING THE DOTS:
THE LONG SHADOW OF ECONOMIC CRIME IN SOUTH AFRICA
Prepared for the first People’s Tribunal on Economic Crime, this report examined continuities in economic crime and corruption in South Africa related to the arms trade, from apartheid to contemporary state capture. In doing so it highlighted the powerful deep state networks that have facilitated these crimes.
RECOMMENDATIONS

2. Power to the Regulators and Transparency for the Big Four.
3. A Greater Role for the Auditor-General.
5. Don’t Trust Henhouse Security to Foxes.