

UNDER THE AUSPICES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

HELD AT JOHANNESBURG

Re:

MERVYN CARSTENS }
RAYGEN PHILLIPS } Implicated Persons

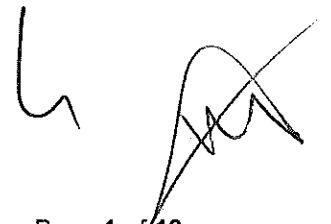
AFFIDAVIT – MERVYN CARSTENS

I, the undersigned,

MERVYN CARSTENS

do hereby make oath and swear that:

1. I am an adult male miner and the former Chief Executive Officer of the Alexkor, Richtersveld Mining Company, Joint Venture. I reside at 13 Laurel Street, Loevenstein, Bellville. The facts herein contained are within my own personal knowledge and belief unless the context indicates otherwise and are both true and correct.
2. Where I make submissions of a legal nature I do so on the advice of my legal representatives which advice I verily believe to be true and correct.
3. I am deposing to this Affidavit pursuant to a Notice in terms of Rule 3.3 of this Honourable Judicial Commission to answer allegations levelled against me by a certain Mr Gavin John Craythorne.



4. On 4 January 2021 I received a further notice in respect of Mr Peter Bishop. The time available to me did not allow for me to respond to the allegations he has raised. I will do so and will seek to file an affidavit in response thereto as soon as I am able to.
5. In addition I have received a Rule 3.3 notice in respect of the Gobodo report and Mr Torres. I will also be responding thereto.
6. Time however did not allow for that response to be completed.

MISSING DOCUMENTS AND AFFIDAVITS

7. I have not received any affidavit by Mr Dekker and as such, will first need to receive this affidavit to complete my response to Mr Bishop's affidavit.
8. In addition, I have not received all of the annexures referred to by Craythorne.
9. I have, most importantly, not been able to complete my response to Mr Craythorne's affidavit. I will do so in the week commencing 11 January 2021.

STRUCTURE

10. Firstly I raise certain preliminary issues which must first be determined as such determination will set out the basis on which this Honourable Judicial Commission has jurisdiction over what is in essence an entity which is not part of the Public Sector and is not an Organ of State.
11. It is however necessary to sketch some of the background context to this affidavit which I do in part as part of the preliminary issue I raise and on its own.
12. I am joined in my response by Miss Raygen Phillips who has likewise received a Notice in terms of Rule 3.3 in respect of Mr Craythorne.
13. For ease of reference she will be compiling her own affidavit however Miss Phillips and I have in essence "teamed up" in that we have both appointed the same set of attorneys to represent our interests, which are aligned.

14. I now raise the following preliminary issues:

PRELIMINARY ISSUES

15. Given the fact that I have not received all the relevant information, I must reserve for myself the right to supplement this affidavit. I however file this affidavit so as not to delay the matter, even though it is incomplete.

16. Section 239 of the Constitution of the Republic of South Africa, Act 108 of 1996 defines Organ of State to be :

"(a) a Department of State or administration in the National, Provincial or Local Sphere of Governments; or

(b) any other functionary or institution –

(i) exercising a power of performing a function in terms of the Constitution or a Provincial Constitution; or

(ii) exercising a public power of performing a public function in terms of any legislation, but does not include a Court or Judicial Officer."

17. Alexkor is a State owned company, the shares of which are held in the name of the Minister for the time being of Public Enterprises, currently the Honourable Pravin Gordhan.

18. The Richtersveld Mining Company is a private company and falls outside of the public sphere.

19. Alexkor and the Richtersveld Mining Company, pursuant to a successful land claim by the Richtersveld community teamed up and formed a Joint Venture.

20. The Joint Venture was established in terms of a Court Order which also incorporated a written Deed of Settlement concluded between the Richtersveld community, Alexkor and the Government of the Republic of South Africa.

21. A Pooling and Sharing Joint Venture ("PSJV") was established pursuant to the Court Order.

22. The terms of the Court Order and written Deed of Settlement was that the Richtersveld Mining Company ("RMC") and Alexkor SOC would form a Joint Board of the PSJV.
23. The interim Joint Board of the PSJV then passed a unanimous Resolution which was signed by both parties.
24. In terms of this unanimous Resolution the relationship between the parties in the PSJV is governed by the Deed of Settlement and unanimous Resolution.
25. The overall supervision of the activities of the pooled operations vests in the Joint Board which is comprised of three members of each party (i.e. 3 from Alexkor and 3 from the RMC).
26. The Marine Mining assets and rights belonging to Alexkor SOC and the Land mining rights belonging to the RMC, were placed under the control of the Joint Board of the PSJV in terms of the provisions of the Deed of Settlement and the unanimous Resolution.
27. Alexkor as a State owned company has its own Board and is a State owned company.
28. There is no question that it falls within the jurisdiction of this Honourable Judicial Commission.
29. I however was employed by the PSJV.
30. At no stage did the PSJV exercise any public powers.
31. At no stage did anything which was done by the PSJV constitute administrative action.
32. Under the circumstances I submit that the PSJV falls outside of the Public Sector and accordingly beyond the jurisdiction of this Honourable Judicial Commission.
33. Organs of State all need to be audited by the Auditor-General. When the Auditor-General was asked to confirm whether the PSJV were required to be audited by his

office, the Auditor-General sent a letter confirming that his office did not need to audit the PSJV. I attach that letter as annexure "MC1" hereto.

34. At no stage was I an employee, a director, a member of, public officer of or in any way, shape and form, part of Alexkor SOC.
35. From time to time I was asked to make submissions to the Alexkor Board and to provide information.
36. Other than that I did not form part of Alexkor.
37. I accordingly ask for a determination from this Honourable Judicial Commission of Enquiry that:
 - 37.1 the PSJV is not an Organ of the State or a State-owned entity;
 - 37.2 the allegations, such as they are, which have been levelled against me have been levelled against me in my capacity as the Chief Executive Officer of an entity that falls outside of the public service and outside of the jurisdiction of this Honourable Judicial Commission's terms of reference; and
 - 37.3 I be completely excused from having to answer any of the allegations levelled against me by any person herein in relation to my role as CEO of the PSJV.
38. Out of an abundance of caution however I will nevertheless proceed to complete this affidavit on the basis as set out above with full reservation of all my rights and under protest.
39. My protest in this regard is that I was employed as the Chief Executive Officer of an entity which falls outside of the terms of reference of enquiry of this Honourable Judicial Commission.

CONSPIRACY

40. For the sake of good record, I deny that:

40.1 there was a conspiracy to capture Alexkor;

40.2 if there was such a conspiracy, then:

40.2.1 I was not aware thereof, and

40.2.2 I did not participate therein;

40.2.3 at all material times I was an employee of the PSJV.

BACKGROUND

41. The starting point of my affidavit is section 217 of the Constitution, Act 106 of 1996. Section 217 deals with procurement however it is limited to procurement by an Organ of State in the National, Provincial or Local sphere of Government or any other institution identified in National legislation.

42. The PSJV falls outside of this definition.

43. As I understand it the Public Finance Management Act No 1 of 1999 as amended by Act 29 of 1999 together with the Municipal Finance Management Act No 56 of 2003 was promulgated to largely regulate public finances, in particular procurement.

44. I also understand that there are various directives issued by the Department of National Treasury to manage supply chain management.

45. It is however so that none of this applies to the PSJV. I readily concede that the PFMA and the National Treasury guidelines do apply to Alexkor.

46. In these submissions I will refer to the foregoing concerning the application of Section 217 of the Constitution, the PFMA and National Treasury's supply chain management guidelines to highlight the fact that the forensic investigators Gobodo and Mr Craythorne have all misdirected themselves as to the application of procurement and the appointment of service providers in the Public Sector as opposed to the private sector.

47. This is a central issue in these submissions and the contents of my affidavit as well as the affidavit of Raygen Phillips. As will be demonstrated hereunder, the vast

majority of the allegations levelled against me will need to be reconsidered in the light thereof.

48. I annex hereto and marked "MC2" the Deed of Settlement referred to above which Deed of Settlement is dated 22 April 2007 as well as the unanimous Resolution which was signed on or about 31 August 2007 as "MC3".
49. These documents are central to my submissions as they form the framework of the PSJV.
50. In terms of the provisions of the unanimous Resolution, the marketing of the precious stones (diamonds) produced from the pooled operation areas is the responsibility of the PSJV Board.
51. During 2012/2013 the view of the Board and Management of the PSJV, was to strategically change its operation to leverage off its position as a primary producer of diamonds to also participate in the post extraction treatment, processing and beneficiation of the diamonds as this would deliver additional benefits to the PSJV.
52. I pause to also point out that the previous service provider, Diamond Marketing Consultants, was appointed by the Alexkor SOC Board (prior to the PSJV being established) without following any due process in terms of the PFMA. They were simply appointed unilaterally by the Alexkor Board prior to the land claim by the Richtersveld community having been settled in the manner it was. I point out the irony that the sea mining contractors at that stage did not object to their appointment outside of the PFMA by Alexkor, which was subject to the PFMA as it was most certainly part of the public sector.
53. There was also no written agreement between Diamond Marketing Consultants and Alexkor. I further point out that despite a diligent search by myself and the Company Secretary, Ms Raygen Phillips, we were unable to locate any written agreement between Diamond Marketing Consultants (Pty) Ltd and Alexkor. To the best of my knowledge and belief, such written agreement does not exist. This was the situation that the Board faced at the time of them making the strategic decision to focus on post-mineral extraction treatment, processing and beneficiation.
54. Ms Raygen Phillips will sign a confirmatory affidavit in this regard.

55. Accordingly a strategic decision was made by the Board and management of the PSJV, not just for the PSJV to appoint another service provider to conduct the valuation, marketing and selling of diamonds but to rather also seek to appoint a service provider who would come up with innovative solutions to ensure that the PSJV was able to benefit from the post extraction treatment of the diamonds.
56. A request for proposals was published, a copy of which I annex hereto marked "MC4". At the outset I do apologise for the poor copy thereof. I will endeavour to obtain a clearer copy and place it before this Honourable Judicial Commission by way of a supplementary affidavit.
57. Annexure "GC10" to the affidavit of Craythorne however does include this request for proposal which was numbered RFP03/14.
58. I wish to highlight the following extracted from the first four paragraphs of "MC4":

"Although there is considerable scope for the ongoing expansion of the earnings and job creation impact of the current diamond mining activities, the Department of Public Enterprises has stipulated the need for Alexkor to develop and implement a strategy to introduce viable and economically sustainable activities in the Richtersveld that extend beyond primary minerals extraction activity. The post minerals extraction (PME) treatment, processing and beneficiation industries are broadly defined as any and/or diverse industrial minerals processing activity extending across the various stages of value chain beneficiation including manufacturing production of final consumer products. Beneficiation entails the transformation of the mineral (or a combination of minerals) to a higher value product, which can either be consumed locally or exported. The term is used inter-changeably with value addition. The development of the PME service sector is considered a key proposition that will ensure additional economic benefit for the communities that rely on the primary extraction activity for the economic survival. This is captured in the Minerals and Petroleum Resources Development Act ("MPRDA") to facilitate among objectives, the development of peripheral and value adding activities that will ensure an economic life for the Richtersveld beneficiary communities beyond their anticipated life with the mine (currently estimated to be between 10 – 20 years)."

59. From the foregoing it is significant that it is the Department of Public Enterprises which has stipulated the need, not for the Joint Venture, but rather for Alexkor to develop and implement a strategy to introduce PME processing and beneficiation.
60. The PME focus of the tender was accordingly foremost in the minds of the Board members of the PSJV.
61. Interested companies were requested to submit written expressions of interest to participate in RFP03/14.
62. The PSJV received 9 expressions of interest from 9 different companies showing interest.
63. All 9 companies were accordingly invited to attend the briefing session at the mine on 13 November 2014. Of the 9 who expressed an interest only 7 companies attended the briefing session. After the compulsory briefing session, the 7 companies were asked to present innovative written proposals for enhancing the revenue of the mine through marketing and post minerals extraction treatment for the processing and beneficiation of diamonds extracted in the Richtersveld.
64. The clear intention of the Board was for the PSJV to leverage its position as a prime producer of diamonds to participate in post minerals extraction treatment, processing and beneficiation of its diamond products to deliver additional benefits to the PSJV.
65. At the time a company by the name of Gamiro Advisory Services ("Gamiro") led by Devon Pather was providing other advisory services to the PSJV especially around community involvement and engagement. Devon Pather happens to be married to Heather Sonn. Heather Sonn was involved in the community engagement aspects of the mandate. To the best of my knowledge and belief, Heather Sonn is a shareholder and plays a limited role within Gamiro, however with this particular instruction to Gamiro, we did not deal with Heather Sonn at all but rather with Mr Devon Pather who provided the services contracted for.
66. On this issue we did not deal with Heather Sonn. I am personally aware that she is married to Devon Pather and is presumably a shareholder within Gamiro and from

time to time does play a role in the advisory services however in this particular experience, she did not.

67. This is one of the hallmarks of the attention seeking nature of the allegations made by Craythorne.
68. With the agreement of the PSJV Board, Gamiro was then asked to conduct the evaluation of the bids.
69. This was pursuant to their mandate being extended to include the evaluation of the 7 bids.
70. I pause to point out that there is nothing unusual in appointing a third party to perform the bid evaluation functions.
71. This might be unusual in terms of the PFMA and National Treasury SCM guidelines, however for an entity falling outside of the Public Sector and which is not an Organ of State or a State owned company, this is not unusual. I also again refer, in this context, to "MC1" hereto (a copy of an email from the Auditor-General confirming that the PSJV falls outside of the public sector and accordingly is not subject to an audit by the Auditor-General's Office).
72. There are no restraints or constraints in this regard on the PSJV appointing Gamiro to perform the evaluation functions.
73. Three companies were short-listed.
74. Scarlet Sky Investment 60 (Pty) Limited with registration number 2009/002967/07, CS Diamonds bearing company registration number 2008/012888/07 and Diamond Realisation (Pty) Limited trading as Fusion Alternatives and bearing company registration number 2010/000915/07.
75. These three short-listed companies were then all invited to make further presentations to the PSJV Tender Committee which was comprised of PSJV Board members. I attended in an ex-officio capacity but was not a voting member, as did Ms Phillips. I can confirm that Ms Kellerman also attended but not as a voting member.

76. Of the three companies who presented to the PSJV Board, SSI presented the most innovative solution.
77. I pause to point out that much has been made in this matter by both Mr Craythorne and by Gobodo of the fact that SSI was permitted to "alter" its proposal.
78. The PSJV Board in RFP03/2014 expressly asked for the PME treatment and beneficiation to be the focus of any proposals.
79. The PSJV as part of its strategic planning did not wish to once again appoint a service provider to conduct evaluation, marketing and selling of diamonds but also to participate in the post mineral extraction treatment, processing and beneficiation of its diamonds to deliver additional benefits to the PSJV.
80. From my vantage point, I can confirm that it was a major focus of the PSJV Board that there be the PME treatment, processing and beneficiation of the diamonds.
81. In this regard the presentation and proposal from SSI was the most innovative of the three companies who presented their bids.
82. If one is constrained by the precepts of the PFMA and the National Treasury's supply chain management guidelines, a changed proposal will require a re-advertising amongst a whole host of other red tape.
83. As the PSJV fell outside of the public service, it was able to nimbly steer all of the companies to focus on the PME treatment, processing and beneficiation of the diamonds produced. In the private sector, which in essence the PSJV was in, this is not unusual and most importantly does not constitute a contravention of any National or Provincial legislation.
84. Subsequent to the presentation by SSI on 11 December 2014 I, in my capacity as CEO, was instructed to obtain clarity on certain of the proposals made by SSI. The clarity and confirmation required included the following:
- 84.1 upfront guarantee of funding available;

- 84.2 what the number of community members to be trained in cutting and polishing of diamonds was to be;
- 84.3 the local beneficiation strategy;
- 84.4 unequivocal undertaking that the mine will benefit from the post mineral extraction treatment processing and beneficiation of diamonds.
85. I wrote to SSI to request this information.
86. On the 15 December 2014 Scarlet Sky through Mr Daniel Nathan submitted the requested information.
87. After the information was shared with the Tender Committee members, SSI was then conditionally approved as the successful tenderer subject to a due diligence and verification process being conducted.
88. As the CEO I conducted the due diligence exercise which was extensive. I annex a copy thereof as "MC5".
89. The verification exercise however was outsourced to the Chief Legal Officer of Alexkor, Ms Zarina Kellerman, who had attended the Tender Committee meetings but was not entitled to vote. I annex hereto marked "MC6" her email discussions with Daniel Nathan.
90. On 29 January 2015 the Due Diligence Report was finalised and circulated to all the Board members except for Mr Duncan Kolrabi who on 27 January 2015 had resigned.
91. After the Board considered the Due Diligence Report and the Verification Report, SSI's appointment was ratified by means of a round robin Resolution.
92. On 1 March 2015 SSI was informed that they were the successful bidder and that the tender was awarded to them.
93. All other unsuccessful bidders were informed that their proposals were unsuccessful.

94. I pause to point out that central to certain of the allegations levelled against me in the Gobodo Report as well by Mr Craythorne is that I advised and misrepresented to the Board that the due diligence and verification exercise had been completed under circumstances where it was not.
95. As I have set out above the due diligence exercise was most definitely completed as well as the verification exercise.
96. My Report in this regard is annexed hereto marked "MC5".
97. With the 2016 tender I can confirm that no due diligence exercise was conducted as SSI was once again the preferred bidder. Given the fact that a due diligence exercise had previously been conducted in 2015, the Board did not deem it necessary to conduct a second due diligence exercise.
98. In addition, the Board was able to observe SSI's successful managing of the process during the previous 12 month months of the first Tender.
99. This was painstakingly explained by Raygen Phillips to Gobodo Investigators however they completely misunderstood the information she was supplying to them. She has signed a confirmatory affidavit confirming that she advised the Gobodo representatives of this fact.
100. It is however my belief that Gobodo deliberately ignored this evidence as it tended to place me in a more favourable light.
101. I will return to this particular issue where it is raised in the Gobodo Report by Mr Torres.
102. As can be seen from "MC5" a due diligence exercise on SSI was most definitely conducted in respect of the RFP03/14.
103. I accordingly expressly deny, wherever it is repeated, that I misrepresented to the Board that the due diligence exercise had been done under circumstances where it had not. The due diligence exercise was most definitely done.

104. As further confirmation of the fact that the due diligence exercise was done I submit hereto marked "MC6" a copy of the Report dated 29 February 2016 by the Audit and Risk Committee of the Alexkor Board which Report was submitted to the then Honourable Minister Lynne Brown of the Department of Public Enterprise. I refer specifically to the entries for 29 January 2015 and 27 February 2015 mentioned on page 7 of the Report. "MC6" is also useful as it sets out the chronology of the events as it unfolded.

CONSPIRACY

105. I, in my capacity as the CEO of the PSJV and in my personal capacity, can confirm that I was not aware of the existence of any scheme or conspiracy to capture Alexkor.

106. If there was indeed such a conspiracy, I can confirm that neither I nor Ms Phillips was aware of it or participated in it.

107. Whatever I have done during my tenure as an employee and CEO of the PSJV, was done by me in good faith, to the best of my abilities and in furtherance of the strategic objectives as communicated to me by the PSJV Board.

108. I also relied on advices which was given to me by Ms Kellerman, the Chief Legal Officer of the Alexkor Board who from time to time was seconded to assisted the PSJV Board with legal issues.

109. I had no reason to disbelieve the advices of Ms Kellerman and I can confirm that the PSJV Board also relied on her advices.

SELF-INTEREST MOTIVATIONS OF THE EQUITABLE ACCESS CAMPAIGN ("EAC")

110. Craythorne is a Founding Member of the EAC which has as its stated aim to enter into an agreement with Alexkor after Alexkor has divested itself of its involvement in the PSJV.

111. It is then the vain glorious hope of the EAC that Alexkor would then in turn enter into an agreement with them in terms of which they in turn would market and sell their

own diamonds and retain 85% of the value of the sales with 10% being returned to Alexkor and 5% returned to the community.

112. This I submit, would constitute theft of the community assets.
113. The EAC self-interest campaign has at its core a desire to acquire the marine assets of the PSJV. In this regard, it is not dis-similar to the Questco document which also was a proposal to purchase the marine rights.
114. As such the EAC and Craythorne, in particular, wishes to procure the sea mining assets of Alexkor to the exclusion of the Richtersveld community.
115. Even if Alexkor wished to enter into such an agreement, what the EAC consistently chooses to ignore is the provisions of the unanimous Resolution and the Deed of Settlement which requires of Alexkor to eventually depart from mining activities in the Richtersveld and when it does so, to offer the sea mining rights to the RMC on a preferential right of first refusal basis as set out in clause 19 of the unanimous Resolution "MC3" hereto.
116. The EAC led by Craythorne in its various forms has for decades been pursuing this agenda without any success.
117. Through Mr Craythorne who is not even a contractor, these efforts will continue to be refuted as it is designed to benefit only the few marine contractors and not the wider community of the Richtersveld.
118. When one considers further that most of the marine contractors have been mining the sea bed for several decades and had started at a time when local members of the Richtersveld community were racially excluded from leasing mining rights, the issue becomes even more complex.
119. It is for this reason that I describe these efforts as a vain glorious hope.
120. The submissions made by Craythorne in particular and the information provided to the Gobodo Investigators have all been motivated by this purpose, which would require of Alexkor to act in contravention of the Deed of Settlement and the Unanimous Resolution.

121. Were Craythorne to achieve his self-serving aims in this regard, it will be to the detriment of the Richtersveld community.
122. This has however not deterred Mr Craythorne and his followers at all. Craythorne has been hailed as a brave whistleblower however he is not. He is motivated by his own self serving greed and self interests which are not c

AD HOMINE ATTACKS

123. Part and parcel of the EAC has been a campaign to denigrate, insult and defame anyone who dares to oppose and point out to Mr Craythorne that he will not be able to achieve his stated goal of acquiring the marine assets of Alexkor under any circumstances, other than in terms of clause 19 of the Unanimous Resolution "MC3" hereto.
124. I will seek demonstrate at the conclusion of my supplementary affidavit that there is no merit to the allegations levelled against me and against other employees of the PSJV in particular Ms Raygen Phillips.
125. The affidavit of Craythorne is littered with bald allegations with no evidence whatsoever.
126. He leaps to conclusions and in many other places draws suppositions from information which is so disparate that they hardly make sense.
127. In addition to his campaign and the EAC campaign of vilifying Ms Raygen Phillips and myself, as part of his aims and objectives to obtain the sea mining rights of Alexkor, he has fomented and stoked dissent amongst the marine contractors.
128. This has gone on to such an extent that both myself and Ms Phillips have both separately received death threats.
129. A death threat was affixed to the notice board of the local Spar in Port Nolloth in which our lives were threatened. A copy of the death threat as well as a translation by Ms Raygen Phillips is annexed hereto marked "MC7" and "MC8". In addition Mr Craythorne was observed affixing to the PSJV notice board, misleading information

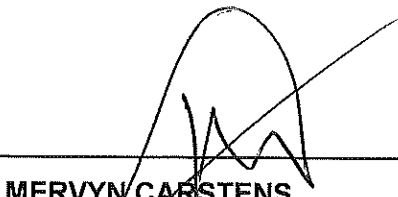
which I believe led to the death threats against myself and Ms Phillips as set out in "MC9" and "MC10".

130. This resulted in the PSJV attorneys writing to Mr Craythorne and a copy of their letter dated 18 October 2017 as well as my letter to Mr Craythorne dated 11 October 2017 is annexed hereto marked "MC11".
131. For these and other reasons, defamation proceedings were instituted against Mr Craythorne by me amongst others.
132. The Board considered the defamation matters and took a principled decision that given the irretrievable breakdown in the relationship and the outrageous allegations made by Mr Craythorne amongst others, that four of the contractors and their significant role players, as a result of these and other unlawful activities, would not have their contracts renewed.
133. When regard is had to the absolute lies and defamation contained in *inter alia* the notice board attachment by Mr Craythorne, it is not difficult to understand why I supported the decision to institute defamation proceedings against Mr Craythorne and others. I did recommended to the PSJV Board that they not renew their mining contracts. However, my recommendation in this regard was not without just cause.

BEE REQUIREMENTS – (THE PROVERBIAL LOG IN MR CRAYTHORNE'S EYE)

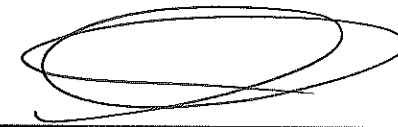
134. Mr Craythorne, given the fact that he is a white male, has decided, that to ensure that he at least receives some Black Economic Empowerment points, to place his mining contract in the name of his daughter. In addition, a third person of colour who is employed by him in his home, is also a shareholder and director.
135. As such, he is not a mining contractor and he is not a shareholder of his daughter's mining company which holds the licence. He operates through them.
136. There is however no denying that he has extensive experience as a diver in the industry.

137. I now turn to the contents of his affidavit. [I pause at this stage and will shortly file a supplementary affidavit.]



MERVYN CARSTENS

I certify that the above signature is the true signature of the deponent and that he has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to before me, in my presence at Cape Town on this 17th day of **FEBRUARY 2021**, in accordance with the requirements of Government Notices No. R1258 dated 21 July 1972 and as amended by Government Notices No. R1648 dated 19 August 1977 and R1428 dated 11 July 1980.



COMMISSIONER OF OATHS

CHRISTLYNNE VERONICA LIMBERG
Commissioner of Oaths
Practising Attorney
3RD FLOOR, WEMBLEY SQUARE
SOLAN STREET, GARDENS, 8008

"MC1"

From: Wessels, Carl (SM) [mailto:Carl@agsa.co.za]
Sent: Monday, 18 June 2018 10:33 AM
To: Goche, George; Ndimande, Chawulani (SM); Fungai Muvaki
Subject: RE: Emailing - OpinionPSJV(2).pdf

Hi Team,

Hi Team. The short answer was "no" the PSJV is not subject to the PFMA.

The PC's opinion was accepted as final.

Carl Wessels

Senior Manager • National E • Auditor-General of South Africa

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"MCZ"

DEED OF SETTLEMENT

Between

THE RICHTERSVELD COMMUNITY

and

ALEXKOR LIMITED

and

**THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA**

Handwritten signature and initials, possibly 'L. [unclear]' and 'M. [unclear]'. The signature is written in black ink and is somewhat stylized.

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IN THE LAND CLAIMS COURT OF SOUTH AFRICA
(HELD AT CAPE TOWN)

Case No: LCC 151/1998

In the matter between:

THE RICHTERSVELD COMMUNITY Plaintiff

and

ALEKKOR LIMITED First Defendant

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA Second Defendant

DEED OF SETTLEMENT

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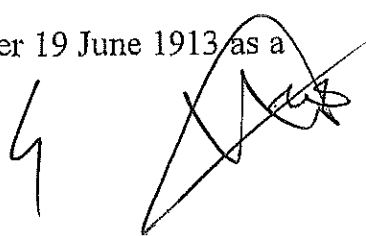
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1. RECORDAL

1.1 WHEREAS under case no. LCC 151/1998 before the Land Claims Court, by agreement between the parties, the Land Claims Court confined itself to deciding the question whether the Richtersveld Community met the requirements of section 2(1) of the Restitution of Land Rights Act, 1994 (Act 22 of 1994), and in particular whether it constituted a community or a part of a community dispossessed of a right in land after 19 June 1913 as a

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result of past racially discriminatory laws or practices, and the Richtersveld Community claimed that it was dispossessed of ownership (by common law or by indigenous law) and the right to exclusive beneficial occupation and use of the claimed land, including the exploitation of its natural resources; and

1.2 WHEREAS the Land Claims Court held in 2001 that the Richtersveld Community constituted a community for the purposes of the Restitution of Land Rights Act, 1994 (Act 22 of 1994) and the Constitutional Court, on appeal, made an order as follows:

"(a) It is declared that, subject to the issues that stand over for later determination, the first plaintiff [the Richtersveld Community] is entitled in terms of s 2(1) of Restitution of Land Rights Act 22 of 1994 to restitution of the right to ownership of the subject land (including its minerals and precious stones) and to the exclusive beneficial use and occupation thereof.";

1.3 WHEREAS the proceedings in the said case no. LCC 151/1998 thereafter resumed in the Land Claims Court on the issue of the appropriate nature and form which restitution of the said rights should take; and on 29 April 2004 the Land Claims Court

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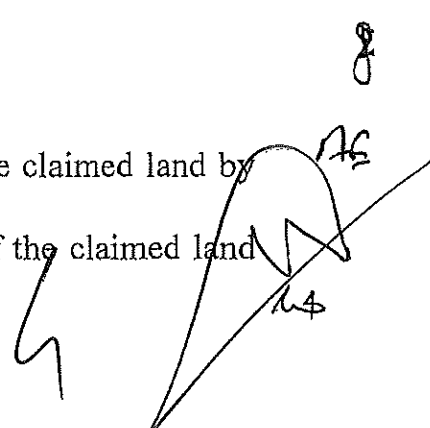
ordered as follows with regard to preliminary issues:

"(a) It is declared that the orders claimed by the plaintiff for both restoration and compensation in satisfaction of its right to restitution in terms of section 2(1) of the Restitution Act, are competent in terms of section 35 of the Restitution Act, (b) It is declared that the orders claimed by the plaintiff for repair of and/or compensation for the environmental damage to the subject land, are competent in terms of section 35 of the Restitution Act";

and

1.4 WHEREAS the Richtersveld Community, in the resumed proceedings, claimed:

- restoration to it of the right to ownership of the claimed land and of the mineral rights in respect thereof, alternatively of rights to prospect and mine in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);
- compensation for minerals extracted from the claimed land by the State and Alexkor since dispossession of the claimed land

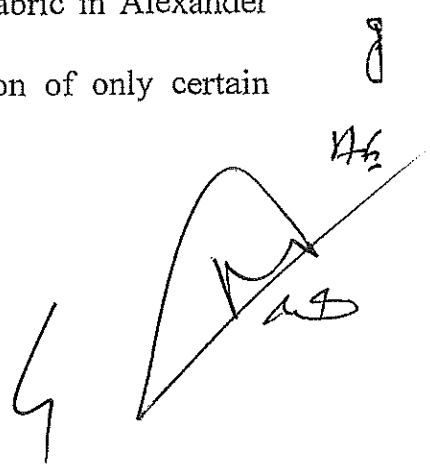
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from the Richtersveld Community, in an amount not less than R1,500,000,000.00;

- repair of the environmental disturbance caused by the said extraction of minerals from the claimed land by the State and Alexkor, alternatively compensation in respect thereof in an amount not less than R1,067,814,014.00; and
- a *solatium* for the said dispossession of R10,000,000.00; and

1.5 WHEREAS the Government of the Republic of South Africa, in the resumed proceedings:

- admitted that restoration of the claimed land should be ordered, subject thereto that formal township establishment in respect of the Alexander Bay township take place and that disruption of governmental functions and of the social fabric in Alexander Bay should be prevented by the restoration of only certain erven in the established township;

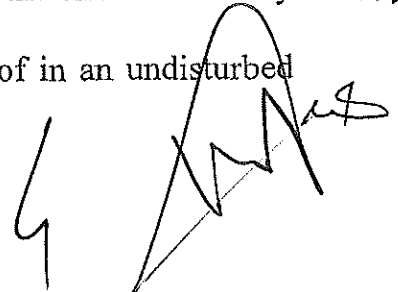


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- disputed that, with effect from 1 May 2004, restoration of mineral rights in respect of the claimed land was possible in law and that the Land Claims Court had the power or jurisdiction to order restoration of any rights to prospect and/or mine as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

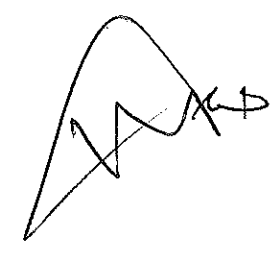
- denied that the Richtersveld Community was entitled to an order for repair of the environmental disturbance caused by the said extraction of minerals and pleaded that the obligation of the State and Alexkor extended no further in this regard than the obligation to rehabilitate the said environmental disturbance in terms of successive mining and mineral laws and regulations;

- denied that the Richtersveld Community was entitled to any compensation in respect of environmental disturbance as claimed and in any event entitled to compensation exceeding the difference between the market value of the environmentally disturbed land and the market value thereof in an undisturbed

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state;

- offered, by way of equitable relief, the alternative State land set out in this agreement;
- denied that the Richtersveld Community was entitled to any compensation in respect of the minerals extracted from the claimed land since the dispossession thereof from the Richtersveld Community;
- denied that the Richtersveld Community was entitled to any *solatium*; and
- pleaded that in determining appropriate restitution, the Richtersveld Community may not receive more in value by way of restoration and equitable relief than the past value of the land and mineral rights which had originally been dispossessed from them, expressed in present-day monetary value and that the Richtersveld Community was not entitled to profit through the restitution process; and

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1.6 WHEREAS it was Alexkor's case that restoration should take place without social disruption, and in a way that would enable it to continue with its marine prospecting and mining operations whilst using the relevant infrastructure and facilities on land; and

1.7 WHEREAS the parties have decided to settle the restitution claim under case no. LCC151/1998 and have agreed to a restitution order by the Land Claims Court on the terms set out in this agreement; and

1.8 WHEREAS the Richtersveld Community is in the process of establishing a company holding structure containing the entities set out in annexure "A" hereto in order to hold the various restoration and compensation components set out in this agreement; and

1.9 WHEREAS the State is obliged to acquire the relevant land, rights in land and assets vesting in Alexkor for the purposes of restitution to the Richtersveld Community and has by agreement with Alexkor provided for the transfer thereof directly to the

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Richtersveld Community;

NOW THEREFOR THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS

In this agreement, unless the context indicates otherwise, the following words or expressions shall have the meaning assigned thereto, namely:

2.1 "Alexkor" means Alexkor Ltd;

2.2 "court" means the Land Claims Court;

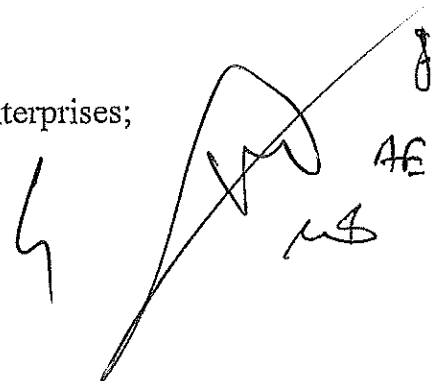
2.3 "CPA" means the Richtersveld Sida !hub Communal Property Association (in Afrikaans "die Richtersveld Sida !hub Vereniging vir Gemeenskaplike Eiendom"), a communal property association established by the Richtersveld Community and registered in terms of the Communal Property Associations Act, 1996 (Act 28 of 1996) and as reflected in annexure "A";

2.4 "CPA Act" means the Communal Property Associations Act, 28

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of 1996;

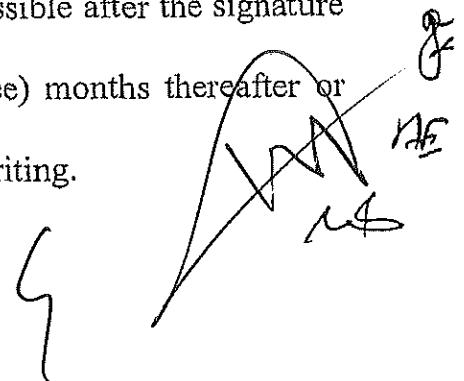
- 2.5 "DME" means the Department of Minerals and Energy;
- 2.6 "effective date" means the date upon which this agreement is made an order of the Land Claims Court;
- 2.7 "EMP" means the Environmental Management Plan pertaining to the mining area of Alexkor approved under the provisions of the Minerals Act, 50 of 1991;
- 2.8 "land claim" means the claim in case no. 151/1998 before the Land Claims Court;
- 2.9 "MOU" means the Memorandum of Understanding signed by and on behalf of the Richtersveld Community, Alexkor and the State on 26 October 2006 in Cape Town;
- 2.10 "Minister" means the Minister of Public Enterprises;

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- 2.11 "MPRDA" means the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);
- 2.12 "parties" means Alexkor, the RVC, the CPA and the State;
- 2.13 "RVC" means the Richtersveld Community;
- 2.14 "signature date" means the date upon which the last signing party signs this agreement;
- 2.15 "State" means the Government of the Republic of South Africa and/or the Executive Council of a province of the Republic of South Africa, as circumstances may require.

3. **AGREEMENT TO BE MADE ORDER OF COURT**

Each party will cooperate and take all reasonable steps to have this agreement made an order of court as soon as possible after the signature date, but in any event by not later than 3 (three) months thereafter or such extended date as the parties may agree in writing.

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4. FULL AND FINAL SETTLEMENT

This agreement is in full and final settlement of the land claim: Provided that the parties will have no further claims against each other in respect of the land claim, save as is expressly provided for in this agreement.

5. ENTITIES ESTABLISHED BY THE RVC

5.1 By agreement between the parties, the RVC is in the process of establishing the entities reflected and defined in annexure "A" for purposes of the implementation of this agreement. Such entities are referred to herein as defined in annexure "A".

5.2 Before the effective date, the parties must be satisfied that such entities comply, insofar as practicable, with section 35(3) of the Restitution Act, read with the CPA Act.

5.3 Before the effective date and subject to clauses 12.2 and 18, the RVC must submit the founding documents of Devco and the

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Investment Holding Co, as well as the trust deeds of the Richtersveld Community Trust and the Richtersveld Investment Trust respectively, for approval to the State.

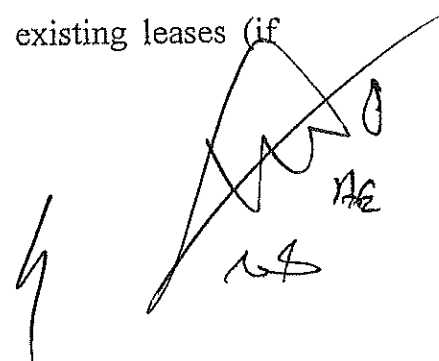
6. **RESTORATION OF LAND RIGHTS AND RELATED MATTERS**

6.1 Subject to clause 7 below, the following land must be transferred to the CPA as soon as possible after the effective date:

6.1.1 by Alexkor, the land in respect of which the RVC claimed restoration as described in annexure "B" hereto;

6.1.2 by the State, as alternative State land, the land as described in annexure "C" hereto;

6.1.3 by the State in its Provincial Government of the Northern Cape, as alternative State land, the land as described in annexure "D" hereto, subject to any existing leases (if any) to be ceded to the CPA; and

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6.1.4 by Alexkor, Portion 3 (Beauvallon) of the farm Groot Derm no. 10, held in terms of Deed of Transfer no. 43637/92 in lieu of monetary compensation as equitable relief.

6.2 Save for the land upon which the Alexander Bay township is to be established, all land transferred to the CPA in terms of clause 6.1 above, will remain subject to the mining rights of Alexkor until the said rights are dealt with as set out in clauses 8 and 10 below and the CPA consents to the said land being used in terms of the said mining rights for mining purposes.

6.3 On the transfer of the Remainder of Farm 1, Alexkor shall be entitled to reserve in its favour, as transferor, and in favour of its successors in title, the servitudes described in annexure "E" hereto, to use the facilities and land on the Remainder of Farm 1 necessary for the reasonable conduct of its activities with respect to the exercise of its prospecting and mining rights in respect of marine diamonds, including activities related to the processing of

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diamonds, as defined in the MPRDA.

6.4 Registration of transfer of the land mentioned in clauses 7.1 and 7.7 as well as the registration of all relevant servitudes, all conveyancing work necessary in connection with the township establishment set out in clause 7, including the opening of the township register and consolidation of the portion of the Remaining Extent of Farm 1 and Farm 625 on which the township of Alexander Bay is to be established, the subdivision of the Remaining Extent of Farm 1 for or in connection with the harbour, the border post and the airport, shall be done by the State Attorney, Cape Town at the cost of the State: Provided that the RVC shall be entitled at its own cost, if it so desires, to appoint Mallinicks Incorporated to assist the State Attorney in respect of the aforesaid attendances and to comment on, vet and approve all documentation prepared by the State Attorney for the aforesaid purpose.

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7. TOWNSHIP ESTABLISHMENT

7.1 The parties agree to formal township establishment in terms of the Northern Cape Planning and Development Act, 1998 (Act 7 of 1998) in respect of the existing Alexander Bay Village on a portion of the Remaining Extent of Farm 1 and a portion of Farm 625, which portions will be subdivided from the said properties and consolidated into a new cadastral unit on which the formal township of Alexander Bay is to be established, all at the costs of the State through Alexkor.

7.2 It is recorded that to enable such township establishment to take place, municipal engineering services have to be upgraded to municipal standards and that the Richtersveld Local Municipality is to take over such services and to fulfil all functions which a local authority has to fulfil in law and in practice in respect of the provision of engineering services and other public services in the formally established township of Alexander Bay.

7.3 It is further recorded that the following matters have been agreed

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upon between Alexkor and the RVC:

7.3.1 the township boundaries or outline of the portions of land on the said properties on which the township of Alexander Bay is to be established, as indicated in the plan "Alexander Bay Town: Figure 5 (Revised June 2006): Subdivision Plan and Zoning" a copy of which is attached as annexure "F" hereto; and

7.3.2 the township layout of Alexander Bay township as indicated on annexure "F" hereto.

7.4 It is recorded that a township application has been submitted by Alexkor to the Richtersveld Local Municipality for its consideration, who has approved thereof in principle.

7.5 The parties further agree that certain erven within the established township of Alexander Bay will be transferred by Alexkor as owner to various social institutions and government authorities and bodies in order to normalize social and governmental

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structures within the township of Alexander Bay, which include the following:

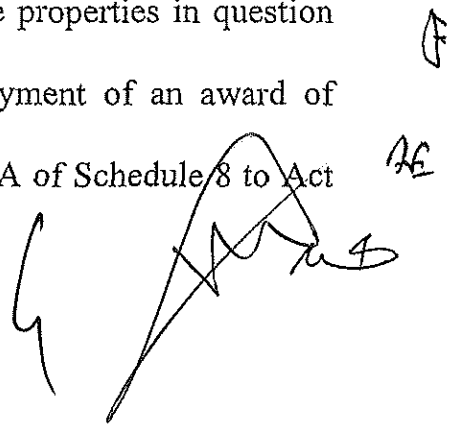
- 7.5.1 Land which will vest in the Richtersveld Local Municipality by virtue of section 52 of the said Act 7 of 1998, namely public streets and public places;
- 7.5.2 Erven which will be needed by the Richtersveld Local Municipality for municipal purposes;
- 7.5.3 Erven on which schools and educational amenities are situated to the Northern Cape Department of Education, or relevant department empowered to hold such land;
- 7.5.4 Erven on which churches are situated to the relevant church institutions; and
- 7.5.5 Erven on which houses or buildings or amenities of Government departments are situated to such Government departments such as the Northern Cape

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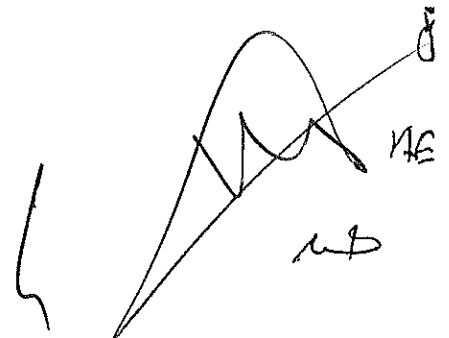
Department of Education, South African Police Service
(or relevant departments empowered to hold such land)
and Eskom.

7.6 The parties have agreed, with reference to annexure "F" hereto, that restoration of the erven as per annexure "G" hereto, with the houses or other improvements thereon, will take place to the RVC and that such erven are to be transferred by Alexkor to, and held by, Property Holding Co.

7.7 The parties further agree that in order for future mining activities to take place on the present land and sea mining areas it is necessary that security of accommodation be created for Alexkor and to that end the parties agree that the residential erven indicated on annexure "G" as read with annexure "F" hereto within the formally established Alexander Bay township, will be transferred to Property Holding Co subject to the retention by Alexkor of the right of occupation of the properties in question for a period of 10 years against the payment of an award of compensation as contemplated in item 64A of Schedule 8 to Act

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58 of 1962, in an amount of R45-million, which right retained by Alexkor will be to use and let the properties as though it were the owner thereof for the said period, the said right in favour of Alexkor to be reserved in the title deed or title deeds on transfer of the said properties to Property Holding Co, or endorsed against the said title deed or title deeds, whichever method may be appropriate. Alexkor will undertake as against the Richtersveld Local Municipality to pay such property taxes with respect to the said properties and for the said period, as though it were the owner of the said properties. Alexkor undertakes as against the Property Holding Co to pay and shall be liable for all expenses, maintenance and repairs with respect to the said properties for the aforesaid period, including without limitation, both the interior and exterior of the buildings on the properties, it being the intention of the parties that Alexkor shall bear all costs and/or expenses in respect of the properties and the management thereof as if it were the owner thereof.

A handwritten signature, possibly 'J. M. M.', is written in black ink. To the right of the signature are the initials 'ME' and 'MB' written in a similar hand.

7.8 For purposes of clause 7.7:

7.8.1 "expenses" shall mean all those disbursements and operating expenses, charges and fees in respect of the properties which are occasioned by the ownership, possession or operation of the property, including but not limited to, maintenance, rates, levies and any other charges levied in respect of the properties by any government, provincial, municipal or other local or statutory authority, any interest or penalty due for the late payment of any of the foregoing (hereafter collectively referred to as "rates and taxes"), insurance of the properties; electricity, water and service charges and the like; all amounts charged in connection with the supply of any of the foregoing, including but not limited to payment of connection fees, deposits and the like;

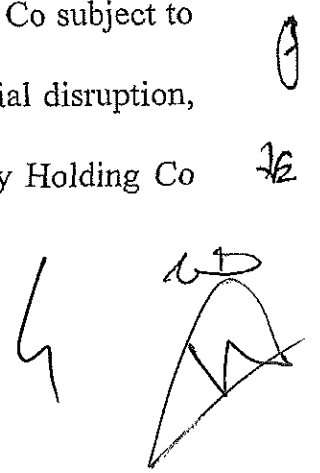
7.8.2 "maintenance" means everything which is required to be done in order to enable Alexkor to return the properties to Property Holding Co on the termination of the said ten

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year period in the condition they were in at the date of transfer thereof to Property Holding Co, fair wear and tear excepted. This includes, but is not limited to, making good any structural or other defects in the properties which may manifest themselves after the final settlement has been made an order of court and thereafter during the currency of the ten year period, and general daily upkeep, that is, everything short of "repairs" as defined hereunder;

7.8.3 "repairs" means everything which is required to be done in order to achieve the same goal as that envisaged in the definition of "maintenance", but which requires more labour and more expense than maintenance.

7.9 The parties furthermore agree that the commercial or retail or industrial properties within the township of Alexander Bay, indicated on annexure "G" as read with annexure "F" hereto, will be transferred by Alexkor to Property Holding Co subject to existing contracts of lease so as to avoid commercial disruption, but that at the termination of such leases, Property Holding Co

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will be free to let such properties at its discretion.

7.10 The State through Alexkor undertakes, at its cost, within the period set out in the services agreement with the Richtersveld Local Municipality, to upgrade the municipal engineering services in the township of Alexander Bay to such municipal standards as are agreed upon between Alexkor and the Richtersveld Local Municipality in a services agreement to be entered into between them as part of the township establishment process.

7.11 Alexkor agrees to transfer such equipment as is presently used for the maintenance and upkeep of the Alexander Bay Village to the Richtersveld Local Municipality on such terms and conditions as may be agreed upon in the said services agreement and to render such assistance to the Richtersveld Local Municipality during a transition period, as may be agreed upon in the said services agreement.

7.12 The parties agree that after subdivision, the harbour (as indicated

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on annexure "H1" with the letters A, B, C, D and E) and the Old HMS Plant (as indicated on annexure "H2" with the letters A, B, C, D, E and F) will be transferred to Alexkor, and the airport (as indicated on annexure "H3") and border post (as mentioned on annexure "H4") will be transferred to the appropriate authority together with such equipment as may be agreed upon between such authority and Alexkor.

7.13 The land upon which the Alexander Bay township is established will be excised from the mining area of Alexkor.

7.14 The parties further agree that all mining infrastructure, buildings, offices, residential complexes or compounds, structures, workshops, roads, pipelines, electrical and water reticulation lines and pipelines, fences, substations, equipment, pumps and everything erected or to be erected for or in connection with marine and land mining activities, on the land to be transferred to the CPA or Property Holding Co, as the case may be, and situated within the mining area of Alexkor (and on transfer of the land mining rights as contemplated in clause 8 below, on the

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mining area of RMC) may be used:

7.14.1 by Alexkor as part of its land mining activities and marine mining activities, pending the transfer of the mining rights with respect to the land, to RMC;

7.14.2 by Alexkor as part of its marine mining activities in the Pooling and Sharing Joint Venture (PSJV) referred to in clause 8 with RMC after transfer of the land mining rights to RMC;

7.14.3 by Alexkor as part of its marine mining activities after dissolution of the PSJV;

7.14.4 by RMC and Alexkor in the PSJV; and

7.14.5 by Alexkor should the PSJV fail as contemplated in clause 8.4.5 and transfer of the land mining rights not take place,

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without payment of any rental or other compensation for the use thereof, to the CPA or Property Holding Co or RMC, as the case may be.

8. MINING RIGHTS

8.1 The parties agree that the RVC, through its shareholding in RMC should acquire the mining rights pertaining to the exploitation of diamonds on land in the mining area of Alexkor and in addition that Alexkor grants a right of pre-emption in respect of the mining rights pertaining to the exploitation of diamonds in the marine areas which vest in Alexkor, all on the basis as set out hereunder.

8.2 It is recorded that Alexkor holds an old order mining right as contemplated in the MPRDA on the land in respect of which mining authorisation ML33/93 was granted to it by the Minister of Minerals and Energy in terms of section 9 of the Minerals Act, 50 of 1991, and in respect of which it held the common law rights to precious stones under Certificate of Mineral Rights

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K365/95, which has to be converted to a mining right in terms of the MPRDA in order for it to be transferred to RMC with the permission of the Minister of Minerals and Energy in terms of section 11 of the MPRDA.

8.3 The parties agree to form a PSJV between Alexkor and RMC as follows:

8.3.1 Alexkor will remain the holder of its marine mining rights and RMC will remain the holder of its land mining rights;

8.3.2 Alexkor and RMC will respectively put their marine mining rights and their land mining rights under the full control of a Joint Board of the Joint Venture for purposes of mining both the marine mining resources and the land diamond resources;

8.3.3 Alexkor will furthermore put its land and marine mining assets under the control of the said Joint Board and

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certain of its personnel under the control of the Executive Committee referred to in clause 8.3.10. The PSJV shall provide that such personnel shall remain employees of Alexkor but will be made available to render services to the pooled operations under the control of the Executive Committee. The parties shall procure that funds be made available to Alexkor from the pooled income of the PSJV to discharge all its obligations in respect of such personnel as part of the operating expenditure of the PSJV. For avoidance of doubt, the parties agree that all such employees shall remain in the service of Alexkor who shall directly discharge all its obligations towards such personnel whilst such personnel are under the control of the PSJV. A tripartite agreement shall be entered into between each such employee, Alexkor and RMC which puts it beyond doubt that such employee is and remains an employee of Alexkor despite the fact that such employee will be under the control of the PSJV through its Executive Committee. Further for avoidance of doubt, all existing obligations owed by Alexkor and

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actual or contingent liabilities of Alexkor to any personnel so put under the control of the PSJV, in respect of the period prior to any specific employee having been put under the control of the PSJV (including but not limited to any liabilities of Alexkor to its personnel in respect of post-retirement finding) shall remain with and be discharged by Alexkor. RMC shall not acquire any ownership in the Alexkor pooled assets and Alexkor shall not acquire any ownership in RMC's pooled assets (if any);

8.3.4 Any assets acquired out of the pooled income from the mining operations shall be jointly owned by the parties in undivided shares in proportion to their participation interest;

8.3.5 Alexkor shall initially have a 51% interest in the PSJV and RMC a 49% interest;

8.3.6 All diamonds won from land operations shall, on being

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won, be jointly owned by RMC and Alexkor in the proportion of 51% by Alexkor and 49% by RMC. The same principle applies with respect to diamonds won from Alexkor's offshore mining area in respect of which RMC acquires ownership as to a 49% undivided share therein and Alexkor retains ownership as to a 51% undivided share therein;

8.3.7 The pooled EBITDA from the sale of diamonds (being revenue less operational expenditure derived from the pooled operations and being assessed before reduction of interest, taxes, depreciation and amortisation) will be paid out as to 49% to RMC and as to 51% to Alexkor subject to the policy of the Joint Board which will be dealt with more fully in the PSJV;

8.3.8 The Joint Board shall have the overall supervision of the activities of the pooled operations and shall be the sole representative of the parties in respect of the pooled operations, unless otherwise determined by the Joint

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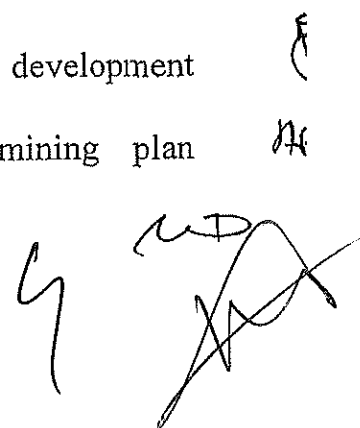
Board by resolution. Each of the parties shall be entitled to appoint, remove and replace 3 (three) members to the Joint Board, who shall be duly authorised to represent that party in respect of all matters relating to the pooled operations. The members of the Joint Board appointed by Alexkor shall have 51% vote at meetings of the Joint Board and those appointed by RMC 49%. The Chairman of the Joint Board shall be a member of the Joint Board and shall not have a casting vote in addition to his deliberative vote;

8.3.9 All decisions of the Joint Board shall be decided by majority vote provided that unanimous decisions are required with respect to –

8.3.9.1 the appointment of the Executive Committee;
and

8.3.9.2 any deviation from the resource development
plan and programme and mining plan

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approved by the Joint Board

(hereinafter referred to as "reserved matters"). In the event that RMC refuses to approve any reserved matter, any of the parties may refer that reserved matter for determination to a suitably qualified expert agreed by Alexkor and RMC, or failing their agreement, appointed by the chairperson for the time being of the South African Institute of Mining and Metallurgy, provided that the chairperson shall appoint the expert from an aggregate of four experts, two of whom shall be nominated by Alexkor and two of whom shall be nominated by RMC. The parties shall be bound by such expert's appointment and determination;

8.3.10 There shall be an Executive Committee, appointed and removed by the Joint Board from time to time. The Executive Committee will comprise persons who have appropriate operational, technical and financial expertise and experience. The Executive Committee shall consist

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of at least the following posts:

8.3.10.1 a General Mine Manager (Chief Executive Officer);

8.3.10.2 a Financial Manager;

8.3.10.3 a Mineral Resource Manager;

8.3.10.4 a Metallurgy Manager;

8.3.10.5 a Security Manager;

8.3.10.6 such further managers as the Joint Board may decide.

The Executive Committee shall procure the appointment of such staff as will have the necessary expertise to supervise, manage, plan and implement all stages of the prospecting and mining process.

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Any member of the Joint Board shall be entitled to attend and ask questions at monthly meetings of the Executive Committee, but such member shall not be entitled to interfere with the affairs of the Executive Committee;

8.3.11 The management structure of the PSJV shall consist of the Executive Committee together with all the persons reporting to it, responsible for the management of the pooled operations;

8.3.12 The Executive Committee has to put a development plan and programme in place for approval by the Joint Board, in order to upgrade the land and sea diamond resources. The development plan and programme in respect of the land diamond resource must adhere to the following principles:

8.3.12.1 The overriding objective and principle is that the resource must be explored and ultimately

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mined to the full potential of the resource;

8.3.12.2 The exploration target is an Indicated Resource of 1,5-million carats which, for purposes hereof, is based on the Inferred Resource Statement of Mineral Services (3,5-million carats) as at 31 August 2004 at a cut-off grade (COG) of 4.6 carats per hundred cubic metres;

8.3.12.3 The perceived Life of Mine (LOM) is 10 years at an annual production rate of 150,000 carats;

8.3.12.4 The exploration target is to be divided up into unique self-contained mining cells of sufficient size to sustain exploration and mining at the envisaged annual rate of 150,000 carats. The location and size of these mining cells will determine the infrastructure to be developed within these cells, but must

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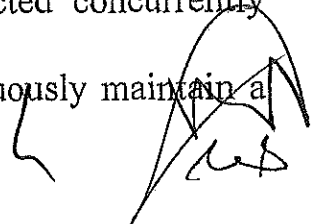
ensure optimal best mining practice;

8.3.12.5 Before mining may commence in any mining cell, a three year resource (450,000 carats) needs to be established in that cell on the basis of one year of Probable Reserve and two years of Indicated Resource;

8.3.12.6 Exploration must be conducted at the average resource grade, i.e. a balanced exploration programme developing both high grade and low grade resource blocks;

8.3.12.7 Mining operations have to take place at the average resource grade so as to prevent the "high grading" of the resource;

8.3.12.8 After commencement of mining further exploration must be conducted concurrently with mining so as to continuously maintain a



resource inventory in each operating mining cell of at least three years of resource on the basis of one year of Probable Reserve and two years of Indicated Resource;

8.3.12.9 A primary exploration plan must be implemented to target new resource areas outside of what is already defined by the inferred resource;

8.3.12.10 The references herein to "Inferred Resource", "Indicated Resource" and "Probable Resource" have the meaning as defined in the SAMREC-code.

The Executive Committee shall also be responsible for the preparation, maintenance and execution of a mining plan, for a viable mining operation on the land and sea resources to be approved by the Joint Board from time to time. A viable mining operation on the land resource will

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be one at least capable of generating sufficient EBITDA to Alexkor for Alexkor to recover 51% of the financial contribution to land operations mentioned in clause 8.3.14 within five years of commencement of mining operations and if further finance as contemplated in 8.3.15 is made available, to recover such finance from the pooled income before EBITDA, within the same five-year period;

8.3.13 Prospecting and mining of land resources will take place under the direct supervision and control of the Executive Committee by means of an independent contractor or contractors to be appointed on recommendation of the Executive Committee by the Joint Board on a basis other than a share of the proceeds of recovered diamonds. The responsibilities and functions of the independent contractor shall stop at the delivery of gravel to the DMS plants and the recovery and sale of diamonds shall be conducted by the Joint Venture. The Joint Board shall not unreasonably refuse to appoint a contractor so

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recommended by the Executive Committee. Should the Joint Board refuse such appointment the matter shall be referred back to the Executive Committee with reasons for such refusal. The Executive Committee shall thereupon reconsider its recommendation and if the Executive Committee again recommends the appointment of the same contractor, the Joint Board shall appoint such contractor unless financial constraints dictate otherwise;

8.3.14 Alexkor shall contribute the necessary finance and capital up to a maximum of R200-million for the joint operations of the Joint Venture, which shall be expended both with respect to the land and the sea operations according to the development plan and programme including the mining plan approved by the Joint Board on recommendation by the Executive Committee. The allocation of the maximum amount of R200-million between land and sea operations shall be made with due regard to the maintenance of an income stream from sea operations in order to subsidize the land operations during its

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