

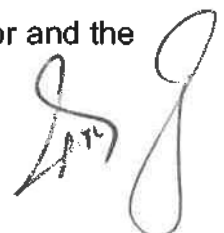
**AFFIDAVIT OF PETER HENRY BISHOP**

I the undersigned

**PETER HENRY BISHOP**

declare under oath as follows:

1. I am an adult male and a senior investigator at the Judicial Commission of Inquiry into State Capture, ("**Commission**") proclaimed by the President of the Republic of South Africa.
2. I am duly authorised to depose to this affidavit by virtue of the position held by me at the Commission.
3. The facts deposed to herein are within my personal knowledge, unless the contrary appears, and are to the best of my knowledge and belief, both true and correct.
4. I will attempt to keep my submission brief in order to avoid prolixity and to unnecessarily burden the Commission. I will seek to highlight key aspects and events which demonstrate that there has been state capture of the assets of Alexkor SOC Ltd ("**Alexkor**") and the Alexkor Richtersveld Mining Company Pooling and Sharing Joint Venture ("**PSJV**") by Gupta related entities and persons. In so doing, I will demonstrate that the facts contained in the submission made by a whistle-blower, Mr Gavin Craythorne ("**Craythorne**") fall within the Terms of Reference ("**ToR**") of the Commission.
5. During 2019, Craythorne reached out to the Commission and requested that it use its powers to investigate the allegations of state capture of Alexkor and the



PSJV as set out in ToR 1.1 and 1.6 respectively as follows:

5.1. *“whether, and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive (including Deputy Ministers), office bearers and /or functionaries employed by or office bearers of any state institution or organ of state or directors of the boards of SOE's...”; and*

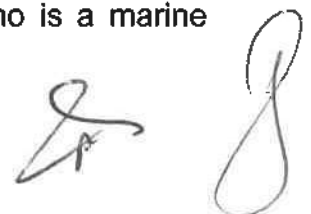
5.2. *“whether there were any irregularities, undue enrichment, corruption and undue influence in the awarding of contracts, mining licenses, government advertising in the New Age Newspaper and any other governmental services in the business dealings of the Gupta family with government departments and SOE's.”*

6. Based on the information received from Craythorne, the Commission authorised an investigation into the averments made by him. Craythorne prepared a detailed affidavit (**Annexure PHB 1**) as part of his submission, which has been further refined in consultation with the investigators and evidence leaders at the Commission to ensure that it was within the terms of reference of the Commission. This further submission has been separately made available to the Chairperson of the Commission.

7. Craythorne's submission is supported by:

7.1. a forensic investigation conducted by Gobodo Forensic Investigating Audit (Pty) Ltd (“**Gobodo**”) that was authorised by the Department of Public Enterprises (“**DPE**”), whose report (**Annexure PHB 2**) was finalised in October 2019;

7.2. an affidavit of Mr George Travis Nicolaai (“**Nicolaai**”), who is a marine



diamond contractor (Diver) and became a whistle-blower with Craythorne, **(Annexure PHB 3)**;

7.3. an affidavit by Mr Martinus Mamphenyane Mononela ("**Mononela**"), **(Annexure PHB 4)**, who is a General Manager Legal Services at the South African Diamond and Precious Metals Regulator ("**SADPMR**"); and

7.4. an affidavit by Mr Jakob Jan Dekker ("**Dekker**"), **(Annexure PHB 5)**, who is employed by the Commission as a Forensic Accountant. He is a qualified Chartered Accountant registered with SAICA, a Registered Auditor registered with IRBA and an associate member of the Institute of Certified Fraud Practitioners ("**ICFP**"). As part of the Commission's investigating team, Dekker was requested to perform an analysis of the business and trading activities of Alexkor, the PSJV between Alexkor and the Richtersveld Mining Company (Pty) Ltd, ("**RMC**"), and Scarlet Sky Investments 60 (Pty) Ltd ("**SSI**"), who in 2018 changed its name to Alexander Bay Diamond Company (Pty) Ltd ("**ABDC**").

8. The DPE also Commissioned Fundunzi Forensics ("**Fundunzi**") to conduct an investigation in 2018 into numerous allegations levelled against the DPE **(Annexure PHB 6)**. One of the allegations investigated was the appointment of Mr Trevern Haasbroek ("**Haasbroek**") as a non-executive director to the Alexkor Board by former Minister Lynn Brown ("**Brown**").

9. The Chief Executive Officer of the PSJV, Mr Mervyn Cartstens ("**Carstens**"), requested and contracted James Allan ("**Allan**") to conduct an independent review and audit of the process from sourcing (mining) the diamonds through to the sale point. This report, **(Annexure PHB 7)**, which was finalised on 29 May 2019, was apparently requested as a result of:

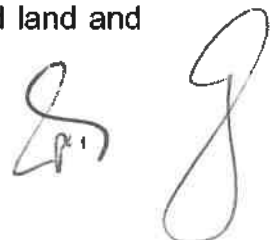
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- 9.1. *“negative press publicity regarding the awarding of the tender process to a Tender House [Scarlett Sky Investments 60 (Pty) Ltd] that had a politically connected individual [Kuben Moodley] as the BEE partner. This individual was linked to the Minister of Mineral Resources [Mr Mosebenzi Joseph Zwane] and an associate in the Gupta State Capture Project;”*
- 9.2. *“Ongoing negative publicity on the prices achieved for diamonds sold on the tender by the Alexcor/RMC PSJV”;*
- 9.3. *“A desire by management to find improvements in the process in order to improve the sustainability for the benefit of Alexcor/RMC PSJV and contractors alike”.*

10. These reports will be placed separately before the Commission.

#### **THE JOINT SHARING AND POOLING JOINT VENTURE BETWEEN THE RICHTERSVELD COMMUNITY AND ALEXKOR.**

11. Alexkor is a Schedule 2 public entity, incorporated in 1992 in terms of the Alexkor Limited Act No.116 of 1992 [Assented to 2 July 1992] [Date of Commencement: 2 November 1992] and trading as Alexkor Limited. The government of South Africa, through the Minister of Public Enterprises, is the sole shareholder of Alexcor.
12. The Department of Public Enterprises is the shareholder representative of Alexkor and exercises oversight on behalf of the South African Government.
13. The PSJV is an unincorporated company acting on behalf of the Alexkor and RMC which manages the mining operations which exploit the pooled land and



marine diamond mining rights of Richtersveld Mining Company (“**RMC**”) (a company formed to represent the interests of the Richtersveld community and Alexkor.

14. The PSJV was established in April 2011 pursuant to a Deed of Settlement concluded with the Richtersveld community in 2007, following a successful land claim instituted by them. According to the 2010 Annual report, in terms of the Deed of Settlement entered into between Alexkor, the Richtersveld Community and the Government of the Republic of South Africa on 22 April 2007 (“**Deed of Settlement**”), the land mining rights were transferred to the Richtersveld Community, with Alexkor retaining its marine mining rights. In terms of the Deed of Settlement:

14.1. Alexkor’s marine mining rights and RMC’s land mining rights have been pooled to form the Alexkor-RMC Pooling and Sharing Joint Venture (“**PSJV**”), which commenced operations on 7 April 2011; and

14.2. Alexkor acquired a 51% interest in the PSJV and RMC acquired the remaining 49% in the PSJV.

15. The PSJV has its own board, but the chair is always the chair of Alexkor. The CEO of the PSJV reports to the CEO of Alexkor.

16. The PSJV concludes marine mining contracts on behalf of Alexkor and land mining contracts on behalf of RMC. The PSJV’s mining operations are sub-contracted to a number of private contractors who operate in the region.

17. Craythorne is a founding member and office bearer of the Equitable Access Campaign (“**EAC**”), being an association of small-scale black-owned and black empowered marine mining companies (“**the Emerging BEE Marine Diamond**

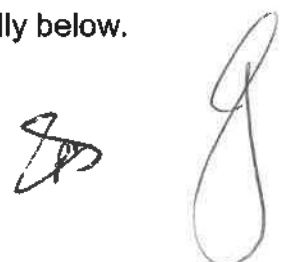


**Miners**”), who are or were subcontracted to the PSJV to exploit its marine diamond rights.

18. Following the introduction of Scarlett Sky Investments 60 (Pty)Ltd (“**SSI**”), a hitherto dormant company with no diamond licence or track record in the diamond industry, to exclusively market and sell all of the diamonds produced by the PSJV, complaints have been made by the contractors, including Craythorne, about the flawed tender process pursuant to which SSI was appointed and the steadily reducing prices achieved by SSI for the diamonds mined by them. Complaints have also be raised by Craythorne about the proposed plans of Alexkor to diversify into the coal industry for the purpose of supplying coal to Eskom. This would obviously exclude the Richtersveld community from the business of Alexkor as its joint venture with Alexkor is only limited to its diamond assets.

## **THE STATE CAPTURE OF ALE XKOR**

19. Allegations have been made by Craythorne that Alexkor has always been captured through the sales/marketing of the its diamonds and that this has occurred long before 1994, (**Annexure PHB 1**). However, for purposes of this affidavit, I will only focus on allegations relating to the state capture of Alexkor by Gupta associated entities, persons and networks, with the assistance of the directors of Alexkor, in keeping with the ToR of the Commission.
20. The Commission’s investigating team has conducted its own investigations into the links between the role players alleged to have been part of the Alexkor state capture project and the Guptas and/or their associates. The results of these investigations reveal that there was an orchestrated plan of state capture of Alexkor and the PSJV, which I will attempt to set out chronologically below.



21. From our analysis and investigations, it is apparent that the aim was to both:
- 21.1. implement a plan to diversify its mining operations to include coal and lime mining in order to supply coal to Eskom pursuant to contracts from which Gupta entities and associates could benefit; and
  - 21.2. take control of the proceeds of the sale of its diamonds.
22. We found that the same *repurposing modus operandi* described by the State Capacity Research Project in its analysis of the capture and exploitation of State Owned Enterprises (“SOEs”) which was used by the Guptas and their associates to capture SOE’s, was employed by them, with the assistance of appointed Ministers of Public Enterprises, including former Minister Malusi Gigaba (“Gigaba”) and former Minister, Lynn Brown (“Brown”) and others, to capture Alexkor.
23. In their report, *Betrayal of the Promise<sup>1</sup>: How the Nation is Being Stolen, May 2017*, the researchers explain that the *modus operandi* adopted entails four steps described below:
- 23.1. “A new minister changes the board composition of a SOE.” In the case of Alexkor, former Ministers Gigaba and Brown changed the board when they took office;
  - 23.2. “The SOE announces a major new acquisition or build project.” Minister Gigaba announced the new strategic direction for Alexkor, a diamond mining concern, to diversify into the production of coal and lime to supply Eskom;

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<sup>1</sup> Bhorat, H., Buthelezi, M., Chipkin, I., Duma, S., Mondli, L., Peter, C. and Swilling, M., 2017. *Betrayal of the Promise: How South Africa is Being Stolen*. State Capacity Research Project.



23.3. *“People are brought on to the board who are either strongly in favour of radical economic transformation and/or have close personal links to some of the bidders.”; and*

23.4. *“The tender is awarded in circumstances where there is a clear conflict of interest.”* This was evident in the appointment of Regiments Capital (Pty Ltd (**“Regiments”**)) to deal with the coal and lime strategy and SSI to control the valuation, sale, beneficiation and marketing of the diamonds of Alexkor”.

24. I now deal with the key persons and entities involved and process that unfolded at Alexkor.

#### **KEY PERSONS AND ENTITIES**

25. The Commission’s investigation into activities of state capture at Alexkor has identified the following key persons, who had/have links to the Guptas and/or their associates, who were complicit in implementing the aforementioned steps and setting the wheels of state capture in motion:

25.1. Gigaba, in his capacity as Minister of the DPE;

25.2. Brown, in her role as Minister of the DPE;

25.3. The former Executive Personal Assistant to Brown, Ms Kim Davids (**“Davids”**);

25.4. The Chairperson of the Alexkor and PSJV Board, Mr Rafique Bagus (**“Bagus”**);

25.5. The Chairperson of the Alexkor and PSJV Board, Ms Hantsi Matseke



(**"Matseke"**);

25.6. The Non-Executive Director of the Alexcor Board, Trevern Haasbroek (**"Haasbroek"**);

25.7. The Chief Executive Officer of Alexkor, Mr Percy Khoza (**"Khoza"**);

25.8. The Chief Executive Officer of the PSJV Board, Mr Mervyn Carstens (**"Carstens"**);

25.9. The Chief Legal Officer of Alexkor, Ms Zarina Kellerman (**"Kellerman"**);

25.10. Duncan Korabie (**"Korabie"**), who in 2014, was accepted by Alexkor as one of the independent RMC directors representing the community on the board of the joint-venture and a member of the Technical Committee of Alexkor that evaluated and scored the respective bidders in the exclusive marketing and sales contract to SSI;

25.11. Daniel Mark Nathan (**"Nathan"**) and Kubentheran Moodley (**"Moodley"**). According to the Confidential Tender Proposal No RFP 03/14, (**Annexure PHB 8**) submitted by SSI, the Directors of SSI, according to enclosed CIPC documents, were Nathan and Moodley. The Group structure organogram for SSI indicated that:

25.11.1. Daniel Nathan Trading CC (**"DNT"**), whose sole shareholder and director is Nathan, performed the function of Executive Management of SSI;

25.11.2. Kimomode (Pty) Ltd (**"Kimomode"**), whose sole shareholder and director is Moodley, was the majority Broad Based Economic Empowerment (BBEE) partner (60%); and



25.11.3. Integrated Capital Management (“**ICM**”) whose purported directors are Mark Chipkin (“**Chipkin**”), Stanley Shane (“**Shane**”), Mark Angel (“**Angel**”) and Selwyn Nathan (Nathan’s father), was responsible for the Administration and Finance of SSI. Selwyn Nathan does not appear as a director from the CIPC documents relating to ICM. He is, however, reflected as a director in ICM’s letterheads (**Annexure PHB 9**) and on a lease agreement between ICM and Trillian Capital (“**Trillian**”), (**Annexure PHB 10**); and

25.12. Mr Erick Wood (“**Wood**”), who was the Executive Director of Regiments for nearly 12 years, after which he joined Trillian as its Chief Executive Officer.

26. The entities utilised and/or involved are/were:

26.1. SSI, which has changed its name to ABDC;

26.2. DNT;

26.3. ICM; and

26.4. Regiments.

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## THE TIME LINE OF EVENTS WHICH CONTRIBUTED TO THE STATE CAPTURE OF ALEXCOR

2010

### The Appointment of Minister Malusi Gigaba as Minister of the Department of Public Enterprises


27. President Jacob Zuma (“**the former President**”) appointed Gigaba as Minister of Public Enterprises on 1 November 2010. He served in this position until 2014, when he was appointed Minister of Home Affairs. In the report, *Betrayal of the Promise: How the Nation is Being Stolen, May 2017*<sup>2</sup>, the authors state that throughout his tenure as public enterprises Minister until 2014, Gigaba was engaged in the restructuring of SOE boards, which became broadly representative of ‘Gupta-Zuma’ interests.
28. In an article by Kyle Cowan, Graeme Hosken, Sikonathi Mantshantsha and Genevieve Quinta<sup>3</sup>, it stated that:

*“Finance Minister Malusi Gigaba, while he was public enterprises minister, and his successor, Lynne Brown, peppered state-owned companies with Gupta family associates, leaked e-mails show. The e-mails have trained the spotlight on Gigaba’s role — whether witting or unwitting — in the capture of the state during his tenure at the Department of Public Enterprises. They also appear to add credence to a report by the Public Affairs Research Institute (Pari), released before the e-mail leaks, that painted Gigaba as a central player in state capture...”*

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<sup>2</sup> Bhorat, H., Buthelezi, M., Chipkin, I., Duma, S., Mondli, L., Peter, C. and Swilling, M., 2017. *Betrayal of the Promise: How South Africa is Being Stolen*. State Capacity Research Project

<sup>3</sup> Kyle Cowan, Graeme Hosken, Sikonathi Mantshantsha and Genevieve Quinta | published on 06 June 2017 - 20:52



*"A regular presence in the Gupta linkages to the directors was their associate Salim Essa..."*

## 2012

### **Carstens appointed as the CEO of the Alexkor PSJV: August 2012**

29. According to the Alexkor audited Annual Financial Report, 2012, it was announced that Carstens was appointed by the PSJV Board in August 2012 as Managing Director of the PSJV, following a recruitment process for the position Chief Executive Officer.
30. In a Question for Written Reply (Question No: 1200) to the DPE, Republic of South Africa National Assembly, it was stated that Carstens was a seasoned Mining Executive with over 30 years' experience in the mining industry, which included working for De Beers, Anglo American and Trans Hex, the relevance of which has been dealt with by Craythorne.
31. Carstens played an important part in the irregular appointment of SSI as the sole marketing and sales agent for the PSJV dealt with below.
32. On examining the cell phone records for Carstens, we noted at least 107 calls made by him to Gupta associates:
  - 32.1. Moodley - Carstens was in contact with Moodley approximately 97 times between the periods 2015/09/12 to 2017/05/10. It must be noted that Moodley resigned as a director of SSI on 04 November 2015; and
  - 32.2. Shane – Carstens was in contact with Shane approximately 10 times between the periods 2016/02/16 to 2016/07/10.

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### Suspicious Vehicle Payments

33. Analysis of Carstens bank statements by Dekker, (**Annexure PHB 11 (1-4)**) revealed that he had made settlements on two Land Rover Discovery 4 vehicles and one Range Rover, which totalled R3.3m over three years. These payments did not come from the bank accounts the Commission has for him. It would appear as if settlements were made during the following periods: August/Sept 2014, Oct 2015 and August 2016. It is also not clear if the settlement amounts were cash transfers or cash payments. The Commission is still awaiting further bank records that have been requested via summons.

### **Gigaba announces new Alexkor Board and Chairperson: 7 September 2012**

34. In the Government Media statement dated 7 September 2012; *“Media Address by Mr. Malusi Gigaba MP, Minister of Public Enterprises, on the occasion of the Annual General Meeting (AGM) of the Board of Directors of ALEXKOR in Tshwane,”* it is stated that.

*“...Our annual review of the Board has necessitated that we rotate the Board and include new skills’ sets and expertise to give impetus to the new strategic direction that the Shareholder wants ALEXKOR to take...”*

*“In this regard, I have appointed, Mr Rafique Bagus as Chairperson of the new Board who will be assisted by Ms Gillian Nonhlanhla Jiyane, Dr Yvonne Nono Mohutsioa-Mathabathe, Ms Zukiswa Ntlangula, and Mr Mohammed Bhabha. I have given the new Board the responsibility to fill the vacancies of CEO and CFO forthwith, by no later than the next 3 months.”*

### **Bagus appointed as new Chairperson of the Board of Alexkor: 7 September 2012**

35. Key to these appointments was Bagus, the new Chairperson of the Board of Alexkor. Bagus was previously the Chief Executive of Trade and Investment



South Africa, Deputy Director-General of the Department of Trade and Industry and special adviser to Alec Erwin when he was the Public Enterprises Minister.

36. Bagus did not waste any time commencing with the new strategic direction (diversification into coal mining) announced by Gigaba. Below is an excerpt from Bagus' foreword to Alexkor's 2013 Annual report appearing, (**Annexure PHB 12**)

*"Halfway through the 2012/13 financial year the new Alexkor board took office, facing challenging circumstances. We were confronted with some stark realities from a business with significant economic challenges. Our new strategy is a radical departure from the past to transform Alexkor into a diversified mining company that will ensure the long-term sustainability of our mining operations. The strategy embraces four key elements, namely:*

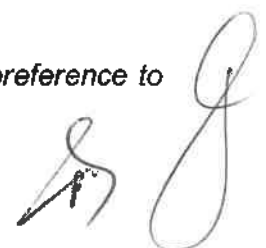
- *Unlocking value from the PSJV;*
- *Extract value from African diamond mining opportunities;*
- *Utilise Alexkor's core mining capability to supply coal to Eskom and reduce their coal supply risk; and*
- *Develop lime resources to supply Eskom.*

*The Alexkor board has been given the mandate to qualify and quantify mining opportunities for investment consideration. An immediate and urgent opportunity exists to focus on securing thermal coal supply for power generation.*

*Eskom faces a critical and significant shortfall in strategic coal supply that will jeopardise efforts to ensure energy supply to our industries.*

*We can significantly contribute to the development of new coal supply sources by utilising mining methods, processes, technologies and skills that are well within our current core capability.*

*Eskom will have to ensure that new mines are opened with a preference to*

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*procure coal from emerging black miners.*

*Alexkor's diversification strategy supports these initiatives that will broaden economic participation, secure employment, stimulate local investment, and unlock underutilised resources. We will provide market access and mining expertise to emerging black miners that will create significant economic value for local communities.*

*Various emerging black miners expressed interest to partner with Alexkor in developing coal opportunities. We believe that these opportunities will create a viable second tier mining industry in South Africa.*

*High grade limestone supply to Eskom is critical for flue gas desulphurisation operations. We are in the process of developing a strategic lime business case to supply Eskom and will report on this progress shortly.*

*During the next financial year, we will focus on building and expanding strategic relationships with sister state-owned corporations and in particular Eskom and Transnet.*

*We will also engage the Department of Mineral Resources (DMR) and the state-owned mining company to coordinate coal mining efforts and secure their support of our strategy.*

*We are also in the process of negotiating better prices for our rough diamonds, which will have a positive impact on future revenues.*

*We have appointed Mr Percival Khoza, one of the leading mining executives in South Africa, to champion the future growth of Alexkor. His vast knowledge and experience in gold, diamond and coal mining is of immense benefit to the executive team.*

*The credibility of our current management team provides Alexkor with the ability to attract the best skills from the mining industry to fill critical positions. We have finalised the team which will add more than 60 years of mining experience to the executive.*



*A special word of thanks to Honourable Minister Malusi Gigaba, whose powerful vision of the future and insightful guidance and support is of huge value to Alexkor."*

37. On examining the cell phone records for Bagus, we noted that he made telephonic contact with the Gupta brothers and their associates as follows:

37.1. Iqbal Sharma ("**Sharma**") approximately 60 times between the periods 2008/04/28 to 2013/02/20. Sharma - according to #GuptaLeaks dated 23 Mar 2018: "*The great train robbery Part 2 - The choo-choo switcheroo*" then previous "*chair of Transnet's Board Acquisition and Disposal Committee. Sharma, readily admits a previous friendship with Gupta lieutenant Salim Essa and a range of business ties with the Guptas before they fell out, has denied wrongdoing*";

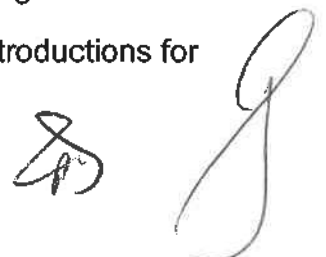
37.2. Ashu Chawla ("**Ashu**") approximately 8 times between the periods 2008/04/28 to 2013/03/18;

37.3. Ajay Gupta ("**Ajay**") approximately 26 times between the periods 2015/07/18 to 2016/03/18; and

37.4. Rajesh (Tony) Gupta ("**Tony**") approximately 7 times between the periods 2015/05/27 to 2016/03/17.

38. Bagus attended the Sun City Gupta wedding and stayed in room 1205 from 30/4/2013 to 2/5/2013 (departed 3/5/2013) with another adult. This was at the same time he was Chairman of the Alexkor Board appointed by former Minister Gigaba.

39. According to an Amabhungane article, (**Annexure PHB 13**), Bagus came to public attention in 2011 when he was linked to making political introductions for

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Uruguayan businessman, Gaston Savoi, who is still battling corruption charges relating to government tender awards, which have been dealt in the evidence of Mr. Trevor White and Colonel Piet Du Plooy before the Commission. Bagus has also featured during evidence led at the Commission in relation to the South African Airways (SAA) and in numerous media articles concerning state capture and corruption.

40. He was also instrumental in his capacity as Chairman of the Alexkor and the Alexkor PSJV Board in awarding the tender to SSI, granting it the exclusive rights to market and sell the diamonds produced by the PSJV.

## 2013

### **Khoza appointed CEO of Alexkor: 4 March 2013**

41. On 7 September 2012, at a Special General Meeting with the newly appointed Board, Gigaba mandated the newly appointed Board to prioritise the recruitment of a new CEO and ensure that the matter was finalised within three months. Within two months, on 15 November 2012, the Board provided the Deputy Minister with a submission on recruitment of a new CEO. The Department confirmed that the submission met the requirements of the CEO Appointment Guidelines.
42. On 4 March 2013, Khoza was appointed as Chief Executive Officer of Alexkor. Prior to this, he was a General Manager at Optimum Colliery, and was clearly recruited in order to pursue Gigaba's agenda to diversify into coal.
43. It is important to note that Tegeta's purchase of the Optimum Coal Mine was the subject matter of the Public Protector's State of Capture Report.



44. In an Amabhungane article dated 13 December 2017, (**Annexure PHB13**), it stated that:

*“The chief executive of Alexkor was Percy Khoza, a seasoned mining executive with both diamond and coal experience. He was hired, in part, to pursue the “coal strategy” approved by Gigaba.”*

#### **New strategy announced to diversify into coal mining: 13 September 2013**

45. During a media announcement it was stated that the Minister of Public Enterprises, Gigaba, would unveil Alexkor’s new strategy on 13 September 2013 at the Sheraton Hotel in Pretoria. This announcement related to the re-positioning of Alexkor’s business into the coal mining business in order to supply Eskom with coal and lime.
46. However, the announcement<sup>4</sup> was made by the Deputy Minister, Bulelani Magwanishe (“**Magwanishe**”), who stated the following:

*“...I’m pleased to announce today, that the board has responded with a game changing strategy that has a well-crafted compelling value proposition that puts/positions Alexkor as a world-class mining company with aspirations to respond to the immediate needs of the country.*

*Our own analysis shows that Eskom will start experiencing coal supply shortages by 2018. The state has to move fast to avert an energy crisis. Electing to enter coal mining, will fundamentally change the value proposition of Alexkor to the people of South Africa.*

*Alexkor’s new strategy provides the state with a significant lever in engaging with coal majors, who are mainly multinationals, with a narrow responsibility to the country’s economy. Alexkor is expected to be a vanguard for transformation*

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4 Address by Deputy Minister Bulelani Magwanishe, MP, on the occasion of the Alexkor Post Annual General Meeting media briefing in Tshwane 13 Sep 2013



*in the coal mining sector, as the government's call for transformation in the sector has effectively gone unheeded.*

*Black emerging miners are still battling to gain a footing in the sector. Alexkor will partner emerging black, women, youth-owned miners through offering the necessary technical and business expertise to enable graduation of these miners from emerging to established, realising the objectives of the Eskom Emerging Miners Strategy, which as a department we have championed.*

*The repositioning of Alexkor satisfies another policy imperative. The Minister of Public Enterprises mentioned during his 2013 Budget Vote speech: the push for SOC-to-SOC collaborations. A year ago an Alexkor-Eskom collaboration at such a strategic level was inconceivable.*

*Now we are at the threshold of shaping the future of this country; and Alexkor is on the verge of finding its place into South Africa's future sustainable growth story.*

*Alexkor is also looking at high grade limestone supply to assist Eskom with its flue gas desulphurisation plants, and transportation cost is a major component of the price of burnt lime and leveraging SOC infrastructure will provide a cost advantage. The company's diversification strategy will ensure that it explore mining opportunities on the African continent. Let me hasten to state that the new strategy is not going to be liked by all, in particular, by those in the private sector.*

*We must expect opposition, challenges and pushback by those who will see the strategy as a threat to their long entrenched positions. We must not be fazed by such; our agenda is bigger than those forces.*

*Ours is not to reinforce Alexkor's commercial bottom-line, but to secure the future of this country and to ensure that the sector is finally transformed. I want to urge the Board to ensure that all governance processes to drive this strategy are put in place and are followed through. We will ensure that legally, we are on solid ground by soliciting opinions of relevant authorities. There will be a plan that executive management will follow in rolling out the strategy..."*



47. In an article in the Cape Times dated 16 September 2013, it was stated that:

*“...in a separate submission to the Portfolio Committee on Mineral Resources Meeting on Friday, Eskom's Kannan Lakmeharan proposed that the state-owned African Exploration Mining and Finance Corporation (“AEMFC”) and Alexkor could contribute to the long-term security of low-cost coal supplies,”*

to which Magwanishe agreed.

48. The Business Day reported on 16 September 2013 that Alexkor, which does not yet have any coal prospecting or mining properties, appears to be duplicating the mandate of state-owned coal mining company, AEMFC, which is producing coal for Eskom from the Vlakfontein mine near Witbank, and plans expansions.

49. Answering questions at a press briefing after Alexkor's Annual General Meeting in Pretoria, Magwanishe said there was no potential conflict between Alexkor and African Exploration.

50. In the audited Annual Financial Reports for 2013, (**Annexure PHB 12**), it was confirmed that Alexkor's new coal strategy was a radical departure from the past to transform Alexkor into a diversified mining company that would ensure the long-term sustainability of mining operations. The strategy outlined embraced four key elements, namely:

50.1. *Unlocking value from the PSJV;*

50.2. *Extracting value from African diamond mining opportunities;*

50.3. *Utilising Alexkor's core mining capability to supply coal to Eskom and reduce their coal supply risk; and*

50.4. *Developing lime resources to supply Eskom.*

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**Kellerman appointed Chief Legal Officer of Alexkor 1 October 2013**

51. Kellerman was appointed on 1 October 2013 as the Chief Legal Officer of Alexcor. Kellerman resigned from Alexkor in 2 November 2015.
52. Whilst Kellerman was the Chief Legal Officer of Alexkor, SSI won a contract to be the sole agent to sell and market Alexkor's diamond production. SSI had no diamond license and Moodley, the majority 60% shareholder in SSI, had no diamond industry background.
53. On examining Kellersman's cell phone records related to her time at Alexkor, the following was noted:
- 53.1. 479 calls to Moodley with a total call duration of 24,112 minutes for the period 2015/08/08 to 2018/04/13;
- 53.2. 23 calls to Zwane with a total call duration of 1 492 minutes for the period 2015/12/09 to 2016/04/25. Noteworthy is that Kellerman was in contact with the Minister shortly after she resigned from Alexkor on 2 November 2015.
54. When Bagus departed and the new board was appointed by Brown in August 2015, Kellerman resigned from Alexkor, and was appointed as the secretary to Zwane's inter-ministerial committee inquiry into banks' withdrawal of services to the Gupta group.
55. After Kellerman resigned from Alexcor on 2 November 2015, she was appointed as an adviser to the Minister of Mineral Resources, Mosebenzi Zwane ("Zwane") from April 2016 to March 2018. She later emerged as the secretary to Zwane's so-called Inter-Ministerial Committee Inquiry into the closure of the Gupta bank accounts.

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56. Kellerman told Amabhungane:

*“After my resignation [from Alexkor], I met with the new chairperson who asked me to reconsider. Whilst I was giving thought to this request, late in September 2015, I received a call from Kuben Moodley, who I had met through the [Scarlet Sky] negotiations, who asked if I would be interested in interviewing for a position as an advisor to the newly appointed minister of mineral resources [Zwane]... However, I only officially joined the minister’s team in April 2016. “As the minister’s advisor, with company secretarial and corporate governance experience, I assisted as the secretary to the [interministerial committee]. There is nothing sinister about this.”*

57. Significantly, shortly after the announcement by Gigaba that Alexkor would be expanding into the coal business to supply Eskom, well documented Gupta linked entities and persons, Regiments and Wood, started engaging with Alexkor. This is evident in the email exchanges between Kellerman), Khoza, Regiments directors and Wood discovered during the course of our investigations dealt with below.

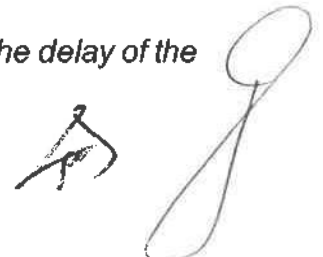
### **Wood and Regiments**

58. According the State of Capture Report No 6 of 2016/17 by the Public Protector, Wood was an executive director of Regiments for nearly 12 years until February 2016 when he joined Trillian as its Chief Operating Officer.

59. According to the founding affidavit of Wood, Regiments was registered and incorporated in 2004, at which time, Regiments had six directors. While it is itself an operator in the financial-services sector, Regiments’ functioned primarily as a holding company; it holds shares in a considerable number of both trading entities and investment companies.



60. On 28 February 2016, Wood left Regiments and was appointed as a director for all Trillian companies and subsidiaries on 1 March 2016. Essa, a close associate of the Gupta family, was appointed as a director of Trillian Holdings (Pty) Ltd on 28 August 2015 and became the controlling shareholder in September 2015.
61. In a document by Organisation Undoing Tax Abuse (“OUTA”), *“No room to hide: A President caught in the act”*, it was reported that the advisory services company, Regiments—whose executive director, and 32% shareholder, Wood, a business associate of the Guptas and Essa, earned hundreds of millions of Rands in service fees from Transnet. It was stated further that Trillian Capital Partners – a company in which Essa holds a 60% stake and Wood a 25% stake, and to which Wood took the financial advisory business he had previously conducted in the name of Regiments, has since late 2015, earned more than a hundred million rand in service fees from Transnet.
62. It thus came of no surprise when Regiments was requested by Alexkor to assist it in preparing the Alexkor Financial Services Panel Request for Proposal (RFP), Evaluation sheet and a sample advert for a RFP for appointment to the panel of financial services providers for Alexkor. When Alexkor advertised the tender, Regiments prepared and then submitted their own proposal, which was totally irregular. According to **(Annexure PHB 14)**, *“The appointment of Alexkor SOC Ltd Legal and Financial Panel of Advisers. Presentation to the Tender Committee 17 June 2014”*, it seems Regiments could have been successfully nominated with a number of other bidders to the financial adviser’s panel. However, it is not clear from the said presentation document if they were in fact appointed. According to the Alexkor Board minutes dated 21 August 2014 **(Annexure PHB 15)**, it was decided and agreed to place a moratorium on tenders for the legal and financial panel of advisers, i.e. *“Resolution Number 04/11/14 - Tender Committee/2 RESOLVED that: The Tender Committee approved the delay of the*


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*tenders for the Legal and Financial Panels, subject to the Board approval and “prospective interested” tenders must be advised accordingly.”*

63. Unfortunately, there is no further information available from Alexkor in the above regard.
64. In the counter application against Capitec heard in the High Court of South Africa, Gauteng Local Division, Johannesburg, Case Number 24805/2017, the Court stated that the value to the Guptas of having a party like the Regiments advising organs of state was self-evident; because Regiments was beholden to the Guptas, they could be depended upon to furnish whatever advice the Guptas wanted them to furnish to organs of state. A good example was the Guptas’ purchase of the Optimum Coal Mine through Tegeta resources and Exploration (Pty) Ltd, with the assistance of Eskom.
65. The Court further found that in turn, Regiments would launder hundreds of millions of rands of public funds for the Gupta family, by paying the bulk of the fees that they were paid from public funds to Gupta front companies which, in turn, would launder them through other entities until the funds finally made their way into offshore Gupta accounts. The money laundering payments made by Regiments were euphemistically described in Regiments’ records and books of accounts as *“business development” fees*.

#### **Non-Disclosure Agreement between Regiments and Alexkor : 3 October 2013**

- 65.1. On 1 October 2013, a few weeks after the announcement by the Deputy Minister of DPE of the new strategy for Alexkor to supply Eskom with coal, Khoza, the CEO of Alexkor, received an email, (CN-023039483 Email from Mr Jonathan Loeb (“Loeb”) to Khoza (**Annexure PHB 16**), with subject line-*“Alexkor Regiments NDA, from Mr Jonathan Loeb of*



*Regiments Capital (Pty) Ltd (Loeb) and Head of Corporate Finance”, which was copied to Wood of Regiments and Tewodros Gebreselasie (“Gebreselasie”), the Senior Economic Adviser at Regiments.*

*“Hi Percy*

*It was good to meet you earlier. Please see attached for your review a draft NDA [Non-Disclosure Agreement] between Regiments and Alexkor. Please distribute to your team as I did not receive email addresses. If you’re comfortable with the document as is, please fill in the blank spaces, sign and scan back to me for counter-signature. Should you have any comments or proposed edits, please mark these up on the document. Once finalised, we would be in a position to receive and review the master coal supply agreement.*

*Thanks and kind regards*

*Jonathan.”*

- 65.2. On the same day, Khoza forwarded the email with the attached NDA to Kellerman.
- 65.3. On 3 October 2013, Kellerman sent an email, (CN-023039483 Email from Kellerman to Loeb (**Annexure PHB 16**), which was copied to Wood, Khoza and Gebreselasie, relating to the same email in which she wrote the following:

*“Hi Jonathan,*

*Any news on the amended NDA? I would like to send you the Eskom Master Supply in advance, on your word of course that you would keep its contents confidential.*

*Thanks*



Zarina.”

65.4. Kellerman emailed the Eskom Master Coal Agreement between Alexkor and Eskom to Woods, Loeb, and Gebreselasie and copied Khoza.

65.5. On the same date, 3 October 2013, Loeb responded to Kellerman via email, (**Annexure PHB 16**)<sup>5</sup> copying the same persons copied earlier, stating:

*“Hello Zarina*

*Thanks for the email and amended NDA. I'm comfortable with the edits – please see attached a signed PDF copy. Please sign and return a copy to us. Thanks also for the Master Supply Agreement; which will of course be treated as confidential.*

*Kind regards*

*Jonathan.”*

65.6. On 3 October 2013, the NDA was signed by both parties (**Annexure PHB 17**)<sup>6</sup>. Importantly, the NDA states in paragraph 2 sub- paragraph 2.1 on page 3 that:

*“The parties are in discussion regarding the potential provision of financial and advisory and other services to Alexkor by Regiments.”*

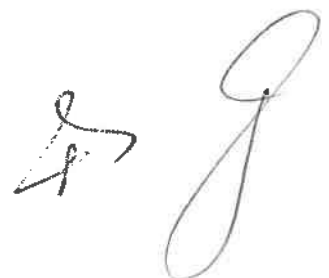
### **Legal opinion sought regarding competition issues arising from proposed co-operation agreement between Alexkor and Eskom**

66. On 11 October 2013, Mr D Walker of Werksmans Attorneys (“Walker”), sent a

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5 CN-023039483 e mail from Loeb to Kellerman

6 CN-023039484, signed NDA between Regiments and Alexkor



letter to Kellerman (**Annexure PHB 18**)<sup>7</sup>. Werksmans had been asked to provide an initial high level view on any key procurement and competition issues that should be considered by Alexkor and Eskom when finalising their Co-operation Agreement. When considering such issues, Werksmans were requested to take into account the fact that Alexkor's ultimate objective was to secure the ability to supply to Eskom approximately 20% of its new coal supply requirements and to structure all coal supply agreements between Alexkor (or entities in which it holds an interest) and Eskom on a "cost plus" basis. Werksmans stated that, based on their initial analysis, they were not aware of any law that prohibits the implementation of such arrangements.

#### **Tender published to provide financial services to Alexkor: October 2013**

67. The following email exchange discovered by the Commission outlines what transpired between Kellerman (Alexkor), Khoza (Alexkor), Neo Mohohlo (Regiments), Indheran Pillay ("**Pillay**") (Regiments), Wood (Regiments and Tewodros Gebreselasie ("**Gebreselasie**") (Regiments) and other personnel of either Alexkor and/ or Regiments surrounding the tender to provide financial services to Alexkor:

67.1. On 7 October 2013, Gebreselasie sent an email (**Annexure PHB 19**)<sup>8</sup>, to Kellerman, copied to Khoza, Wood, and Loeb with subject: "*Info on the RFP document*" as follows:


*"Good afternoon,*

*As promised, we are in the process of preparing the RFP document for the panel of financial services providers. We will be able to send it to you before close of business today. Can you please forward me your*

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7 CN-026629431, Werksmans Attorneys letter to Alexkor dated 11 October 2013

8 TRL-000497681 (1) (Email)

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name.

*standard adjudication template and standard scorecard, if you have any? Your prompt response is highly appreciated.*

*Regards*

*Tewodros Gebreselasie..”*

67.2. On the same date, 7 October 2013, Kellerman responded to all via email **(Annexure PHB 20)**<sup>9</sup>, as follows:

*“Hi all,*

*Only just seen the mail, apologies. Attached is our, which should include everything you are looking for. Let me know if you require anything else last RFP, (CN-023039349 LAND REHABILITATION PLAN- **(Annexure PHB 21)**).*

*Sincerely*

*Zarina”*

67.3. On 9 October 2013, Gebreselasie wrote an email **(Annexure PHB 22)**<sup>10</sup>, to Kellerman, copied to Khoza, Neo Mohohlo (Regiments), Pillay (Regiments), and Wood (Regiments) with subject: *“RFP for appointment to the panel of financial services providers for Alexkor”*

*“Hi Zarina,*

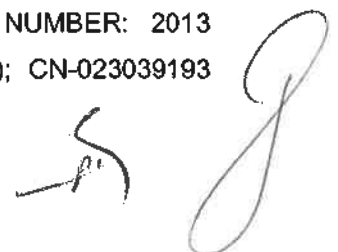
*Please find attached, the RFP document, bid evaluation form and advert on the captioned. **(Annexure PHB 23)**.<sup>11</sup>*

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9 CN-023039348 (Email)

10 CN-023039188 (Email exchange)

11 CN-023039191 (RFP Draft REQUEST FOR PROPOSAL (RFP). RFP NUMBER: 2013 /10/23/FINANCIAL SERVICES PANEL); and CN-023039192 (Evaluation sheet); CN-023039193

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*Kind regards*

*Tewodros Gebreselasie”*

68. On the same day, 9 October 2013, Kellerman responded to all the above persons in the mail, but also copied Bianca Gasela [bsjgas@yahoo.com] in the email as follows:

*“Thanks Tewodros.*

*Will peruse tonight and give you feedback tomorrow.*

*Sincerely*

*Zarina”*

**2014**

### **Regiments’ Fee Proposal to Alexkor: January 2014**

69. On 15 January 2014, Loeb sent an email (**Annexure PHB 24**)<sup>12</sup>, which he copied to Pillay and Gebreselasie with the subject line, “*Alexkor Fee Proposal:*”

*“Hi Eric*

*Please see below our Alexkor fee proposal:*

*Transactions of this nature typically include four main work streams:*

*1 Valuations*

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(Sample advert))

12 CN-023034649, Email from Loeb to Wood

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## *2. Due diligence*

## *3. Transaction advisory*

## *4. Capital raising*

### *Valuations and due diligence*

*The majority of consultancies charge for valuations and due diligence work on a time and materials basis. An hourly rate per resource coupled with pre-agreed rates for travel, communications, accommodation, etc. is agreed upon by the parties and the number of hours expected is generally agreed upon upfront. This fee is not a success based payment and is charged monthly in arrears.*

### *Transaction advisory*

*Transaction advisory is a bit more complex. For transactions between R100M and R1bn, a corporate finance fee of 2%-3.5% of transaction size is charged as a success fee. This percentage reduces slightly as the transaction size increases over R1bn. A monthly retainer is charged to cover costs and is typically offset against the final success fee charged.*

*For smaller transactions (i.e. R10M – R100M) a fixed fee is generally negotiated between the parties. This fee would typically not be reliant on success and large investment banks would not often engage in these mandates.*

### *Capital raising*

*Capital raising fees are usually success based, based on a percentage of funding raised:*

*Senior debt: 1%*

*Mezzanine: 1.5%-2.5%*

*Equity: 2.5%-3.5%*

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*Alexkor fee proposal:*

*Due to the nature of the transactions and for the sake of simplicity and transparency, we propose the following hybrid approach:*

*All work done is charged on a time and materials basis, based on our standard rates table below. These rates will be charged monthly in arrears. In order to incentivise the successful and timely completion of transactions, we propose a small success fee of 1% (of the transaction size) over and above the time and materials fees charged.*

*Capital raising fees are to be charged separately on a success fee basis at the rates shown above.*

*Kind regards*

*Jonathan*

<i>Regiments Capital - fee table</i>	
<i>Resource</i>	<i>Regiments Standard Rates</i>
<i>Analyst</i>	<i>3 333</i>
<i>Senior Analyst</i>	<i>4 167</i>
<i>Corporate Financier</i>	<i>3 333</i>
<i>Senior Corporate Financier</i>	<i>4 167</i>



<i>Due Diligence Analyst</i>	3 000
<i>Senior Due Diligence Analyst</i>	4 167
<i>Mining Expert</i>	5 000

69.1. Wood on Wednesday 15 Jan 2014 sent an email (**Annexure PHB 25**),<sup>13</sup> to Kellerman on copy to Humphrey at Alexkor, Gebreselasie and Loeb, with Subject: *"FW: Alexkor fee proposal"*

*"Hi Zarina*

*Post our meeting with Humphrey and the team yesterday, we have put forward our thoughts on the fee structuring as detailed below. It does appear difficult to fit this approach into the consulting agreement you sent me yesterday, but would be happy to discuss and expedite in the most efficient manner.*

*Regards*

*Eric Wood"*

69.2. Wood emailed Essa on 15 January 2014 with subject line: *Alexkor Fee Proposal (Annexure PHB 26)*.<sup>14</sup>

*"Hi Salim*

*Fee proposal as discussed, please give me a ring once you have gone*

13 CN-023267669 Email from Wood to Kellerman

14 CN-023121273 Email from Wood to Essa

*through the contents*

*Regards*

*Erick Wood*

*Executive Director”*

69.3. Kellerman sent an email, on 16 January 2014 (**Annexure PHB 25**),<sup>15</sup> on copy to Humphrey, Gebreselasie; Loeb Bianca Ilunga; Mxolisi Dlodla with Subject: *Re: Alexkor fee proposal Importance: High*

*“Hi Eric.*

*Thank you for your email and our discussion yesterday. We have now had an internal meeting on this and from our side, we would like to engage you on the valuation and DD [Due Diligence] at this time only. This will give us time to work through the tender and will assist in curbing Board approvals. In this regard, we can then look at a general consultancy agreement. I would just need to get an indication from you on anticipated man hours. If you are happy with this, could someone from your legal team send a marked-up consultancy agreement for consideration and finalisation? Looking forward to your urgent response on this.*

*Sincerely*

*Zarina.”*

69.4. On 16 January 2014, Wood responded to Kellerman via email (**Annexure PHB 25**)<sup>16</sup> on copy to Humphrey, Gebreselasie, Loeb, Bianca Ilunga, Mxolisi Dlodla Subject: *RE: Alexkor fee proposal*

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15 CN-023267669 from Kellerman to Wood

16 CN-023267669 Email from Wood to Kellerman



*"Happy to proceed on this basis, will get the team to mark-up the consultancy agreement asap.*

*Regards*

*Eric Wood"*

70. With regard to the rates structure proposed in the e-mail correspondence between Jonathan Loeb ("**Loeb**") and Woods above the Commission's investigating team noted the following:

70.1. Alexkor is a state owned entity and listed in Schedule 2 of the Public Finance Management Act (PFMA) as a Major Public Entity;

70.2. The Board of Alexkor is the Accounting Officer in terms of section 49(2)(a) of the PFMA.

70.3. In terms of the PFMA, the Accounting Officer and other officials of Alexkor have a duty to act in the best interests of Alexkor. This includes:

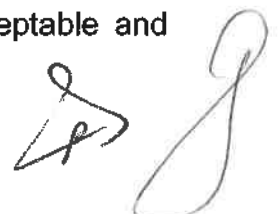
70.3.1.the management of expenditure and the prevention of irregular and fruitless and wasteful expenditure; and

70.3.2.ensuring a procurement process is followed that is fair, equitable, transparent, competitive and cost-effective.

70.4. The Regiments pricing proposal was that:

*"All work done is charged on a time and materials basis, based on our standard rates table below. These rates will be charged monthly in arrears."*

70.5. For a consultant to charge for time and materials is acceptable and

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widely used.

70.6. The Department of Public Service and Administration (DPSA) issues guidance on hourly fee rates to be used when contracting contractors.

70.7. The hourly DPSA rates recommended for consultants, with effect from 1 April 2013 until 31 March 2014 (**Annexure PHB 27**) at the time of the e-mail correspondence prescribed a maximum fee of R3 156.00 per hour.

70.8. It was noted that the minimum hourly rate proposed by Regiments for a due diligence consultant, was R3 000.00, which was at the maximum rate as per the DPSA schedule. I would, however, expect an analyst to be charged at approximately R679.00 – R1 218.00 per hour as per the DPSA schedule.

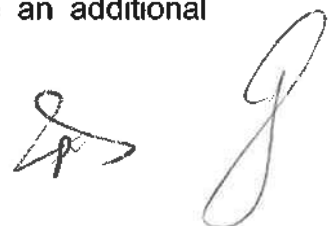
70.9. The maximum hourly rates proposed by Regiments was R5 000.00 for a mining expert. This exceeded the maximum rate for consultants recommended in the DPSA schedule, which was R3 156.00.

70.10. Based on the above, all rates proposed by Regiments, except that of a due diligence consultant, exceeded the maximum DPSA rates. Based on the DPSA schedule and the rates proposed by Regiments, the Regiments rates were excessive.

70.11. Regiments also proposed that:

*“In order to incentivise the successful and timely completion of transactions, we propose a small success fee of 1% (of the transaction size) over and above the time and materials fees charged.”*

70.12. If in addition to their fees, Regiments were to receive an additional



success fee of 1%, although seemingly small, this would be excessive and totally out of proportion with the services rendered by it. If it was a R1bn deal, Regiments would receive R10 000 000.00 as a bonus/success fee, which would not add any value to the work already performed.

70.13. Regiments proposed that:

*“Capital raising fees are to be charged separately on a success fee basis at the rates shown above.”*

70.14. The capital raising fees indicated were for senior debt – 1%, mezzanine 1.5% -2.5% and for Equity 2.5% - 3.5%.

70.15. A fee for raising equity is unfathomable as the State is a 100% shareholder of Alexkor.

70.16. Therefore, if more equity is injected into Alexkor by the South African Government, then an additional 2.5% - 3.5% is paid for no reason at all to Regiments.

70.17. Furthermore, paying Regiments a percentage of debt incurred by Alexkor would also not be beneficial as Regiments would be in a position to motivate higher debt levels than required, which would only serve to benefit Regiments.

70.18. Securing debt is not a function that Alexkor should outsource as this function should be performed by the staff of Alexkor. The South African Government would in any case be responsible for providing security for such transactions.

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70.19. It is readily apparent from this analysis that the proposal put forward to Alexkor was designed solely to benefit Regiments, who would benefit if Alexkor was indebted; this would certainly not have been in the best interests of Alexkor.

71. On 14/01/2014, Kellerman wrote an email to Wood and Loeb of Regiments, copied to "Humphry" of Alexkor and Bianca Ilunga, stating the following: **(Annexure PHB 28)**.<sup>17</sup>

*"Dear Eric and Jonathan,*

*I trust that you are well and that 2014 will be a blessed year for you. I have left a message for you at the office. We will be putting out the tender shortly for financial advisors but for now, I am advised that we require your assistance on something specific. As a result, I attach a standard consulting agreement. Have a look at it and we can hopefully finalise this by email. But you are welcome to contact me on my mobile. We will require you to tender in the normal course and if you are successful, a more detailed agreement will follow. Let me have your comments.*

*Sincerely*

*Zarina"*

72. On 16 January 2014, Loeb sent an email **(Annexure PHB 28)**<sup>18</sup> to Kellerman, copied to Humphrey (Alexkor), Wood, Gebreselasie, and Pillay with subject: "Alexkor Regiments consultancy agreement\_edit1 Alexkor Regiments

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17 TRL-000491467 (email) and TRL-000491468 (Copy of standard consultancy agreement)

18 TRL-000491309

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*consultancy agreement\_edit1.docx*” as follows: **(Annexure PHB 29)**<sup>19</sup>

*“Hi Zarina*

*Please see attached our mark-up to the consultancy agreement including our best estimates of fees per transaction. Please note that our internal legal is still reviewing the agreement and will revert with comments during the course of tomorrow. In the interim, we can proceed based on the attached.*

*Thanks and kind regards*

*Jonathan”*

73. On 24 January 2014 Neo Mohohlo (Regiments) sent an email **(Annexure PHB 28)**<sup>20</sup> to Gebreselasie, Brandon Subrayan (Regiments) and Niel Wyma (Regiments), copied to Wood, Pillay, with subject: “*Alexkor Proposal Financial services panel draft Alexkor Proposal Financial services panel\_draft.docx*”, stating: **(Annexure PHB 30)**.

*“Hi all,*

*Please see attached the first consolidated draft of the RFP. Please review and send me comments and input by cob Monday. Do not worry about the formatting, I will send the doc to Natalie for formatting once the content is finalised.*

*Regards,*

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19 TRL-000491310 Alexkor and Regiments Consultancy Agreement

20 TRL-000510309 (Email)

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Neo”.

73.1. On 31 January 2014 there was an unsigned letter addressed to Kellerman, but for signature by Wood, as Regiments Capital Executive Director, with subject line: “RE: APPOINTMENT TO THE FINANCIAL SERVICES PANEL OF ALEXKOR (2014/01/06/FINANCIAL SERVICES PANEL)” (Annexure PHB 31),<sup>21</sup> in which it was stated that:

*“Regiments Capital (“Regiments”) is pleased to submit the accompanying proposal for the above mentioned tender.*

*... This proposal covers a description, methodology, experience and project plan for all the services that Regiments is bidding for as well as a brief profile on Regiments. In submitting this proposal, Regiments hereby complies and agrees to be bound by the rules of the RFP submission as contained in the request for proposals...”*

**The appointment of SSI to provide exclusive diamond marketing and sales services to the PSJV: 17 December 2014**

74. On 25 November 2014, SSI submitted a tender to the PSJV to provide exclusive diamond marketing and sales services to it. At this stage, SSI was a shelf company with no diamond marketing or sales experience.

75. On 4 December 2014, Moodley and Nathan became directors of SSI.

76. On 17 December 2014, the tender was conditionally awarded to SSI.

**2015**

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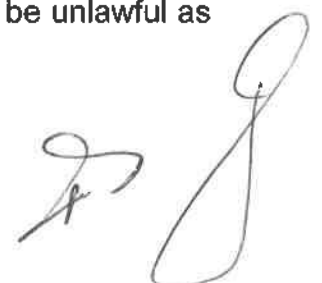
21 TRL-000597132

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77. On 27 February 2015, the PSJV Board approved the awarding of the tender to SSI. SSI were informed that their bid was successful on 1 March 2015.
78. SSI, which changed its name to ABDC, had no diamond license or experience in the industry, but still won the tender submitted in 2014 to be the sole agent to value, sell and market Alexkor's entire diamond production (**Annexure PHB 2**) Alexkor's chief legal officer at the time, was Kellerman. Moodley, the purported 60% BEE shareholder of SSI through his company, Kimomode, had no diamond industry background.
79. The two directors of SSI, appointed after SSI's bid was submitted, were Nathan and Moodley.

#### **Nathan and Daniel Nathan Trading**

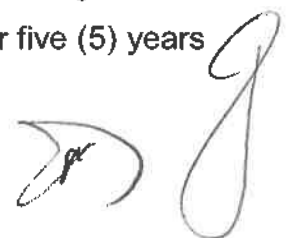
80. SSI is 40% owned by DNT, represented by Nathan.
81. The business address of SSI is the physical address of Nathan's company, DNT and Knox Titanium Vault Company ("**Knox**"). Moodley and his wife had personal safety deposit boxes at Knox, which were subject to search and seizure orders by the Commission in 2019.
82. The Commission has received confirmation from the South African Diamond and Precious Metals Regulator (SADPMR) that SSI has never applied for a diamond trading house licence. SSI was using the licence of Daniel Nathan Trading CC to trade Alexkor diamonds from inception of the contract being awarded to SSI, which is unlawful and in contravention of the Diamonds Act. The consequence of trading with no authorised diamond licence is that SSI was and still is unlawfully in possession of rough diamonds and each sale may be unlawful as this constitutes a contravention of the Diamonds Act.



83. Evidence of a further misrepresentation that was made by Daniel Nathan Trading CC to the SADPMR to acquire a back dated licence in the name of ABDC purportedly on the basis that DNT had changed its name to ABDC is dealt with by Mr Jan Dekker (“Dekker”) (**Annexure PHB 5**), a forensic investigator employed by the Commission, in a separate affidavit. In this affidavit he also deals extensively with the under-valuation of diamonds by DNT and corroborates the findings of Gobodo and the submission made by Gavin Craythorne.
84. On 16 September 2020, the Commission forwarded a RFI to the SADPMR requesting information concerning transfer of diamond licence from Daniel Nathan Trading CC to Alexander Bay Diamond Company (Pty) Ltd, (**Annexure PHB 32 (1),(2),(3),(4),(5)**)
85. A statement by the SADPMR General Manager Legal Services Mr Mononela, (**Annexure PHB 33**), confirms that Daniel Mark Nathan submission for a name change as mentioned in Dekker’s affidavit (**Annexure PHB 5**), constitutes a deliberate gross misrepresentation of fact, as the incorrect documentation was used to request a name change.

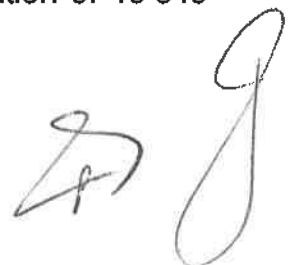
### **Moodley and Kimomode**

86. Kimomode is the 60% shareholder of SSI.
87. Moodley is known for his company, Albatime, his involvement with Regiments and Trillian Capital Management and being a “fixer” for the Guptas. Moodley was also the subject of investigation by the Public Protector as stated in her State Capture Report.
88. Moodley resigned from SSI on 5 November 2015, shortly after Zwane was appointed as Minister. However, he retained his 60% shareholding in SSI through Kimomode until April 2017, after SSI was reappointed for five (5) years

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in a new PSJV tender in 2016.

89. Kellerman was appointed as adviser to Zwane from April 2016 to March 2018 after Moodley called and asked if she would be interested in an interview for the position. She was also instrumental in the negotiations between Alexkor and Regiments to appoint Regiments as consultants to assist with the new Alexkor coal mandate to supply Eskom with coal and lime.
90. Zwane appointed three (3) advisors when he was Minister of Mineral Resources:
- 90.1. Moodley (1 October 2015 to 31 March 2016);
  - 90.2. Mabaso (1 October 2015 to 31 March 2018); and
  - 90.3. Kellerman, at the behest of Moodley (1 April 2016 to 31 March 2018).  
From her cell phone records, Kellerman was in contact with Zwane for several months before she was appointed.
91. From examining the cell phone records of Moodley, it is evident that:
- 91.1. He had contact with the CEO of the PSJV, Carstens 97 times, with a call duration of 1 485 minutes from 2015/09/12 to 2017/05/10.
  - 91.2. He had contact with Kellerman, no less than 479 times with a call duration of 24 112 minutes from 2015/08/08 to 2018/04/13.
  - 91.3. He had contact with Chipkin 27 times with a call duration of 1 590 from 2014/11/04 to 2017/03/27.
  - 91.4. He had contact with Nathan 306 times, with a call duration of 15 345 minutes from as early as 2008/05/09 to 2017/11/14.



- 91.5. He had contact with Selwyn Nathan 232 times, with a call duration of 10 239 minutes from 2010/09/01 to 2016/11/07.
- 91.6. He had contact with Angel a director of ICM, 20 times with a call duration of 1 303 minutes from 2015/06/10 to 2017/03/27.
92. Evidence flowing from recent matter in Kuben Moodley vs Sunday times,<sup>22</sup> *"Moodley complains about a report in the Sunday Times of 14 August 2016, headlined- 'Gupta pal' in R380m SABC licence-fee deal – Contract awarded without tender, extended without authority and not delivered on, say sources..."* and the #Guptaleaks and former public protector Madonsela's State of Capture report portray Moodley as closely linked to Essa and the Gupta family.
93. During March 2015 – the same month SSI was awarded the Alexkor contract – Moodley was entangled in what appears to be a R122m simulated transaction with the Guptas' Sahara Computers.
94. Moodley previously told the Sunday Times that the payments would have been for *"the procurement of IT equipment and services"*, but the #Guptaleaks suggest otherwise.

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22 This was a defamation matter brought by Moodley concerning a report in the Sunday Times on 14 August 2016, headlined 'Gupta pal' in R380m SABC licence-fee deal – Contract awarded without tender, extended without authority and not delivered on, say sources.

The gist of his complaint was that both the article and the headline left the reader with the false impression that Moodley had benefitted from corruption.

In particular, he complained that the text falsely said or implied that:

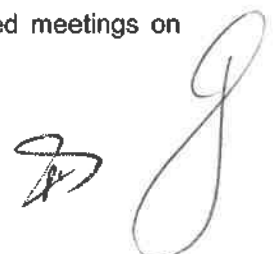
- he had relations with the Gupta family; and
- the contract between Lorna Vision and the SABC was suspect

Ruling by the Press Ombud, Johan Retief, and a Panel of Adjudicators (Peter Mann, public representative, and Mahmood Sanglay, representing the press.) The panel convened meetings on February 6, March 16 and March 27, 2017 before concluding the matter.

95. Leaked emails show that on 27 June 2015<sup>23</sup>, Sahara chief executive and the Gupta associated, Ashu Chawla, sent an email to Moodley with a single line, stating: *"Hi Kuben here is the invoice for your reference"*.
96. The invoice attached to the e mail to Moodley's company, Albatime, simply stated it was for *"Admin IT services... contract 2012-2014"* - but the figures were simply too large and got cut off, so the R122m was reflected as R22m.
97. Moodley wrote back, saying, *"Please call me, your invoice does not make sense to me."*
98. Eventually, on 3 July 2015, the invoice was sorted out to reflect R122m, plus R17m VAT, *"payable quarterly"* for a supposed contract due to run March 2015 to February 2017.
99. It has been reported that according to Saharah's bank records, Moodley paid over R52 155 000 the same day.
100. Only on 8 July 2015 did Sahara director Ronica Ragavan create an underlying contract.
101. On that day she emailed a document titled *"Service Level Agreement – Albatime – March 2015"* for everyone to sign.
102. This contract was merely a drafted to disguise the Commission payment. A spreadsheet tracking gross profit in the Sahara business shows that the R122m was reflected as income at zero cost to the business.

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23 Ruling by the Press Ombud, Johan Retief, and a Panel of Adjudicators (Peter Mann, public representative, and Mahmood Sanglay, representing the press.) The panel convened meetings on February 6, March 16 and March 27, 2017 before concluding the matter.



103. The timing of this transaction, the alleged mention of a R 50 million guarantee on the award of the tender to SSI and the subsequent award of the PSJV marketing contract to SSI, is suspicious.

#### **Chipkin and Integrated Capital Management**

104. SSI's corporate advisor was Chipkin of Integrated Capital Management ("ICM"), which was involved with Essa. According to the Gupta leaks in November 2014, when SSI responded to the diamond marketing tender, their expression of interest noted that all communication should flow through their "corporate advisors", addressed to Chipkin of ICM. ICM was later intimately involved with Essa and the establishment of the Trillian Group of Companies, which was used to capture consulting work from Transnet and Eskom from the end of 2015.

105. ICM Chairman at the time was Selwyn Nathan, who is the father of Daniel Nathan. When the PSJV Chief Executive, Carstens, demanded that SSI provide a R50m funding guarantee, it was ICM's Chairman, Selwyn Nathan, who submitted a letter of comfort, committing ICM to secure the guarantee, should SSI win the bid.

106. The Commission has subsequently established that Investec has no record of any guarantee that was applied for and provided (**Annexure PHB 34**).

#### **Duncan Korabie**

107. Korabie was the Chairman of the Technical Committee that awarded the sole marketing and sales contract to SSI.

108. Korabie scored SSI 100%, for a bid by a company which was hitherto dormant and had no diamond trading licence or experience in the diamond industry.



109. On 11 September 2015, Korabie sent a letter, (**Annexure PHB 35**), of complaint to then Public Protector, Thuli Madonsela, about the award process. He copied it to Alexkor's management and the Department of Public Enterprises.

110. In this complaint Korabie alleged that Bagus had influenced the process, stating that:

*"On the 11th of December [2014] the chief legal officer [Kellerman] and chairperson at the time [Bagus] took Korabie and Dr. Roger Paul, an Alexkor representative, into his office and discussed what he viewed as the new direction the PSJV must take in appointing the service provider. He mentioned that only one candidate that will be interviewed met the new direction he proposes. He then mentioned SSI."*

111. Korabie told the amaBhungane Centre for Investigative Journalism, and Scorpio, also a team of investigative journalists, that during a separate private conversation, Bagus told him that the instruction to appoint Scarlet Sky came "right from the top" (**Annexure PHB 13**).

112. In Korabie's 2015 complaint, he further alleged that the award to SSI was supposed to have been subject to the completion of a due diligence. He wrote:

*"The CEO [Carstens] never reported to the tender committee on the due diligence he was directed to conduct... It is clear to us that [Scarlet Sky] was created specifically for this tender. We do not know who the shareholders are of [Scarlet Sky] and their relationship, if any, with any of the... board members."*

113. Korabie's complaint was not pursued by the Public Protector's office, ostensibly due to doubts about its jurisdiction and a commitment from Alexkor that the matter would be investigated. However, the complaint was withdrawn by Korabie (**Annexure PHB 36**) subsequent to a meeting between DPE and the Alexkor-



CPA during November 2015, to allow the Department to investigate the matter internally. The investigation was done by the ARC Committee of the PSJV and the outcomes have been communicated with the Department. However, Korabie's 100% score for a company with no diamond licence and no track record is consistent with the averred instruction given to him by Bagus that SSI had to be appointed.

114. One unknown source close to Bagus (who tells a story that supports Korabie's version), who asked not to be identified, apparently told amaBhungane:

*"Look, [Gupta business partner Salim Essa] went to Bagus and said [Scarlet Sky] must get the tender... They said, this comes from the very top... He said, no ways. So they said, then you must go."*

115. A former close associate of the Guptas also apparently told the aforementioned journalists that the family tried to capture Alexkor in order to take their money out in diamonds: *"They wanted the sole marketing rights for [Alexkor] diamonds... They wanted the mobility of diamonds."*

#### **Haasbroek's Appointment to Alexkor's Board: July 2015**

116. Following a forensic investigation into various allegations at DPE conducted by Fundudzi Forensics in 2018 with regard to Alexkor Board appointments, (**Annexure PHB 6**), they determined that on 16 July 2015, Ms Kim Davids ("**Davids**"), the executive assistant to Brown, sent an email to infoportal1@zoho.com from her private e-mail address, anckimwc@gmail.com. The title of the e-mail was "*Trevern's CV*". In the email, Davids stated the following:

*"Dear Saleem*



*Herewith cv for Alexkor board as discussed".*

117. Fundunzi also noted that Haasbroek's CV and a motivation letter purportedly prepared by Haasbroek dated 15 July 2015 was attached to this said email.
118. The e-mail above is an indication that Davids was communicating with "Saleem", who it can safely be assumed was Saleem Essa.
119. It is evident from the Fundunzi report that the email address infoportal1@zoho.com has been extensively used in communications between the Gupta family and members of SOE's.
120. It is evident that great care was taken during these communications to the said email address, not to identify the owner of the said email; the email address is an anonymous email address with no trace.
121. Fududzi further determined that on 20 July 2015, Davids forwarded Haasbroek's CV from her private e-mail address (anckimwc@gmail.com) to her DPE e-mail address, Kim.Davids@dpe.gov.za.
122. On 27 July 2015, 11 days after the email from infoportal1@zoho.com to Davids, Makobe issued a memorandum to Brown to advise the Minister on the rotation and re-appointment of Non-Executive Directors to the Alexkor board.
123. The said memorandum, *inter alia*, recommended the appointment of Haasbroek to the Alexkor board with effect from 14 August 2015 for a period of three years, subject to annual review by the Minister of Public Enterprises.
124. Haasbroek accepted his appointment as non-executive director to the Board of Alexkor on 13 August 2015.



**Matseke appointed by Brown as the Chairperson of the Alexkor Board: August 2015**

125. Matseke, the Independent Non-Executive Director and Chairperson of Alexkor, was appointed in August 2015 by Brown.

126. She was also a member of the Free State Development Corporation Board at the time that she was appointed to the Board of Alexkor. According to an article in News24wire (**Annexure PHB 37**) on 31 January 2018, Matseke, the FDC's chairperson is allegedly a long-time ally of ANC Secretary-General, Mr Ace Magashule ("**Magashule**"). Matseke is also the business partner of Ms Thoko Alice Malembe, Magashule's estranged daughter, with whom he was allegedly reunited in 2011, scored a contentious property deal with the FDC, when Matseke was the chairperson. Malembe's and Matseke's respective companies have both greatly benefited from government contracts in the Free State and have worked together on some of these projects.

**Brown appoints the Audit and Risk Committee to conduct an investigation into the tender awarded to SSI: 28 October 2015**

127. On Wednesday, 28 October 2015 it was resolved by the Minister of Public Enterprises, Brown, that the Audit and Risk Committee would conduct an investigation in respect of the awarding of the tender, Tender No RFP 03/2014, by the PSJV to SSI. This was as a result of complaints submitted to the Minister by RMC, Alexkor's joint venture partner in the PSJV. The matter had been raised at the meeting between the RMC, Alexkor and the DPE.

128. The following persons were members of the Audit and Risk Committee:

128.1. Ms M Lehobye (Chairperson);



128.2. Haasbroek; and

128.3. Mr T Matona, who apologised for not being available to serve on the Committee, who was replaced by Mr V Bansi.

## 2016

129. On 26 February 2016, a report back was provided on the investigation carried out by the Audit and Risk Committee of the Alexcor Board (“**the Audit and Risk Committee**”) (**Annexure PHB 38**).

130. Following its review of the matter, the Audit and Risk Committee concluded as follows:

*“Based on the affidavit and collaborative evidence reviewed by the committee, we could not find any fundamental breach of procurement procedures adopted by PSJV other than manner housekeeping that we have alerted the management of the PSJV to correct.*

*Furthermore, we are of the view that some of the challenges that have been raised could be mitigated if the PSJV board pack is enhanced to include all committee minutes for noting at each board meeting. This will enhance transparency and information sharing. To that end, we have recommended to the chairperson of the PSJV to consider a resolution of the board to include the minutes as part of the board pack”.*

131. These findings are totally contrary to the numerous and consistent complaints lodged by Craythorne about the irregular appointment of SSI and the subsequent findings and recommendations made by Gobodo, who prepared a report pursuant to a mandate from the DPE that such appointment was irregular.

### **The Gobodo Findings and Recommendations**

132. Following and in depth forensic investigation by Gobodo, during October 2019,



they recommended that the PSJV Board / Department of Public Enterprises consider terminating the ABDC, formerly known as SSI contract with the PSJV based on the following:

132.1. That tender 03/14 was irregularly awarded to SSI by the PSJV Board in or about 2014. The procurement process was fatally flawed;

132.2. That the procurement process for tender 02/2016 was flawed and irregularly awarded by the PSJV Board;

132.3. That there was no compliance with the terms of the contract by SSI. SSI failed to ensure that the rough diamonds sold for beneficiation purposes to the State Diamond Trader (SDT) and Joe Gaddies was 10% and 5% respectively, *which was in accordance with the contract*;

132.4. That the contract placed the PSJV at risk by not ensuring that 15% in value of the rough diamonds are sold for beneficiation purposes in order to allow the PSJV to be exempted from the export levy in terms of Section 8 of the Export Levy Act;

132.5. That SSI failed to disclose information relating to the buyers of the rough diamonds to the PSJV and misrepresented SSI as the buyer; and

132.6. For selling the rough diamonds at a price that is ostensibly lower than the market price.

133. Gobodo also recommended:

133.1. That the contract for the reclamation of the stockpile tailings awarded to Ambicor be investigated;

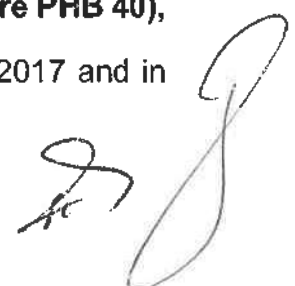
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- 133.2. That further investigation be conducted to identify the buyers of the 85% rough diamonds and the related prices for the rough diamonds and ensure that the buyers have the required licences and that the sales have been registered with the relevant authorities;
- 133.3. That the Tender Committee not be considered as a sub-committee of the Board and that Board members should not be involved in the adjudication and evaluation tenders as this is a breach of the Unanimous Resolution. Board members should only be involved in the approval of the tenders;
- 133.4. That the PSJV Board should consider appointing an independent valuator to conduct a proper Valuation of the rough diamonds before it is delivered for marketing and selling; and
- 133.5. That the PSJV Board DPE consider disciplinary action against Mervyn Carstens, the CEO for misrepresenting that a due diligence had been conducted before the award of tender 03/2014 to SSI.

## 2017

### **The proposed establishment of Alexcoal to pursue the coal business with Alexkor**

134. A Non-Binding Memorandum of Understanding (“MOU”) between IPC Beneficiation (Pty) Ltd (“IPC”) and Alexkor SOC Limited was signed in Witbank on 8 May 2017 (**Annexure PHB 39**).
135. On 20 October 2017, Matseke wrote a letter with heading, “*PRE-NOTIFICATION ON THE PROPOSED ESTABLISHMENT OF ALEXCOAL*” (**Annexure PHB 40**), to Brown acknowledging the Minister’s letter dated 20 September 2017 and in



particular, to acknowledge the Minister's conditional approval to proceed with the negotiations with IPC Beneficiation.

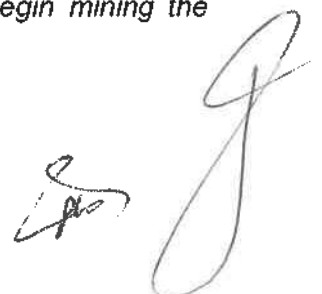
136. Significantly, the MOU states that a new company ("Newco") will be established and that the shareholding will be Alexkor- 55% and IPC- 45%. It was provided that Newco would enter into logistics and supply agreements with WecCoal and Nungu Mining, for the supply of washed coal to Eskom.

137. The Commission's investigating team have established that the entire coal deal was part of a Gupta linked and associated network of companies, positioning themselves to control Alexkor coal business, which consisted of IPC, WesCoal and Nungu. Should the deal have gone through, the entire coal business for Alexkor would be to the benefit of the Guptas and their associates. The following Centaur News Bulletin, date 27 Jan 2015, supports these assertions (**Annexure PHB 41**):

*"Centaur Holdings Announces Funding Package for 'Nungu Colliery' Coal Project in South Africa- NEWS PROVIDED BY: Centaur Holdings Ltd 27 Jan, 2015, 04:00 GMT (DUBAI, January 27, 2015 /PRNewswire/ -). According to this bulletin the following was announced:*

*Centaur Holdings Ltd ("Centaur"), a global investment holding company with interests and investments ranging from asset management, wealth management, private equity, venture capital, mining and natural resources and agricultural investments is pleased to announce that it has completed a funding package through a wholly owned subsidiary (the "Company") for IPC Coal (Pty) Ltd and IPC Mining (Pty) Ltd (collectively "IPC").*

*Under the terms of a recently executed Cooperation Agreement, the Company has agreed to provide secured capital to expand IPC's existing opencast mining operations at its Nungu Colliery, which will allow IPC to begin mining the underground reserves in February 2015.*

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*The remaining extent of Portions 4 and 23 and Portions 67, 68 and 69 of the farm Elandspruit 291 JS form the Nungu Colliery which measures roughly 3 258 hectares. The Nungu Colliery lies 5km West of Middelburg Town, Mpumalanga Province, Republic of South Africa and benefits from well-established logistics infrastructure.*

*The Nungu Colliery coal reserves are located beneath the surface on the remaining extent of Portion 23 and access to the underground coal reserves is also located on Portion 23 in the high wall of the previously mined out Nungu West Opencast pit. All the opencast reserves on Portions 67, 68 and 69 have previously been mined and the pits have been rehabilitated and the surface levelled. Only the remaining underground coal reserves are available to be mined.*

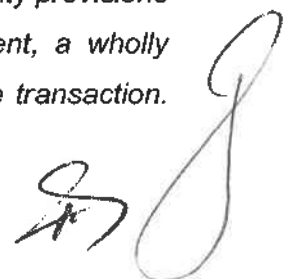
*The Company previously funded IPC to mine the Nungu opencast reserves and based on IPC's track record, has now agreed to fund an undisclosed sum to allow IPC to successfully mine the underground reserves of circa 7m tons of thermal coal.*

*Centaur and IPC have agreed an option to allow Centaur to increase the funding package and simultaneously acquire an equity stake in IPC as a secondary stage to the transaction.*

*On the funding package, Centaur Group CEO, Daniel McGowan, said*

*"The recently completed funding package for IPC is part of Centaur's strategic plan for its mining division, with a specific focus on high quality export thermal coal and established logistics infrastructure. Centaur and IPC have a strong working relationship, which has been built on IPC successfully mining the Nungu opencast reserves. The funding package further demonstrates Centaur's selective expansion plans in the natural resources sector in South Africa. Centaur will begin work on the secondary stage of the transaction during Q1."*

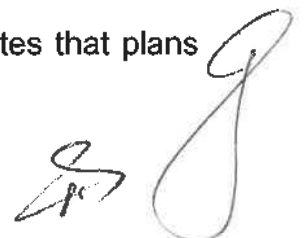
*Webber Wentzel acted as Legal Counsel for Centaur for the security provisions of the Cooperation Agreement and Centaur Asset Management, a wholly owned subsidiary of Centaur, acted as financial advisor for the transaction.*

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*Ecca Project Services (Pty) Ltd acted as mining advisor to Centaur and will maintain a supervisory role throughout the underground mining 'life of mine'. The 'Private Equity' division of the Centaur Group was responsible for sourcing and managing the IPC transaction."*

138. According to an email the Commissions investigating team has in its possession from attorney Henk Smith, who has also been assisting the Commission with information related to Alexkor (**Annexure PHB 42**), Centaur Holdings is based in Dubai in the United Arab Emirates (UAE) and has Daniel McGowan as its CEO. The company states on its website that it has interest in developing coal properties in South Africa. (<http://www.miningmx.com/top-story/28353-firm-behind-r500m-de-roodepoort-coal-project-gupta-linked/>) (**Annexure PHB 43**), (confirmed in the above quoted article). The firm's key shareholders are Aakash Garg Jahajgarhia, who is married to the daughter of Anil Gupta, one of the Gupta brothers, according to the state capture report. Other shareholders include Simon Hoy, McGowan and David Silver. The reason for Centaur Holdings' mention in the state capture report is that the company signed a \$100m (R1.4bn) revolving credit facility with an anonymous UAE-based family to expand its natural resources projects in South Africa. Centaur is also one of the entities that contributed towards the R2.15bn purchase price of Optimum Coal Holdings by Tegeta Exploration & Resources, a subsidiary of Gupta company, Oakbay Investments.
139. In a corporate presentation, (**Annexure PHB 44**), "*Gupta Family - The Inconvenient Truth*," that was prepared by Aslam Kamal and Nazeem Howa for Oakbay Investments (Pty) Ltd dated 27/01/2016, on slide 16 it confirmed that "*M&A Team worked on three deals - Optimum, Wescoal and Universal. Lost bids for Wescoal and Universal. So much for all-powerful!*"

- 139.1. An email in possession of the Commission indicates that plans



were already afoot in August 2014 to acquire the Nungu concessions. In relation to the Nungu mine that would form part of the Alexkor Newco, the following email (**Annexure PHB 45**), was sent to Tony Gupta[tony@sahara.co.za] from: Ravindra Nath of Oakbay on Thur 8/28/2014 5:43:25 PM (UTC)with Subject: *"Information required:"*

*"Dear Tony ji,*

*We need following information:*

- a. CPR of Mining right (Nungu);*
- b. Is there any other mining right?*
- c. Mining works programme for Mining Right;*
- d. Copy of all the 7 prospecting rights.*
- e. CPR or geological report of the prospecting right;*
- f. Mining status at MR site;*
- g. Approval of wash-plant;*
- h. Any contract with other coal mines for washing of their coal;*
- i. Coal supply agreement with Eskom?*
- j. Off-take agreement of coal with any other party.*
- k. Latest financials of the Company.*

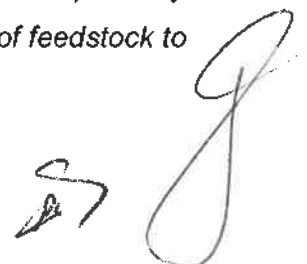
*Regards,*

*R. Nath"*



**2018****Moratorium placed on the acquisition of Alexcoal**

140. The Commission formally requested information from Alexkor in relation to its coal strategy it had announced, (**Annexure PHB 46**). The Commission was provided with several documents related to Alexkor's new coal strategy expansion programme.
141. From a letter by Matseke dated 26 April 2018 to Minister Gordhan with heading "*PFMA section 54 (2)(b) Notification on the Proposed Establishment of Alexcoal and Feedback on Alexkor's 2017/18 Third Quarter Report for the Period Ended 31 December 2017*" (**Annexure PHB 47**), it is evident that Minister Gordhan had placed a moratorium on the acquisition plans of SOC's. Matseke advises in the letter that the Board of Alexkor will take no further action on the coal project until instructed to so.
142. It thus seems that after Minister Gordhan placed the moratorium on the coal acquisition plans the Alexkor proposed coal strategy came to an abrupt halt.
143. According to a due diligence document, (**Annexure PHB 48**) that was provided by Matseke to Minister Pravin Gordhan ("**Gordhan**") on 26 April 2018, the Introduction to the Presentation bulleted the following points:
- *"The current core business of Alexkor SOC Limited ("Alexkor") is mining of diamonds*
  - *Alexkor's Board and management has been directed to look into other business opportunities to diversify and grow the business*
  - *Alexkor goal is to adopt a twofold initiative to their coal strategy which entails primarily the partnership with emerging coal companies to facilitate the supply of feedstock to Eskom Power Stations from road to rail agencies*

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- *Alexkor has identified a business opportunity to invest in a privately owned Company whose owners have experience in coal beneficiation and who are currently operating a coal beneficiation toll-wash facility in Middleburg which is in close proximity to a number of coal fired Power Stations*
- *The Run of Mine (ROM) processing capacity is 140 000 tons per month which can yield a product in excess of 100 000 tons per month*
- *Alexkor has expressed an interest in taking up an equity stake in the company and has undertaken a due-diligence exercise on the opportunity and the outcome of this exercise has indicated that the opportunity is financially viable and the team went ahead to progress the business opportunity to the development of a Business Case*
- *The presentation summarises the proposed Business Case for Alexkor to pursue the opportunity.”*

144. According to this presentation to Gordhan, the Newco was to be called Alexcoal (Pty) Ltd (“Alexcoal”).

**2019**

### **The Administration of Alexkor**

145. On 12 September 2019 an Administrator of Alexkor, Mr Lloyd McPatie (“**McPatie**”) was appointed for a period of six months, (**Annexure PHB 49**). The Administrator held the positions of:

145.1. Executive Chairperson of Alexkor;

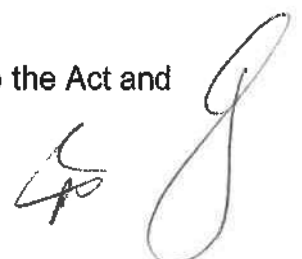
145.2. Chairperson of the Pooling and Sharing Joint Venture (PSJV); and

145.3. Chairperson of the Rehabilitation Trust.

146. The Administrator’s terms of reference were to:



- 146.1. Undertake an extensive review and analysis of the contract mining and revenue sharing models between the Alexkor Richtersveld Mining Company (RMC) PSJV and the contractors and provide proposed solutions;
- 146.2. Review the Alexkor and the Alexkor RMC PSJV cost structure to ensure that procurement of goods and services is at fair value and warranted;
- 146.3. Remove the duplicate functions at Alexkor Head Office and Alexkor RMC PSJV with a particular focus on executive and overhead expenses as well as to identify and implement other remedial and cost reduction intervention plans and/or initiatives;
- 146.4. Launch an investigation into any contractual impropriety and if need be, terminate marketing and sales contract with Scarlet Sky Investments (SSI) and propose solutions/options for the establishment of own or State Diamond Trader related diamond marketing and sales channel;
- 146.5. Develop a revenue enhancing plan with emphasis on contracting for mid and deep-water mining operations;
- 146.6. Propose a right sizing model for Alexkor and Alexkor RMC PSJV in line with the income streams;
- 146.7. Manage the rooting out of corruption and State capture related practices and individuals at Alexkor and Alexkor RMC PSJV;
- 146.8. Determine the optimal shareholding structure of the state's marine diamond resources;
- 146.9. Incorporate the Alexkor RMC PSJV to ensure adherence to the Act and

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proper Corporate Governance provisions;

146.10. Obtain in collaboration with the Department the support of the Richtersveld Communities and their appropriate entities into implementation of the Alexkor RMC PSJV restructuring interventions; and

146.11. Develop in collaboration with the Department a Key Stakeholder Engagement Plan to ensure support for the implementation of the above plans.

146.12. The Administrator records that it launched an investigation into the impropriety of the contract concluded with SSI. This revealed that:

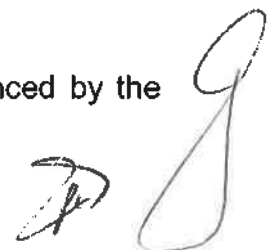
146.12.1. the appointment of SSI to do the marketing and selling of the diamonds is questionable from a governance perspective as SSI does not have a diamond trading license; and

146.12.2. the sales and marketing contract concluded with SSI was irregular.

147. It is recorded that Alexkor has applied to the South African Diamond and Precious Metals Regulator (SADPMR) for a diamond-trading license to enable the company to market and sell its own diamonds on various platforms and thus being able to cancel the SSI contract. It was anticipated that the license would be issued by end of February 2020.

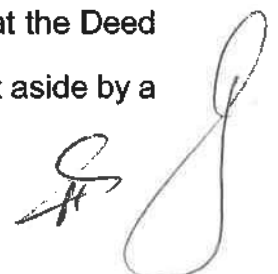
148. It is also recorded that a legal firm was engaged to formulate charges against all implicated individuals and/or companies emanating from the Gobodo report.

149. The fact that Alexkor has been stripped of all its assets is evidenced by the



Administrator's statement that it only has funds which would last it until the end of March 2020 and thus, should be liquidated. It is furthermore stated that the PSJV is technically insolvent and cannot trade itself out of its current financial situation. In this respect it is recorded that:

- 149.1. Alexkor impaired a R200m loan in the 2018/19 financial year that was provided to the PSJV;
  - 149.2. The PSJV currently has outstanding debts of approximately R100m which includes statutory payments such as PAYE, VAT and Pension Fund Contributions;
  - 149.3. This will be reduced to R45m by the financial year end but the PSJV will not be able to meet its financial obligations during the winter months when carat production is low.
  - 149.4. After the liquidation process, the Administrator suggests that a new corporatized and adequately recapitalised entity could be established.
  - 149.5. As an alternative to liquidation, it is proposed that the joint venture be recapitalised on the basis that:
  - 149.6. The budget required to do the exploration is approximately R400m;
  - 149.7. The debt excluding the loan to Alexkor is around R100m; and
  - 149.8. Further funding will be required to adequately staff the mine with the correct levels of technical skills.
150. If a decision is taken to recapitalise the PSJV, it is recommended that the Deed of Settlement (DoS) and the Unanimous Resolution (UR) must be set aside by a



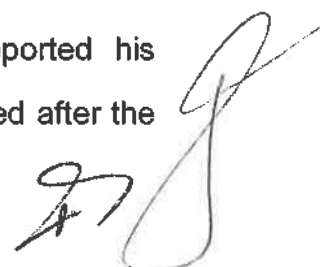
court of law and a Partnership Agreement between Alexkor and the PSJV must be entered into.

151. A further alternative proposal put forward by the Administrator is that the marine mining rights be sold to the private sector to partner with the community. However, it is said that these rights will be a hard sell as the exploration has not been done and there is no tangible value in the mining right without understanding the resource. According to Craythorne, this simply is not true; Alexkor's diamond rights are extremely valuable and their value is readily ascertainable as he has demonstrated in this affidavit.

#### **Disciplinary charges proffered against Carstens: 31 January 2020**

152. On 31 January 2020, Carstens was suspended by the Administrator McPatie for Gross Negligence, Gross Misconduct and for Failure to Demonstrate Acceptable Conduct related to the irregular SSI contract awards, failure to act against SSI who failed to ensure that the rough diamonds sold for beneficiation purposes to SDT and Joe Gaddies was 10% and 5% respectively, which was in accordance with the contract, and matters related to not paying over monies to the Pension Fund Administrator, failure to monitor the contract between the PSJV and SSI and allowing for the underselling of rough diamonds for beneficiation in contravention of section 8 of the Diamond Export Levy Act. His charges further related to the fact that he failed without proper cause to perform his fiduciary duties with proper care and thus placed the PSJV at risk by not ensuring that 15% in value of the rough diamonds were sold for beneficiation. He also expressed bias in his failure to disclose information of buyers and misrepresenting SSI as a buyer. (**Annexure PHB 50**).

153. The acting CEO, Mr Gerone Cloete ("**Cloete**"), has since reported his suspension to the CCMA and a disciplinary hearing will be scheduled after the



CCMA process to ensure that the CEO does not continue to benefit from the PSJV while on suspension.

**Administrator Briefs Parliament: 27 May 2020**

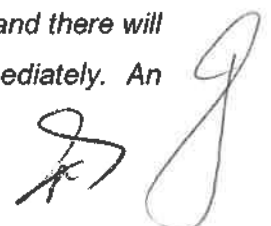
154. On 27 May 2020, the Portfolio Committee on Public Enterprises and the Select Committee on Public Enterprises and Communication were briefed by the Alexkor Administrator, (**Annexure PHB 51**), on the outcomes of the forensic investigation and the turnaround plan. The Deputy Minister of the Department of Public Enterprises was in attendance. Some of the relevant excerpts from the transcript are as follows:

*"The sales and marketing contract awarded to Scarlett Sky Investments was found to be irregular and in order to overcome this, an application for a diamond-trading license was made so that the contract can be cancelled. It's anticipated that the license will be issued in mid-June of this year. The Department fell short in providing the Administrator with all available information and data and in rendering assistance without unreasonable delay..."*

*"Members asked whether there are prosecutions against the executive members of Scarlett Sky Investments..."*

*"It was also asked why the irregular appointment of Scarlett Sky Investments was not referred to the Public Protector, how far the application process is for a trading license, feedback on the disciplinary action case against the Chief Executive Officer..."*

*"Mr McPatie said the Sales and Marketing contract awarded to Scarlett Sky Investments (SSI) was found to be irregular. The difficulty with cancelling the contract immediately is because of the financial situation. SSI is selling diamonds on a monthly basis and if the PSJV doesn't sell diamonds, it will have no money to pay its contractors or to pay for water and electricity. It provides electricity for the entire town. The community is poverty-stricken and there will no money to pay salaries if the contract is cancelled immediately. An*

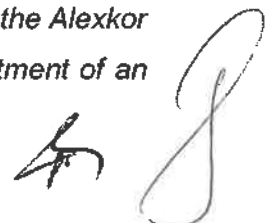


*application for a diamond-trading license has been made and it's anticipated by the CEO that the license will be issued by mid-June of this year. Once issued, the contract can be cancelled and diamonds can be sold on any platform..."*

*"Mr Tihakudi explained that matters of state capture are referred to the Zondo Commission. In the past, the Administrator provided very concerning responses when asked why irregular contracts were not terminated. The power to affect such a decision lies with the Administrator as the accounting officer. Miners raised concerns that diamonds were getting sold through SSI and an analysis showed they were getting paid 40% below index. The contract was found to be irregular. The Department will step in to make sure diamonds are sold through the proper channels. On the obligations under the Companies Act given the reckless trading, the Department has developed options to ensure the situation is addressed. The Administrator was brought in as a temporary measure. On the difference in performance between the south and north side of the river, the criticism is linked to the quality of management. It was apparent that the suspended CEO of Alexkor was not suited to this particular task. The Board that was overlooking the business decided to proceed with him even though he had Human Relations (HR) qualifications and not mining qualifications. The diamonds tend to drift north as a result of the currents in the ocean. The resources have not been fully exploited in the past and this will be addressed going forward. The municipality needs to start taking responsibility over Alexander Bay town. On the issue of using the company instead of outsourcing mining contractors, this is something that needs to be looked at but it essentially boils down to management. If there is a proper team in place, this ideal can be realised..."*

*"Mr M Nhanha (DA; Eastern Cape) .... On matters referred to the Zondo Commission, in the fourth and fifth administration, there were 3 ministers reporting to the Gupta family. To what extent has the Gupta family been involved in engaging in the Alexkor business and the diamonds in Alexander Bay?"*

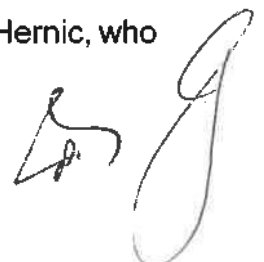
*"Ms C Labuschagne (DA; Western Cape) said she has been part of the Select Committee on Public Enterprises and Communication dealing with the Alexkor issues since 2014. The previous Committee called for the appointment of an*

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*Administrator and an investigation into the supply chain management. For the first time in 7 years, members are receiving reports and getting an indication of what is going wrong in Alexkor. Since 2014, members have been very worried that the community is not benefitting from the land claim and the contracts being done. The community can only benefit if there are economic options and if the mining is going to be viable. There needs to be some kind of income for the community. The Department must look into all of the options. The reporting of the state capture and corruptive activities to the Zondo Commission can take years. The Administrator's report contains a lot of information and the Department should follow through in laying criminal charges and doing the correct thing. She and the previous Chairperson of the Committee in the previous term received warnings to stay out of these issues. In the last meeting of the Fifth Parliament, the Committee called for the Department to refer these issues to the Zondo Commission. She said she's very glad to hear today that it's been done. The Department must take this further and do the right thing. That community is destroyed as it is and people are going to be further destroyed. She agreed with Mr Cachalia's suggestion for members to do an oversight visit."*

### **Lemogang Pitsoe**

155. Pitsoe was appointed as the Alexkor CEO on 1 December 2017 by Brown. Mr Vimal Bansi, was Alexkor Acting CEO at the time.
156. The Commission has information in its possession that indicated that Pitsoe was also an invited guest at the Gupta wedding in 2013, (**Annexure PHB 52**). He stayed in room 0315 from 1/05/2013 in and on 3/05/2013 out at Sun City with a partner.
157. The response to the Parliament Question, (**Annexure PHB 53**) that was received from the CEO of Alexkor, Pitsoe, is that he attended the said weddings while he was in the employ of Heric Ferrochrome (Pty) Ltd ("Heric"). Mr Pitsoe was representing Mr Johan Swanepoel ("Swanepoel"), who is the CEO of Heric, who



could not attend due to unforeseen circumstances.

158. Based on the information on the database of the Commission, it is evident that the intention was to invite them both to the wedding at the same time. They both appeared on the same schedule of guests (**Annexure PHB 54 and Annexure PHB 55**)

159. The Commission has established from its database of information that Gupta mining concern reported that, Westdawn Investments (Pty) Limited T/A JIC Mining Services ("JIC") was the largest contract mining company in South Africa with almost 10,000 employees. It is/was doing contract mining for companies such as Anglo Plats, Impala Platinum, AngloGold Ashanti, Harmony Gold and Heric Ferrochrome (**Annexure PHB 56**).

160. According to Pitsoe's CV, (**Annexure PHB 57**), he was the General Manager for Heric Ferrochrome from 04/2011 to 02/2017.

#### **Alexkor terminates the contract with SSI: 11 August 2020**

161. On 11 August 2020 the Alexkor CEO, Pitsoe terminated the contact with SSI. SSI has, however, disputed the cancellation of its contract and seeks to hold Alexkor to it (**Annexure PHB 58**).

**PETER HENRY BISHOP**

I hereby certify that on 9 <sup>October</sup> ~~September~~ 2020, in my presence at PRETORIA, the DEPONENT signed this Affidavit and swore and acknowledged to me that he knew and understood the contents thereof, had no objection to taking this oath and that he considered this oath to be binding on his conscience.



RANK: BRIGADIER  
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WEST LAKE AVE.  
WEAVER PARK  
SILVERTON.

*[Handwritten Signature]*  
Commissioner of oath

<b>Investigating Directorate: Corruption</b>
Private Bag X752
<b>- 9 OCT 2020</b>
Pretoria 0001
<b>National Prosecuting Authority</b>

*[Handwritten mark]*