

IN THE COMMISSION OF INQUIRY INTO STATE CAPTURE

---

AFFIDAVIT

---

I, the undersigned,

**GAVIN JOHN CRAYTHORNE**

do hereby make oath and say that:

1. I am an adult male businessman living in Alexander Bay, Northern Cape Province.
2. The content of this affidavit is within my personal knowledge, unless the context indicates the contrary. To the extent that I rely on hearsay evidence, I have explained the circumstances in which the information was imparted to me, and I have identified my sources. I confirm that I verily believe such information to be true and correct, and that I have no reason to doubt my sources.
3. I will, in the course of this affidavit refer in the text of the affidavit to the annexures attached to this affidavit in support of the averments made by me. Each reference will reference an annexure with the suffix "**GC**" followed by the number of that annexure. Footnotes will be used to clarify certain aspects in this affidavit.
4. I am duly authorised to depose to this affidavit. I do so as a founding member and office bearer of the Equitable Access Campaign (EAC) [**GC1**], being an association of small-scale black-owned and black empowered marine mining companies ("**the Emerging BEE Marine Diamond Miners**") [**GC2**] who are or were subcontracted to the Alexkor – Richtersveld Mining Company Pooling & Sharing Joint Venture ("**PSJV**"). This joint venture manages the mining operations of the pooled land and marine mining rights of the Richtersveld Mining Company ("**RMC**") and Alexkor SOC Ltd ("**Alexkor**"), a state owned entity, dealt with by me herein below.



## MY QUALIFICATIONS AND EXPERIENCE

5. I have been working full-time in the diver-based marine diamond mining industry since July 1985 and as an Alexkor marine mining contractor since 1999, except for a period from 7 November 2017 to 19 March 2019. As such, I have contributed significantly to Alexkor and the PSJV's shallow water marine profits [GC3].
6. I have also contributed significantly to the success of Alexkor's marine operations by designing, building and providing turnkey mining vessels to start-up contractors that do not have the technical ability to construct their own mining vessels. I am locally and internationally acknowledged as an expert in the narrow field of diver-based underwater mining and engineering [GC4]. I attach hereto a copy of my curriculum vitae setting out my work experience and my expert experience [GC5].
7. I have expert knowledge, based on twenty years of local marine mining experience, of Alexander Bay's world class marine diamond geology, including the diamond ore grade distribution, the diamond size frequency distribution and the shape, colour and clarity quality attributes thereof.

## THE JOINT VENTURE BETWEEN ALEKOR AND THE RICHTERSVELD MINING COMPANY

8. Alexkor SOC is a state-owned mining company which owns marine diamond mining rights in the Richtersveld. The Department of Public Enterprises is the shareholder representative of Alexkor on behalf of the South African Government, with oversight responsibility over it.
9. RMC is a community mining company which acquired the land diamond mining rights in the relevant region, following a land restitution claim brought by the Richtersveld community. A Settlement Agreement was reached between the parties which was signed on 22 April 2007 and made an Order of Court [GC6]. This was later supplemented by a further agreement referred to as "*the Unanimous Resolution*" ("**the Resolution**") [GC7].
10. In terms of the Settlement Agreement and the Resolution, it was agreed that a joint venture would be pursued between Alexkor and the Richtersveld Community. In terms of the joint venture agreement, styled the Pooling and Sharing Joint Venture Agreement ("**PSJV**"), it was agreed that Alexkor would retain its marine mining rights, but would transfer its land mining rights to a



company formed by the Richtersveld Community, the Richtersveld Mining Company (“RMC”), to be exploited by them jointly. It was agreed that Alexkor would hold 51% of the shares in PSJV and that the remaining shares (49%) would be held by RMC.

11. In terms of the Joint Venture Agreement, the PSJV was mandated to conclude marine mining contracts on behalf of Alexkor and land mining contracts on behalf of RMC. However, the PSJV does not itself conduct mining operations and all its land, beach and marine mining operations are conducted by contract miners, who are subcontracted to the PSJV and mine areas allocated to them under their contract with the PSJV.
12. The joint operations were placed under the control of an executive management team, under the control of a Joint Board, with three directors representing Alexkor and three directors representing the RMC (“**the Board**”). In terms of clause 6.1.3, the Joint Board is responsible for the *“carrying out of the recovery and sale, at the highest prices possible, of precious stones produced from the pooled operations areas.”*
13. To give effect to this clause and various others in the Settlement Agreement and Resolution, the Joint Board established a PSJV Technical Committee (“**the Technical Committee**”) to oversee the many complex technical aspects of the joint land and marine mining operations.

#### **THE EVENTS WHICH PRECEDED THE APPOINTMENT OF SCARLET SKY AS A SERVICE PROVIDER**

14. During 2013, the PSJV’s marine diamond production traded on average at 30.2% below the market. [GC8]
15. On 21 October 2013, the PSJV Technical Committee raised a concern with management regarding the manner in which diamonds were marketed and sold by the then service provider, Diamond Marketing Consultants (“**DMC**”). The committee advised management to request approval from the Board to appoint a new service provider on a trial basis to determine whether there would be an improvement in pricing [GC9].
16. On 23 October 2013, the PSJV Management Team obtained approval from the PSJV Joint Board to appoint a new service provider on a trial basis [GC9, page 4].

A handwritten signature in black ink, consisting of several loops and a vertical stroke, located in the bottom right corner of the page.

17. On 1 January 2014 the Management Team appointed Fusion Alternatives on a trial basis [GC9, page 4].
18. On 8 January 2014 the Management Team cancelled the marketing and sales agreement with Diamond Marketing Consultants (“DMC”) [GC9, page 4].
19. On 16 April 2014 the Joint Board gave approval for the management team to begin a tender process for the appointment of a permanent service provider to take the place of Diamond Marketing Consultants [GC9, page 4].
20. On 31 October 2014 the Management Team published a Request for Proposal in this regard in the Government Gazette titled RFP 03-14 [GC10].
21. On 1 March 2015 Alexkor awarded the tender to a Gupta linked entity, Scarlet Sky Investments 60 (Pty) Ltd (“SSI”), after the conclusion of a fundamentally flawed tender process that was fraught with breaches of the law dealt with below.
22. In spite of the further deterioration in Alexkor’s diamond prices under the SSI contract, the contract was not cancelled, but was renewed again in October 2016, more than two years before the first contract was due to expire, and in the midst of growing controversy over SSI’s poor performance.

#### **THE IRREGULAR TENDER PROCESS FOLLOWED IN THE APPOINTMENT OF SCARLETT SKY**

23. On 21 October 2013, the PSJV’s Technical Committee initiated the process leading to the appointment of SSI as the sole agent to market and sell Alexkor’s diamonds [GC9].
24. In the Alexkor Audit Risk Committee (“ARC”) Report to former Minister Lynn Brown (“Brown”) on the appointment of SSI it is stated:

*“21 October 2013*

A handwritten signature in black ink, appearing to be a stylized name or set of initials, located in the bottom right corner of the page.

*Technical Committee meeting of the PSJV raised a concern to management regarding the manner in which diamonds were marketed and sold by the then service provider Diamond Marketing Consultants (“DMC”). The committee advised that management request approval from the PSJV Board (“the Board”) to appoint a new service provider on a trial basis to determine whether there will be an improvement in pricing.”*

25. The Technical Committee meeting of the PSJV raised a concern to management regarding the manner in which diamonds were marketed and sold by the then service provider Diamond Marketing Consultants (“**DMC**”). The committee advised that management request approval from the PSJV Board (“**the Board**”) to appoint a new service provider on a trial basis to determine whether there would be an improvement in pricing.

26. Those present at this meeting are recorded in the Alexkor 2014 Annual Report as being the following individuals:

ATTENDANCE AT TECHNICAL COMMITTEE MEETINGS					
Name	23/04/13	15/08/13	21/10/13	17/01/14	10/04/14
Dr. J Bristow	P	VT		VT	VT
Mr. M Carstens (CEO)	P	VT	P	P	P
Mr. W Diergaardt	P	VT	P		
Dr. R Paul	P	VT	P	VT	VT

SEE ARC REPORT

27. At the time Rafique Bagus (“**Bagus**”) chaired the Joint Board of the PSJV.

ALEXKOR RMC JV ATTENDANCE AT BOARD MEETINGS					
Member	24/04/13	26/08/13	30/10/13	30/01/14	16/04/14
Mr. MR Bagus	P	P	P	VT	P
Dr. J Bristow	P	P		VT	VT
Mr. M Carstens (CEO)	P	P	P	P	P
Mr. W Diergaardt	P	P	A		
Mr. D Korable				VT	VT
Mr. C Matthews	P	VT	A		
Ms. Z Ntlangula	P	VT	P	VT	A
Dr. R Paul	P	P	P	VT	P
Mr. W Vries				VT	P

SEE ARC REPORT

28. The advertisement for tender RFP 03/14 was published in the Government Tender Bulletin on 31 October 2014 [**G10**, at section 2] and in the Sunday Times on 26 October 2014. Interested parties were invited to formerly submit an Expression of Interest to participate in the process by 13:00 on Friday, 7

November 2014. The closing date for the submission of the formal proposal was given as 24 November 2014.

29. Pursuant to the tender advertisement, nine interested companies, including SSI, submitted written expressions of interest to participate in the tender by 7 November 2014 [GC9].

30. SSI sent an expression of interest on 6 November 2014 on a letterhead that indicated the directors were Daniel Nathan ("**Daniel Nathan**") and Kuben Moodley ("**Moodley**"). At that date, however, the directors were actually still shelf company stand-ins and company records indicate that Nathan and Moodley only became directors on 4 December 2014. SSI's own company structure shows that they became shareholders on 20 November 2014 (through their respective companies Daniel Nathan Trading ("**DNT**") and Kimomode (Pty) Ltd ("**Kimomode**").<sup>1</sup>

31. Accordingly:

31.1. Up until 4 December 2014, the date upon which Messrs Moodley and Nathan officially became directors, SSI was a shelf company [GC11]; and

31.2. The date upon which they became directors was eleven days after the official closing date of 24 November 2014 for formal written proposals to be submitted in order to compete in the tender [GC10 at section 3.c].

32. An investigation was carried out by Alexkor in 2015 ARC at the behest of Brown. The ARC report to Brown [GC9] revealed that:

32.1. Mervyn Carstens ("**Carstens**"), the chief executive of the joint venture, outsourced the shortlisting of bids to a company called Gamiro Advisory Services ("**Gamiro**") (controlled by Heather Sonn ("**Sonn**")), although there were only seven bids. (The significance of the involvement of Sonn and Christo Wiese ("**Wiese**") in Alexkor's plans to diversify into coal is dealt with below.)

32.2. Gamiro shortlisted three companies, namely SSI, CS Diamonds and Diamond Realisations, who were all invited to make further presentations to the tender committee.

---

<sup>1</sup> Exhibit 25 in the Gobodo report (GC11)



- 32.3. On the shortlist, Diamond Realisations – the company that held the interim contract – scored the highest with 75 points, SSI came in second with 71.5 points and CS Diamond third, with 67 points.
- 32.4. SSI was shortlisted although it held no diamond license (Daniel Nathan's company, DNT did, however, have a diamond licence, but this could not be utilised by SSI as explained below). Moodley, the purported 60% BEE shareholder, had no diamond industry background at all.
- 32.5. When it came to the final selection on 11 December 2014, only three people sat on the panel at Alexkor's Rosebank, Johannesburg head-office: Bagus, Duncan Korabie (“**Korabie**”) and Dr Roger Paul (“**Dr Paul**”). Korabie awarded SSI a full 100% mark.
- 32.6. It was recorded in the ARC report that:

*“11 December 2015*

*The Board members present at the presentations was Dr Paul, Mr Korabie and MR Bagus. None of the members had any interest to declare in the tender.*

*Each board member present scored the shortlisted companies. The scoresheet is disclosed after each members' declaration form.*

*The highest score per member was as follows:*

- *Dr Paul: SSI=54 points*
- *Mr Korabie: SSI=100 points*
- *Mr Bagus: SSI=66 points, tallied by the committee.”*

33. Despite all three adjudicators awarding SSI the highest points, it appears there was a significant lack of clarity about their proposal and what exactly SSI had committed to in terms of funding, pricing, beneficiation and community investment, which resulted in a delay in finally awarding the tender to SSI.



34. On 27 February 2015, Alexkor awarded the tender to SSI (which was announced on 15 March 2015), notwithstanding that it failed to meet the specified minimum requirements of the tender, more particularly in that:

- 34.1. SSI had no track record in the diamond industry [GC12 page 1 reply point (1)];
- 34.2. SSI had no experience in trading in diamonds or in cutting and polishing rough diamonds [GC12 page 1 reply point (1)];
- 34.3. SSI had no cutting or polishing factory [GC12 page 1 reply point (1)];
- 34.4. SSI had no licence to buy rough diamonds [GC12 page 3 reply point (4)];
- 34.5. SSI had no licence to sell rough diamonds [GC12 page 3 reply point (4)];
- 34.6. SSI had no licence to cut and polish rough diamonds [GC12 page 3 reply point (4)];
- 34.7. SSI had no diamond trading house licence [GC12 page 3 reply point (4)]; and
- 34.8. SSI had no BEE certificate SSI (which it only acquired after being awarded the tender).

35. These were all minimum requirements for the tender [GC13].

36. In addition, notwithstanding that a due diligence was a requirement of the Bid, Zarina Kellerman (“**Kellerman**”), Alexkor’s Chief Legal Officer and the CEO, Carstens (who is still currently in the employ of Alexkor), misrepresented to the Board that a due diligence had been conducted, when in fact, no due diligence was conducted before SSI was appointed by the PSJV [GC14].

37. The Tender Committee and the unlawfully constituted Joint Board (dealt with by me below) also contravened section 217(1) of the Constitution in that they failed to ensure that the procurement process was fair, equitable, transparent and competitive by ignoring their own tender specifications as set out above and favouring SSI in the following manner:



- 37.1. Whereas SSI's original proposal was to procure rough diamond production through an outright purchase of production at the price determined by an independent diamond valuer, SSI was permitted to change its bid proposal to the selling of rough diamonds through an auction process to the highest bidder. This favoured SSI and afforded it a competitive advantage over other bidders.
- 37.2. SSI was also permitted to include 1.5% handling fee for handling the rough diamonds.
38. It seems self-evident to me that the outcome of the RFP 03-14 tender process was a forgone conclusion and that the process itself was a mere sham put on by the PSJV Management Team, headed by the CEO, Carstens, to try and create a façade of compliance with the required procurement processes[GC15].
39. Gobodo Forensic and Investigative Accounting (Pty) Ltd ("**Gobodo**") found that that tender 03/14 was irregularly awarded to SSI by the PSJV Board during 2014 as the procurement process was fatally flawed. Gobodo also found that a proper procurement process was not followed during tender no 02/2016, which led to the renewal of the contract with SSI. [GC11]. The Gobodo report is dealt with by me more fully below.
40. Having won the tender, SSI went from being a dormant shelf company to suddenly appearing on the local diamond trading scene as the PSJV's new marketing and sales service provider, taking delivery of its first tranche of multi-million rand rough diamonds on 15 March 2015 at its new offices located at 1 River Street, Houghton, Johannesburg [GC16].
41. Numerous complaints about the irregular appointment of SSI were reported to Alexkor management and Parliament's oversight committees, to no avail.
42. As will be demonstrated below, the awarding of Tender RFP 03-14 to SSI and the subsequent renewal of its contract has contributed to the collapse of Alexkor and with it, the economies of Alexander Bay and Port Nolloth and RMC.

#### **THE LINK BETWEEN SCARLET SKY AND THE GUPTAS**

43. The links between SSI and the Guptas have been investigated and are dealt with in the affidavit deposed to by Peter Bishop ("**Bishop**"), an investigator at the Commission [GC17]. From my knowledge and that discovered by Bishop,



key persons involved in both Alexkor, the PSJV and SSI have links to the Guptas and/or their associates.

44. According to the group structure submitted with the proposal for the first tender awarded to SSI, the shares in SSI were held as follows:

44.1. 60% owned by Kimomode (represented by Moodley); and

44.2. 40% owned by DNT (represented by Daniel Nathan).

45. The current shareholding of SSI is constituted as follows:

45.1. 30% owned by the Richtersveld Community Trust;

45.2. 40% owned by DNT (represented by Daniel Nathan);

45.3. 30% owned by a black female, who Daniel Nathan informed a Democratic Alliance member of Parliament, Veronica Van Dyk, when she visited the premises in December 2018, is Raygen Phillips ("**Phillips**"). However, company searches could not confirm this and have also not identified who the BEE partner/s is/are or what their BBBEE rating is.

46. CIPC records indicate that Daniel Nathan is a director of SSI. Its prior directors, Moodley and Kasavan Govendor ("**Govendor**"), resigned on 5 November 2015 and 4 November 2016 respectively.

47. On 20/12/2016 Mr Stanley "*Screamer*" Tshabalala, who is Mr Irvin Khoza's close confidant and Orlando Pirates technical director and founder member of Kaiser Chiefs, was appointed as a director to DNT.

48. Known Gupta associates linked to state capture who were instrumental in the awarding of Tender RFP 03-14 to SSI are as follows:

48.1. Malusi Gigaba ("**Gigaba**");

48.2. Mosebenzi Zwane ("**Zwane**");

48.3. Bagus;

48.4. Carstens;



- 48.5. Moodley [GC18];
- 48.6. Percy Khoza (“Khoza”);
- 48.7. Kellerman;
- 48.8. Hantsi Matseke (“Matseke”);
- 48.9. Daniel Nathan;
- 48.10. Selwyn Nathan [GC19, Daniel Nathan’s father and close associate of Salim Essa (“Essa”) [GC20];
- 48.11. Marc Chipkin (“Chipkin”) [GC21], the CEO of Integrated Capital Management (“ICM”) [GC22], which provided a R50 million credit facility to SSI [GC23]; and Essa [GC19]

## Bagus

49. At the time of the appointment of SSI, Bagus was both the Chairman of Alexkor and of the RMC/Alexkor joint venture. He was appointed the Chairman of Alexkor by Gigaba in September 2012. When Bagus was appointed all of the directors of the Board of Alexkor, Mr RT Muzariri, Ms S Ngoma, Dr V Makin and Mr C Towel, resigned and 6 new directors were appointed. Previously, he had been 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 Public Enterprises Minister.
50. Bagus attended the Alexkor Board Meetings as well as those of the Joint Venture, including those held on 23 January 2015 and 29 January 2015, where decisions to support the appointment of SSI was made. After the meeting on 23 January 2015, Korabie resigned.
51. In December 2012, Alexkor “embarked upon a strategic planning exercise,” which was a reference to its intent to diversify into coal in order to supply Eskom. The role Bagus played in this is dealt with in a separate section below. Prior to Bagus’ involvement, Alexkor’s corporate strategy was firmly to pursue its diamond interests. The hand of the Guptas in this change in direction is also



documented below. It is rumoured that Bagus was a frequent visitor to the Guptas at Saxonwold.

### **Carstens**

52. Carstens was appointed the Chief Executive Officer of the Alexkor/RMC joint venture in August 2012. He had a long history with Trans Hex, where he had ultimately served as the Executive Director of land operations until his departure in April 2012. Trans Hex has sought to acquire Alexkor's marine mining rights and is dealt with below.

53. The Audit and Risk Committee meetings were attended, *inter alia*, by Carstens, Dr Paul, Dr Bistrow, who were present at the meeting on 15 January 2015 where decisions to support the SSI bid was made. The same persons attended the Technical Committee meetings and in particular, the meeting held on 22 January 2015 referred to in the ARC report where decisions to award the tender to SSI were being taken.

### **Khoza**

54. The Chief Executive of Alexkor was Khoza, who was a mining executive with both diamond and coal experience. He was hired, in part, to pursue Alexkor's diversification into coal approved by Gigaba, dealt with below. Khoza took a voluntary retrenchment package. He apparently raised concerns about the appointment of SSI and delivered a detailed memorandum to Brown's advisor, Annelize van Wyk.

### **Moodley**

55. It is common knowledge that the majority shareholder of SSI at the time of the tender was Moodley, who was implicated by the former Public Protector, Advocate Thuli Madonsela, in her State of Capture Report [GC18].

56. The available information indicates that Moodley was the former advisor of the erstwhile Mineral Resources Minister, Zwane, who was appointed to former President, Mr. Jacob Zuma's Cabinet in or about September 2015. Moodley resigned from SSI on 5 November 2015, soon after Zwane was appointed to the cabinet.



57. A number of media reports have linked Moodley to the Guptas and to the erstwhile Minister of Mineral Resources, Zwane, who is infamous for his involvement in the Vrede Dairy Project which paid for the Gupta Wedding. It has been averred by witnesses at the Commission that Moodley assisted Trillian Capital to loot Eskom and assisted the Guptas in acquiring Optimum Mine. It would appear that he has also assisted the Guptas in looting the diamond resources in the Richtersveld for their, Daniel Nathan and other connected person's benefit.

#### **Essa**

58. 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 Woods started engaging with Alexkor CEO, Khoza and the Chief Legal Officer, Kellerman as discussed in Bishop's affidavit [GC17]. Wood and Essa at the time were partners as mentioned in Bishop's affidavit [GC17]. In one instance Wood engages via email with Essa regarding his costing proposal he was to submit to Alexkor as mentioned in Bishop's affidavit [GC17].

#### **Kellerman**

59. Kellerman was appointed as Alexkor's Chief Legal Officer and played a role in facilitating the award of the contract to SSI. She was also appointed as an adviser to Zwane after her resignation from Alexkor. She must have known that SSI's bid did not comply with the tender requirements.

#### **Matseke**

60. Bagus left Alexkor during August 2015 and Brown appointed Matseke in August 2015 as the new Alexkor chair. Matseke also became chair of the Alexkor/RMC joint venture. Matseke acted as the Chairperson of Alexkor from August 2015 to October 2018 and is also the Chairperson of the Free State Development Corporation, which ran the Vrede Dairy Project.

#### **Regiments Capital**

61. Regiments Capital, already involved in State Capture, was also involved with Alexkor, and during January 2014 tendered to provide Financial and Advisory Services to Alexkor. The Financial Advisors Panel report is attached marked (GC17) Significantly, Regiments at the request of Kellerman was requested to prepare the Request for Proposal ("RFP"), score sheet and advert for the



Financial Advisory Panel and thereafter also tendered and was appointed. This is totally contrary to the PFMA prescripts as it gave them an undue advantage.

62. It is submitted that the biased tender process and the involvement of the aforementioned Gupta linked individuals, are enough evidence to reasonably conclude that the insertion of SSI into the PSJV's diamond value chain was a Gupta sponsored state capture project that followed the same *modus operandi* used by the Guptas in the capture of other SOEs.

63. Indeed, there was absolutely no need for any marketing or sales company to promote the diamonds recovered by PSJV, given the expert opinion of Charles Wyndham ("**Wyndham**") regarding the self-selling quality of Alexkor's diamonds and the example set by Zimbabwe's state owned diamond company (who sell their own productions in Zimbabwe<sup>2</sup>)[**GC24**]. I submit that if international buyers will travel to Zimbabwe to buy Marange diamonds [**GC25**], they will certainly also travel to Alexander Bay to buy Alexkor's diamonds [**GC26**].

#### THE BREACH OF THE RELEVANT STATUTORY PROVISIONS

64. SSI does not have the necessary licences required in terms of the Diamond Act 56 of 1986 ("**the Diamond Act**") authorising it to purchase, acquire, possess or sell uncut diamonds.

65. It is therefore by law not permitted to:

65.1. buy and sell rough diamonds;

65.2. operate a tender house or diamond exchange; or

65.3. cut and polish rough diamonds.

66. Diamond licences are not transferrable. SSI can thus, by law, not use the license of Daniel Nathan and/or his company, DNT to trade or deal in diamonds.

---

<sup>2</sup> The Marange Diamond Fields are a massive deposit of cheap low-quality diamonds that have attracted a lot of attention due to the high volumes of carats produced, the Zimbabwean Governments involvement and alleged human rights abuses. South Africa lobbied intensely for Zimbabwe to be admitted into the Kimberley Process Certification System after they were banned. The concern about Marange diamonds is that there is no control over these cheap low-quality diamonds entering our borders and being substituted for high quality South African goods.

67. SSI and/or Nathan and/or DNT are, furthermore, contravening the following provisions of the Diamonds Act:

68. **Section 19** deals with the prohibition of the sale of unpolished diamonds and provides that no person shall sell any unpolished diamond unless-

68.1. he or she is a producer;

68.2. he or she has manufactured that diamond, if it is a synthetic diamond;

68.3. he or she is a dealer; or

68.4. he or she is the holder of a permit referred to in section 26 (h).

69. **Section 20** prohibits the purchase of unpolished diamonds and provides that no person shall purchase any unpolished diamond unless-

69.1. he or she is a licensee; or

69.2. he or she is the holder of a permit referred to in section 26 (e).

70. **Section 44** prohibits the utilization of unregistered premises as a diamond trading house and provides that no person shall utilize any premises as a diamond trading house unless he or she holds a diamond trading house license and those premises are registered as a diamond trading house in terms of the Diamonds Act.

71. In relation to the premises, I am advised the contract between SSI and Alexkor and its renewal are unlawful.

72. I caused certain questions to be asked in Parliament as to whether SSI had the necessary licenses. Attached hereto are the questions posed by me and the responses I received thereto [**GC27**].

73. I would like to make particular mention of Parliamentary Question No. 1267 (item (4) [**GC12**] on page one) and the answer thereto (item (4) on page three), as well as the Affidavit from the South African Diamond and Precious Metals Regulator (SADPMR), Mr Martinus Mamphenyane Mononela ("**Mononela**") [**GC28**]. The response to Question 4 in the Parliamentary Question No. 1267 stated:

*"In terms of the South African Diamonds and Precious Metals Regulator (SADPMR) prescripts, a license is issued to an individual "Diamond Dealer"*



*or to a company "Diamond Trading House". In this instance, Mr Daniel Nathan is the holder of the required Diamond Dealer license."*

- 73.1. Although Daniel Nathan is a holder of Diamond Dealer Licence and a Diamond Trading House Licence, these licences were issued in the name of DNT and not SSI. SSI does not have any licences as stated by Mononela. SSI could, thus, not trade using DNT's licences as this would be in contravention of the Diamonds Act. The response to the parliamentary question 4 was therefore, not true as far as it relates to SSI.

### **THE UNLAWFULLY CONSTITUTED BOARD OF RMC**

74. On 4 September 2014, just prior to the PSJV publishing the tender that provided the opening for SSI to enter Alexkor's diamond value chain, a judgement was handed down by Judge Samela in the Western Cape High Court, which declared that the people purporting to be the directors of RMC (Alexkor's partner in the PSJV), were not directors and reinstated Mr Craig Matthews ("**Mathews**") as the sole director of the RMC Board. [GC29] In a letter to Alexkor's directors, the CEO of the PSJV and the Board Secretary of the PSJV dated 4 September 2014. [GC30] Matthews stated the following under point number 3:

*"The judgement also means crucially that Dr John Bristow, Mr Duncan Korabie, Mr Willem Vries and Mr Dennis Farmer are not directors of the RMC and were never appointed as such on 22 November 2013"*

75. Under point number 7, he further stated that:

*"The further implications are very serious in that any decisions that were taken by the PSJV Board since November 2013 are on the face of it invalid for the mere fact that the RMC representatives were not appointed by the RMC and had no authority to take decisions on behalf the company and the PSJV Board. You were advised in previous communications that subsequent to the finalisation of the aforementioned Court matter that the RMC may review all decisions taken by the PSJV Board since November 2013."*

76. The Alexkor SOE board, Alexkor CEO, Alexkor PSJV CEO and unlawful Alexkor PSJV joint board all ignored the Samela judgement and the warnings of Matthews and continued to finalise the onboarding of SSI.

77. I submit that the aforementioned breaches of law, the serious tender irregularities and the involvement of several individuals implicated in a range of state capture projects, are sufficient evidence to reasonably conclude that the

insertion of SSI into the PSJV's diamond value chain was itself a state capture project [GC31].

78. This can be seen by the manner in which the terms of the Marketing and Sales Agreements with SSI have been manipulated to deprive PSJV and the private contractors of their rightful profit derived from the sale of the diamonds mined, to the detriment of Alexkor, and ultimately the South African taxpayers and the Richtersveld community dealt with by me below.

### THE COMPLAINTS LEVELLED BY THE MINING CONTRACTORS

79. As I will explain fully in this affidavit, since the involvement of SSI in the value chain, the value of the diamonds recovered have considerably diminished, to the detriment of the members of the joint venture, the private mining contractors and the Richtersveld community.

80. I, as one of the main mining sub-contractors, have been directly affected by this. I have been active in the diamond mining industry since July 1985 and an Alexkor marine mining contractor since 1999.

81. On 9 October 2017, I wrote to Ms Phillips, the PSJV Company Secretary, on behalf of the EAC's members, who had expressed their concern and anger about the ever-decreasing values attributed to the diamonds produced by them as follows [GC32]:

*"Dear Raygen,*

*The EAC has been inundated with complaints from the small-scale marine mining community regarding the alarming systemic decline in the prices Alexkor is achieving for the sale of their hard-won diamonds.*

*My colleagues in the EAC and myself, having done some initial due diligence on the matter, have concluded that it is in the best interests for all involved in the winning of Alexkor's diamonds to gain a better understanding of who is participating in and benefitting from the marketing and sale of Alexkor's diamond production. The interests of the country's tax payers are taken as read. To this end, we provide under cover hereof, a selection of documents that are self-explanatory and which furthermore, provide ample cause for Alexkor management to share in our concerns and to favourably respond to our request for sight of Scarlet Sky Investment's company registration number."*



82. Ms Raygen responded as follows [GC33]:

*“Dear Gavin,*

*Your email of 09 instant is noted.*

*Any issue pertaining to the diamond sales and diamond pricing trends must be addressed directly with the PSJV. SSI is the marketing agent of the PSJV duly appointed by the Board. We cannot provide information of a service provider to 3rd parties. You are welcome to discuss any issues with SSI or any other service provider of the PSJV with management.*

*Regards*

*Raygen Phillips”*

83. I responded by email dated 10 October 2017 in which I made a second attempt to obtain transparency [GC34]:

*“Hi Raygen,*

*Thanks, and understood.*

*Could you then provide the following information as a precursor to opening discussions between the EAC and management on this issue and others relating to corporate governance?*

- 1. A list of the directors and shareholders of SSI.*
- 2. The technical credentials of the SSI personnel.*
- 3. The track record of SSI within the diamond marketing and sales industry.*
- 4. A list of the firms who competed unsuccessfully against SSI for the Alexkor contract. Please provide contact details.*
- 5. Are there any links, direct or otherwise between SSI and the Gupta family or any of their known associates?*
- 6. What is their business model and how does it support the purchase of the former American Embassy premises located at 1 River Street, Houghton?*
- 7. What is the total to date of fees payed to SSI by Alexkor?*



8. *What is the total to date of commissions, profit share or any other benefit to SSI?*

9. *Details of all diamonds that have been selected from the contractor's production for beneficiation to date including:*

- a. *The rough valuation specifications, the prices paid and the ratio between the price achieved and the instant Rap spot price.*
- b. *The polished outcomes in terms of grade, prices achieved at sale and details of the buyer in each case.*
- c. *The names of all the clients who were offered the polished goods.*
- d. *The Alexkor share of the added value.*
- e. *The contractor's share of the added value.*

10. *What is the total value of diamonds Alexkor has supplied to the State Diamond Trader since the date Alexkor began supplying the entity?*

11. *Can you provide details on how the SDT mandate clients have benefited from these transactions?*

12. *In addition to the grievances of the marine mining community in terms of the poor diamond prices, the EAC has also received numerous complaints regarding the following:*

- a. *Treatment of their gravels and tailings.*
- b. *The highly negative impacts of seawall mining and the threat it poses to the sustainability of the diamond diving industry and the environment.*
- c. *The shocking lack of respect from many of the Alexkor employees towards their work and towards the marine mining community.*
- d. *The serious deterioration of critical infrastructure brought about by a lack of work ethic, maintenance and funding for the mine and the town.*



- e. *The decline of the socio-economic welfare and social cohesion of Alexander Bay.*

*Regarding the above could you please provide the following information:*

- a. *The average monthly grade in carats/m<sup>3</sup> of the production from the marine division over the past five years.*
- b. *The average monthly grade in carats/m<sup>3</sup> of the recoveries from the marine tailings since the project began.*
- c. *The total value of diamonds produced to date from the marine tailings.*
- d. *The process and decision record for the awarding of the contract to process the marine tailings dump and the continuing processing of current tailings generated by the efforts of the small-scale marine mining community.*
- e. *Did the transaction trigger a section 54 application and if so was such an application made to the Minister?*
- f. *An explanation as to why Alexkor's marine contractors who produced the marine gravels of the tailings were not consulted even though they themselves were in discussions with Alexkor at the time to do a joint venture project on the very same tailings dump, and who in fact had been the first to point out to Alexkor the substantial value that could be unlocked by retreating the tailings using advanced sensor-based sorting technology.*
- g. *A list of the directors and shareholders of the company concerned.*
- h. *The deal split in favour of the company concerned and the methodology used in the determination thereof.*
- i. *The frequency of polygraph testing for staff employed at the sorting plants, the total number of tests conducted to date and the ratio of negative to positive results.*
- j. *The legal basis upon which Alexkor is conducting seawall mining by dumping waste rock, gravel, sand and fine particulate into the sea more than 150m beyond the low water mark.*



- k. The deal split in favour of the company concerned, the methodology used in the determination thereof and when or to what extent any changes were renegotiated in the deal split.*
- l. A GIS shape file containing all the shallow water mining blocks that have been affected by seawall mining.*
- m. The benefits for the people of Alexander Bay and Port Nolloth in supporting a corporate structure based in Johannesburg at a cost of R40 million per year.*

*I know I should have begun this process soon after our meeting in Kimberley Raygen but the pressure on me personally and our business due to the cost over-runs on the MASS FLOW MINING research, development and innovation project has been quite staggering.*

*While this has not grown any easier for me under the present circumstances, I believe the time has come for us all to deal with these difficult issues and begin building a legacy for our children without delay.*

*Kind regards,*

*Gavin Craythorne."*

84. I received no response to my email dated 10 October 2017.

85. After I raised serious concerns regarding the sharp decline in the prices of our diamonds, my, and several other miners' contracts were cancelled.

86. It was only after Moodley was implicated in State Capture by the Standard Bank of South Africa, that my contract for my company, Ocean Diggers CC, was reinstated on 01 April 2019 [GC35].

87. There is a vital need for the Emerging BEE Marine Miners to have a voice to champion their cause, which has been succinctly borne out in a 2010 report produced by the Mineral Resources Portfolio Committee [GC36]. The South African taxpayers and the Richtersveld community also deserve protection from what I would describe as the wholesale theft of the marine diamonds of Alexkor. This has been achieved by the manipulation of the provisions of the agreements between the PSJV and SSI and the persistent undervaluation of the diamonds produced by the contractors.



## THE MARKETING AND SALE AGREEMENT CONCLUDED WITH SCARLET SKY INVESTMENT

88. On 4 March 2015, the PSJV concluded an agreement with SSI [GC37], which was registered on 16 February 2009 as a shell company, with Christian Gouws as the stand-in director [GC38].

89. In terms of the agreement:

- 89.1. The PSJV undertook to deliver one hundred percent (100%) of all diamonds produced within the land mining and marine concessions to SSI; and
- 89.2. SSI was granted the exclusive right to market, value, sell and beneficiate all of the diamonds mined.

90. A further agreement on similar terms was concluded on 6 October 2016 [GC39].

91. The first agreement stipulates that:

- 91.1. 10% of the rough diamonds must be offered to the State Diamond Trader (“SDT”) for purchase;
- 91.2. 5% of the “supply” by value will be allocated by SSI for “beneficiation purposes”. In the diamond industry, the term, “*beneficiation*” is used to refer to the downstream activities, such as cutting and polishing of the rough diamonds mined, that enhances their value; and
- 91.3. The remainder of the diamonds (85%) are sold in a tender process.

92. In terms of paragraph 7.6 of the first agreement, it was provided that the 10% offered to the SDT must be based on value and must be a representative sample of the production to prevent the SDT “*cherry picking*”, a term I will explain below.

93. The second agreement, however, stipulates that 10% of the rough diamonds are to be offered to the SDT, with an “*additional amount*” of not less than five percent to be allocated by SSI for beneficiation purposes (paragraph 3.1.2. of the second SSI agreement signed in 2016 [GC39]).



### THE VALUATION AND SALE OF ALEXKOR'S DIAMONDS BY SCARLET SKY

94. The gravel mined by the private contractors is delivered to two diamond recovery plants for batch processing by them, done together with officials from the PSJV. The diamonds recovered by each contractor are then counted, weighed and documented. Hereafter, they are sorted into parcels of equal size diamonds and sent to Johannesburg, where they are cleaned, sorted and valued by Daniel Nathan and Dale Horne ("**Horne**"); Horne values the diamonds up to 8 grainers and Daniel Nathan values the diamonds more than 8 grainers.

95. Valuation of the smaller diamonds is not done on an individual basis. According to the report compiled by James Allan ("**Allan**") dated 29 May 2019, dealt with below [**GC40**], the diamonds are sorted by taking a sample which is divided into categories and a valuation is placed on each category. In this manner Daniel Nathan states that he arrives at a weighted average value for the sample and a weighted average for the category.

96. The diamonds are then sold in mixed and singles parcels.

97. After the sale, each producer gets the average price per carat for the contributions they made towards the total weight of each of the various assortments/lots. The special stones over 6.8 carats are sold individually and producers only receive price information on the special stones they produced [**GC41**]. This was lowered to 5 carats from the March 2019 sale onwards.

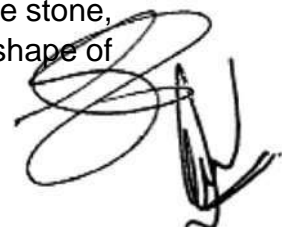
### THE DIFFICULTY WITH THE VALUATION AND SALE PROCESS

98. The Marketing Protocol set out in clause 13.3 of the Resolution obliges the PSJV to ensure that Alexkor and RMC's diamonds are marketed and sold in a manner which at all times achieves the highest possible prices for the diamonds [**GC42**].

99. There is, however, room for manipulation of the prices obtained at each stage of the sale process.

### The absence a proper valuation of the diamonds at the mine

100. The valuation of diamonds depends upon the diamond quality, which, in turn, is a function of the proverbial four C's, comprising of the carat weight of the stone, clarity of the stone, colour of the stone and cut. Cut is a function of the shape of



the rough diamond which will influence the shape of the polished diamond. Of the four C's, clarity and colour are the biggest drivers of value.

101. The difficulty with the process undertaken to value the diamonds is that the valuation of the diamonds at the mine is based only on the carat size of the diamonds. This valuation is done by an admittedly inexperienced valuer, Ms Adams, who has only received intermittent training to determine value, which she estimates solely on the basis of the carats of the diamonds mined, having regard to the prevailing market prices. This is done solely for insurance purposes and not as a process of verification of the size, quality and value of the diamonds that have been produced prior to their delivery to SSI.
102. The lack of experienced personnel in the valuation of the diamonds at the mine exposes the PSJV and the contractors to a risk of the diamonds being undervalued at the mine. [**GC11: Gobodo** at paragraph 14.1.4-9 p 101].
103. This is exasperated by the fact that the miners are not able to verify the value of the diamonds produced by them and are forced to accept the valuation of the stones attributed to them by Daniel Nathan at SSI's premises in Johannesburg. This is analogous to providing an art dealer with a painting with instructions to sell it without checking whether it is a Van Gogh or a Tretchikoff, and simply receiving the proceeds without question. The miners are thus faced with Hobson's choice: either they accept this situation or they face victimization, as has happened to me and the miners I represent who have questioned the valuation of the diamonds mined. It is submitted that this situation has been created by the PSJV in conjunction with SSI.
104. The financial importance of properly valuing diamonds before they leave the mine can be illustrated by noting the impact that colour and clarity have on a one carat diamond as indicated in the 2017 Rapaport Diamond Price Statistics Report [**GC43**]:
  - 104.1. The lowest grade one carat diamond has a value of \$1000, 00/carat, while the top grade one carat diamond has a value \$20 000/carat;
  - 104.2. Consider that the PSJV has sold, according to the annual reports, more than 317 329 carats since SSI took control of the marketing and sale of its diamonds and the losses could amount to many billions of rand, even before factoring in the price boosting effect of significantly larger and rarer diamonds [**GC44**].



105. There is no reason for not valuing the diamonds while they are still at the mine. The net effect is that the divers/miners are at the mercy of corruption down the line.

### **The undervaluation of the diamonds**

106. It has been found that the diamonds have been undervalued over the years to the detriment of Alexkor, the Richterveld community and the private diamond contractors. This has been achieved by both:

106.1. undervaluing the diamonds mined by the private contractors at the mine; and

106.2. undervaluing the diamonds sold to the SDT and for beneficiation; and

106.3. manipulating the tender process to ensure that the diamond parcels are sold to the local diamond traders at reduced prices for on-sale to international buyers at substantially higher prices.

107. Whatever protocols the Joint Board of PSJV may have implemented to ensure that the highest possible prices are achieved for the diamonds have been rendered redundant by refusing and/or failing to ensure that:

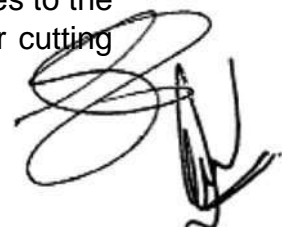
107.1. all diamonds which leave the mine are competently graded (in terms of quality) and appraised (in terms of value for insurance purposes) before leaving the mine, on the basis of size, colour and clarity; and

107.2. all diamonds which leave the mine do so with full traceability at every stage in the chain of custody up to the point of sale and transfer of ownership and risk to the buyer.

108. There are at least four corrupt methods used to deprive the producers and Alexkor out of fair diamond prices, all of which I believe the PSJV and SSI are using:

108.1. **Switching:** This scheme involves the swapping out of high-grade stones and replacing them with low grade stones of the same weight.

108.2. **Cherry Picking:** This scheme, which has in effect, been confirmed in Parliament by way of an answer to Question No. 687, involves the removal of the highest quality diamonds from the various categories of mixed diamonds prior to the auction, which brings down the price of tender bids dramatically. It is these prices that SSI then applies to the top-quality stones they have selected prior to the auction for cutting



and polishing in terms of the beneficiation agreement with Alexkor PSJV and, for which any transparency has been denied to the contractors, who have repeatedly requested details regarding their stones that have been so selected but for which no additional benefit accrued to them [GC45]

108.3. **Sawn Kap Theft:** This scheme involves the theft of diamond offcuts, known as “sawn kaps”, which arise when the shape of a diamond is such that it would be more profitable to saw a diamond in two and produce two polished diamonds. However, the smaller offcut is not manufactured into a second polished diamond but written off as waste and then sold as a cut (but not polished) stone;

108.4. **Tender Collusion:** This scheme involves collusion between the buyers who attend the diamond auctions and the auction service provider.

109. It is the refusal on the part of the PSJV management to allow producers to grade and appraise their diamonds before they leave the mine that facilitates the practice of stone swapping, cherry-picking, sawn-kap theft, bid rigging and ultimately, fraudulent diamond prices being attributed to the diamonds produced.

#### **The diamonds sold to the SDT**

110. It is stated in Allan’s report dated 29 May 2019 (dealt with more fully below) that the valuation of the diamonds by Nathan is not used in the tender process but is used to provide the PSJV with “*an indication of the value of the tender and hence the revenue that is likely for each tender sale. Importantly the valuation is also used as the starting point for the negotiation with the State Diamond Trader (SDT)*” [GC40. at paragraph 7.4 p 16]. According to Allan, the SDT is “*only interested in the average value per carat for the entire parcel and not in negotiating each different category.*” [at paragraph 7.4 p16]

111. Thus, although the agreement stipulates that 10% of the value of the rough diamonds must be sold to the SDT, only 10% of the carat quantities is sold to the SDT. This seriously reduces the overall price recovered for the sale of the diamonds to the SDT. As in effect, the selection is not a representative sample.

#### **The diamonds sold for beneficiation purposes**

112. In terms of the contract between the PSJV and SSI, 5% of the diamonds produced are removed from the tender process for beneficiation (cutting and

polishing). These diamonds are selected by Daniel Nathan and are purchased by his company, DNT and sent to Joe Gaddie Diamonds (“**Gaddie**”) for cutting and polishing. DNT buys the diamonds at the price paid for each category in the tender.

113. The serious conflict of interest faced by Daniel Nathan, representing both SSI (as the agent of the PSJV) and his own company, DNT in selecting the diamonds for beneficiation purposes and controlling the tender, and ultimately the prices paid by his company for the diamonds, should not be underestimated. There is also nothing to prevent him selecting the best stones for beneficiation, thereby reducing the value of the diamonds sold by way of tender and/or manipulating the tender prices obtained.
114. In addition, the agreement stipulates that no less than 5% of the rough diamonds should be sold for beneficiation purposes to Gaddie based on gross sales (value) of a representative sample of the rough diamonds received by SSI, which has not been adhered to.

#### **The diamonds sold pursuant to the tender process**

115. 85% of the diamonds are sold in a tender process. These diamonds are sold in parcels which the buyers are invited to view in viewing rooms at the tender house. The buyers then submit their bids through the Fantasy Tender Management System which operates off a server in Israel. The tender close off is done at the offices of SSI. The screen shows the top three bids against each parcel and the total dollar value for the tender. Thus there is visibility of the top three bids at the tender to Daniel Nathan and his assistant who close off the tender.
116. This creates a possibility that favoured buyers may be informed of the top 3 bids for certain parcels before they place their bids. Allan discounts this as “*suspicion and rumour circulated around all of the tender houses*”, but it is my view that this is an attempt to downplay this glaring irregularity [GC40 at paragraph 8.1-2 p18-19]. More significantly, according to Louis Kotze, Nathan is able to, and does, phone bidders while having sight of all live bids in real-time.
117. In addition, valuations are generally about 30% lower than prices achieved on the open market, therefore the so-called “*5% premium*” is no premium at all, but rather a net discount of at least 25%.



118. In the case of the special stones of 6.8 carats and larger, the spread between the valuation price and the selling price is significantly greater, often in excess of 40%.

#### **THE EFFECT ON ALEXKOR'S ROUGH MARINE DIAMOND PRICES SINCE THE APPOINTMENT OF SCARLET SKY**

119. During 2015, SSI's first year of the contract, the PSJV's marine diamond production traded on average at 47.1% below the market i.e. 38.5% worse [GC46] than the negative 34% performance recorded for 2014.

120. On 16 December 2015, the PSJV CEO, Carstens quietly fired Mr Jeffrey Brenner ("**Brenner**") of Flawless Diamonds, the PSJV's independent diamond valuator and replaced him with Daniel Nathan of SSI, as the independent diamond valuator for the PSJV [GC47].

121. From here on, the value attributed to the diamonds mined continued steadily decreasing, in circumstances under which there can be no innocent explanation.

122. From February 2015 to December 2017, the diamond prices continued to decrease relative to the Zimnisky Index (explained below), with Alexkor composite index at 100 points for 2017, the Zimnisky Index at 186 points for the same year and a spread differential of 86 points on average. This translates to a minimum 46% discount to fair value and a loss to Alexkor, the Emerging BEE Marine Diamond Miners and taxpayers amounting to more than R 400 million for 2017 alone.

123. During 2016, the PSJV's marine diamond production traded on average at 40% [GC46, at page 12] below the market.

124. During 2017, the PSJV's marine diamond production traded on average at 46.1% [GC46, at page 12] below the market.

125. During 2018, the PSJV's marine diamond production traded on average at 37.5

126. During 2019, the PSJV's marine diamond production traded on average at 45.6% [GC46, at page 12] below the market.



127. During the first quarter of 2020, the PSJV's marine diamond prices improved to 37.5% below the market, only to plunge down to 57.5% below the market in the second quarter.
128. One does expect to see a drop in the market due to the Covid19 lockdown and to see a corresponding drop in the performance of the PSJV's diamond prices too. What one does not expect to see is the tracking error diverge to a gaping negative 57.5% chasm, that is completely decoupled from the market.
129. I have sought to bring the readily apparent under-valuation of Alexkor's diamonds to the attention of the PSJV Executive Management Committee and the Technical Committee. The PSJV Executive Management Committee, who are responsible for monitoring the prices of the PSJV'S diamonds and ensuring that the highest possible prices are being achieved, were deeply concerned when Alexkor's prices were 43 points lower than the Zimnisky Index. However, as the prices dropped steadily to a level of 100 points (46%) below the benchmark, this same Technical Committee remained silent and inert. Instead of dealing with the problem, the PSJV Executive Management Committee has been victimising those who have complained, thereby violating the trust of the Emerging BEE Marine Diamond Miners and Section 34 of PRECCA [GC48].
130. The impact of fraudulent low diamond prices has devastated the Alexander Bay small-scale mining community and caused a high level of dissatisfaction within the Richtersveld Community, for whom the largest successful land claim in South African history has proved to be nothing more than an empty victory [GC49].

#### **MY EXPERT ASSESSMENT OF THE VALUE OF THE DIAMONDS PRODUCED BY ALEXKOR**

131. On the basis of my twenty years as an Alexkor contract miner, thirty plus years of industry expertise and diamond sales information management, I have assessed the performance of Alexkor's diamond marketing and sales process by constructing indices for each of the standard size category assortments [GC50], and benchmarking them against an internationally recognised rough diamond price index, the popular Zimnisky Global Rough Diamond Price Index, published by Mr Paul Zimnisky online at, [www.roughdiamondindex.com](http://www.roughdiamondindex.com).
132. I have continuously tracked the prices of each of Alexkor's standard diamond size categories since 2000, using data which Alexkor, and after 28 March 2013, the PSJV provides to the miners following each sale [GC51].



133. I have not been able to track the price performance of Alexander Bay's larger stones, those over 6.8 carats, as this data has not been available to me, with the exception of such stones that I myself have produced and a small data set [GC52], which was provided to me by a confidential source in Alexkor about ten years ago.
134. The Zimnisky Global Rough Diamond Price Index was created to consolidate reliable natural rough diamond price information and publish the current price change of natural rough diamonds on a weekly basis in the form of an index. The aim of the Index is to track the like-for-like price change of natural rough diamonds priced in U.S. dollars weighted according to the global product mix.
135. It is important to note that the index published by Mr Zimnisky is relatively conservative and to illustrate this point, I have benchmarked his index [GC53] against the equivalent index published by Bloomberg. The reason I point this out is that the Alexkor SOE/PSJV tracking errors<sup>3</sup>, as appalling as they are using the Zimnisky index, would be even greater using the Bloomberg index.
136. It is very important to note that, regardless of which Alexkor category index is benchmarked with the Zimnisky Index, the tracking error and inflection points are echoed across them all with a high level of correlation among the Alexkor indices but an alarming divergence between all of the Alexkor indices and the benchmark.
137. In stark contrast, the Zimnisky Index and the Bloomberg Index correlate very closely, as should any indices that are tracking the same commodity prices [GC54].
138. Over the medium to long-term (four or more production cycles and sales), the run-of-mine production (typical size, colour, shape and clarity) from a mine is consistent and unique to the specific mine where the diamonds are produced.
139. This phenomenon is crucial as it provides a credible basis upon which statistical benchmarking and trend analysis can be performed and which, when applied to Alexkor's diamond pricing data, proves that Alexkor's diamonds have been sold at fraudulent price points since at least 2000, with the exception of the period

---

<sup>3</sup> Tracking error tells the difference between the performance of an asset and its benchmark



2006 to 2011, but most aggressively since March 2015 after SSI took control of the value chain.

140. For the purposes of benchmarking and trend analysis, it is irrelevant what the weighting for the different categories is as that data only impacts on Alexkor's overall diamond price average, which is the total diamond revenue divided by the total carats. If more carats were produced in an area mineralised with small diamonds than in areas that are mineralised with large diamonds, the average price will be lower than if the scenario was reversed [GC55].
141. It was disingenuous for Alexkor to try and introduce carat volumes and stone size frequency distributions into the price benchmarking analysis, as they did in Parliament during a Portfolio Committee meeting on Wednesday, 7 November 2018; it is not diamond revenue that is being compared, but rather one of the drivers of revenue i.e. pricing. The claims made by board member Haasbroek, are proof that he does not understand this cardinal fact or was deliberately trying to mislead Parliament [GC56].
142. Rough diamond pricing is a function of diamond quality, transparency and market conditions; it makes not one iota of difference where diamonds came from, or how many there are in the total production run when valuing the different assortments that the total production run has been sorted into; all that matters is what the real intrinsic value of the diamond is before the valuer, based upon the quality of the diamonds and the prevailing market conditions.
143. An interesting fact to note is that the SDT selects, by percentage, the highest volume of its diamonds from Alexkor's production, in fact more than double the average supplied by other producers. This is a proxy for diamond quality and proves that Alexkor produces the best run-of-mine diamonds in South Africa. It is my view that the PSJV produces some of the highest valued diamonds in the world [GC57].
144. This notwithstanding, it is clear from the data that Alexkor's marine diamond marketing and sales efforts have been dismally sub-optimal for all but a five-year interregnum, beginning after the cancellation of Diamdel's exclusive agreement in 2006 [GC58] (dealt with below), and ending with the onset of what I believe to be a further era of state capture starting with the appointment of Gigaba in 2010, and the interposition of SSI into the value chain during 2015. The introduction of section 20A in terms of the Diamond Second Amendment Act 30 of 2005, climate change and global market conditions have also played a part, which I have taken into account in my analysis as set out below.

### Raw Pricing Data



145. Alexkor has, after every diamond sale for the past twenty years, provided what is loosely referred to as a “*broker’s note*” by management and the miners [GC59]. In fact, however, this is a tax invoice which has been generated by Alexkor Ltd management (on behalf of the miners). With the inception of the PSJV, the PSJV management then took over the completion and control of the brokers note from Alexkor.
146. Recorded on every brokers note is a detailed breakdown of the average selling price in US\$/carat for each of the fourteen standard size assortments, into which all diamonds below 6.8 carats in weight are sorted. These diamonds are referred to as the “*mixed goods*”.
147. Each individual contract mining company is paid according to the carat weight contribution it makes to each of the standard size assortments on a pro-rata basis and the average selling price per carat per assortment.
148. Within a separate block on the same tax invoice, any diamonds weighing 6.8 carats or more, are recorded individually reflecting each stone’s weight, the US\$/carat selling price and the total US\$ selling price. These diamonds are referred to as the “*special goods*.”

### **Standard Diamond Size Category Indices**

149. The selling price information for the mixed goods has been used to populate an Excel table from which average selling prices per assortment per year have been calculated [GC60]
150. The average price data has then been indexed to a base of 100 in the year 2000 to construct assortment-specific indices for each of the fourteen size categories.
151. For the purpose of this affidavit and brevity, only five indices will be referenced, but the general price behaviour is almost identical across all fourteen of the categories:
- 151.1. The 4-grs (1-carat stones);
- 151.2. The 8-grs (2-carat stones);
- 151.3. The 3-carat stones; and



151.4. The 4-carat stones.

### The Composite Diamond Size Index

152. In order to aggregate all of the pricing data into a single reference tool and to provide a basis upon which to estimate the impact that tracking error has had on Alexkor's diamond sales revenues for the past twenty years, it was necessary to construct a composite index for all fourteen of the standard assortments.
153. To allow for the widely ranging weightings and value contributions between the assortments, I used a data set provided by Mr Henk Smith ("Smith") [GC61], an attorney who represented the Richtersveld Community during the land claim court case.
154. This data set was useful because it was the enterprise-level equivalent of an individual miner's broker's note, i.e. reflecting the total carat weights for the entire mine for each of the fourteen assortments for the period [GC62].
155. The total weight for the sample was just over 56 000 carats. From this I was able to construct a model of the carat weight contributions for each of the assortments as a percentage.
156. These percentage weight contributions provided the basis upon which to then derive a weighted average diamond selling price for each year's worth of data for the run of mine production under the 6.8-carat top-cut for the Alexander Bay mixed goods [GC62].

### Tracking Error & Inflection Points

157. Statistical benchmarking and trend analysis are very effective tools for identifying anomalies in large chunks of data, such as Alexander Bay's diamond sales data. Besides being able to clearly see the continuously increasing tracking error over the past twenty years, which is an emphatic long term (secular) trend in Alexkor and the PSJV diamond prices, you can also use inflection points in the price curve to identify significant changes in the general trend. This could be a complete trend reversal or an acceleration or deceleration in an established trend. These events generally correlate to external factors

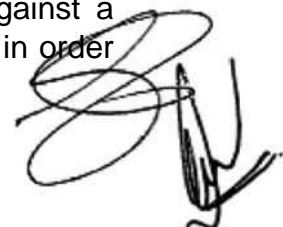


such as political interventions, recessions, regulatory capture, state capture and media exposes.

158. The Composite Weighted Average Selling Price (WASP) index reflects the price behaviour of all fourteen of the PSJV standard selling size ranges in a single curve that factors in the different weightings and values of each price range.
159. The principle behind this model is based upon the fact that every diamond deposit has a unique statistical footprint in terms of the size frequency distribution, the clarity, the colour and the shape of the diamond population, akin to a person's DNA. It is extremely reliable and therefore, very useful in combatting corruption in diamond value chains.
160. Statistical modelling or "*foot printing*" of diamond deposits around the world is promoted by the United Nations Security Council as a tool for combatting the trade in conflict diamonds around the world and the Kimberley Process has a dedicated department, the Kimberley Process Working Group on Statistics (KPWGS) which focuses on developing these footprints for diamond producing regions that are vulnerable to exploitation and conflict.
161. The inflection points in the PSJV diamond price curves can be credibly correlated to events that had a significant distorting effect on the prices of Alexkor's diamonds, such as, the introduction of section 20A and the introduction of SSI into the value chain.
162. You can also clearly identify positive inflection points caused by media exposes, such as the Mining Weekly article during the Diamdel era [GC63] and the Amabhungane article [GC64] during the current state capture era. Both of these media expose's caused significant improvements in the pricing of Alexkor's diamonds after their publication which can be clearly seen in the inflection points of the price curves that match the timelines of the expose.

### **The Effect of Inception Date Pricing Dynamics**

163. The truth about Alexander Bay's diamonds cannot be developed using indices, without considering an important factor and recognising its cascading effect through time.
164. When the price performance of an asset over time is measured against a benchmark index for the market into which the asset is being traded, in order



for the index to provide a credible indication of how the asset is performing against the overall market, it must be on a like-for-like basis; clearly the index published by Mr Paul Zimnisky is very much intended to provide such a basis [GC65].

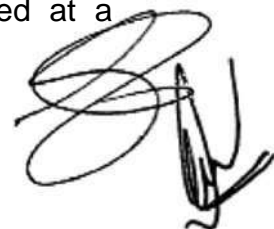
165. If Alexander Bay's diamonds were trading at a discounted price to their true market value at the start of the benchmarking period, say 23% below the market in 2000 and, the prices (for the same quality of diamonds) had perfectly tracked the same index for twenty years, it must follow that twenty years later the prices will still be 23% below their true market value.
166. If, however, the discount is eroded by, for example, changing to a more transparent and competitive sales process, the prices will improve relative to the benchmark, until the diamonds achieve and maintain their true market value. This is precisely what happened after the cancellation of the Diamdel agreement.
167. From that point forward, the two will move in lockstep until either the open, secure and competitive sales process loses its integrity, in which case the prices will fall again relative to the market, or buyers are willing to pay a premium for the exceptional quality of Alexander Bay's diamonds, in which case they will even outperform the index. This is precisely what happened during the period between Diamdel and the regulatory capture that introduced Section 20A into our diamond legislation.
168. International diamond expert, Mr Charles Wyndham ("**Wyndham**") [GC66], stated the following in his 1998 report to Alexkor:
- 168.1. *"Alexkor's is a premium production which is by definition extremely saleable;" and*
- 168.2. *"Conservatively Alexkor should be receiving at least another R36.5 million per annum on its current production."*
169. It is therefore imperative to discover what discount was being applied to Alexkor's diamonds at the starting date of the index and, to adjust the base to reflect the fact that the starting value was not a true reflection of the market value, but a discounted value.
170. Accordingly, although strictly speaking the Diamdel era does not fall within the terms of the reference of the Commission, it is important to deal with it in order to refute any suggestion that comparatively, the prices of Alexkor's marine diamonds is no different during the SSI era to that during the Diamdel era and



thus, are a true reflection of their market value. The fact of the matter is, as I will demonstrate below, the Diamdel era was an era of equal corruption where Alexkor's diamonds were acquired by Diamdel Inc ("**Diamdel**"), a company in the De Beers Group, at well below their market value.

#### **THE DEVALUATION OF ALEXKOR'S DIAMONDS DURING THE DIAMDEL ERA**

171. From the documented expert opinions of Wyndham [**GC67**] and Mr Abe Sher ("**Sher**") [**GC68**], we can reasonably conclude that around 2000, when Alexkor first contracted to Diamdel, Alexkor's marine diamonds traded at, at least 23% below market value.
172. The strong sentiments expressed by each of these expert gentleman in relation to the manner in which Alexkor sells its diamonds seems to suggest that the discount (or fraud as they suggested) was significantly greater.
173. It is thus safe to say that 23% is a conservative value and this is the value that I have used to adjust the baseline from 100 points down to 77 points.
174. To illustrate how conservative this adjustment is, I must place on record facts that emerged during the Richtersveld Community's land claim court case in 2006.
175. As part of the proceedings, a joint report, produced by Standard Bank and SRK Consulting for Alexkor, was placed on record wherein, as a critical component of NPV calculations, the Alexkor marine run of mine (ROM) diamond production was determined to be, on average, \$396/carats [**GC69**].
176. Standard Bank and SRK Consulting arrived at this value based upon their diamond size frequency distribution (DSFD) model, into which diamond sales price data provided by Diamdel was fed.
177. The Richtersveld Community's attorney, Smith, relied upon the services of WWW International's, Wyndham, to provide a fully independent value for Alexkor's marine production.
178. After inspecting two large marine productions at Diamdel's offices in Johannesburg during January and February 2006, Windham arrived at a



significantly higher average value of \$830/carat [GC70] for Alexkor's marine run of mine diamond production i.e. 109, 6% higher.

179. The valuation price and selling price during the Diamdel era was effectively one and the same as Diamdel's directors, Athol Methven and Brian Ray, would simply fly into Alexander Bay on a chartered flight, inspect Alexkor's production, decide what price they were prepared to pay and then take the diamonds back with them on their flight back to Johannesburg.
180. This was highlighted during the Alexkor Limited Amendment Bill hearings on 5 September 2001 at the Public Enterprises Portfolio Committee at which industry expert, Mr Vuyi Mdeleleni ("**Mdeleleni**"), stated the following, with reference to the exclusive sales agreement between Diamdel and Alexkor:
- "The current arrangement (a legacy from the previous regime) that the product is sold to one buyer at his price without any check is completely unacceptable in fact it is tantamount to fraud."* [GC71]
181. The same allegation was repeated to me by Wyndham in an email he sent to me on 28 February 2013 in which he expressed the view that Alexkor was being cheated and was receiving substantially less for the diamonds than what they were worth. He was also certain that "*various people had been paid off and everything was pushed under the carpet again*". He stressed that it was "*simply shocking what was allowed to happen there.*"
182. Wyndham was referring to the valuation he did in 2006 as an expert witness during the land claim court case when he valued the Alexkor marine diamond production at Diamdel's Johannesburg offices.
183. It is clear from independent expert opinions sought by Alexkor itself in 1998 [GC67] and again in 2006 [GC72], that Alexkor's highly questionable diamond pricing during the Diamdel era was common knowledge within the diamond trading industry.
184. The exclusive agreement with Diamdel was challenged by the European Competition Commission [GC73], but De Beers and Alexkor circumvented the challenge by switching to a monthly renewable contract.



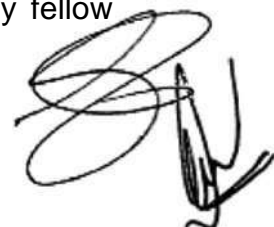
185. I also challenged the agreement in a written exchange with Alexkor by way of commentary on a letter written by the company secretary on 4 September 2004 to Mining Weekly journalist, Jill Stanford [GC74].
186. I also wrote to Business Day on 16 July 2005 in response to a letter from a dissatisfied Diamdel client published on 15 July 2005 [GC75].
187. The agreement was also challenged by my colleague in the EAC, Joseph Klaasse (“Klaasse”) [GC76], on page 5 of a report submitted to Alexkor on 6 June 2004.
188. On 22 July 2006, I co-authored a report on the matter and an abridged version thereof was hand-delivered to Mr Lance Greyling (“Greyling”) of the Independent Democrats, for Ms Patricia De Lille’s [GC77] attention.
189. In January 2012, I presented a report to Mr Barend Petersen [GC78], the Executive Chairperson of De Beers Consolidated Mines, in which I again raised the state capture of Alexkor in a section titled “*A Legacy of Betrayal*” starting at page 29.
190. I am not the first person to openly proclaim that Alexkor’s diamond sales are corrupt. During the 2001, at a Judicial Inquiry into the South African Diamond Industry, industry expert, Mr Vuyi Mdleleni (“Mdleleni”), stated the following with reference to referring to the exclusive sales agreement between Diamdel and Alexkor that ran from 2000 until 2006. [GC79]:

*“The current arrangement (a legacy from the previous regime) that the product is sold to one buyer at his price without any check is completely unacceptable in fact it is tantamount to fraud.”*

191. Despite these efforts to bring sense to the minds of Alexkor management, they persisted with the anti-competitive arrangement with Diamdel until the deal self-destructed in April 2006 [GC80].

#### **THE EFFECT ON DIAMOND PRICES AFTER THE TERMINATION OF THE CONTRACT WITH DIAMDEL**

192. During the state capture of Alexkor by Diamdel between 2000 to 2006 (prior to the formation of the Equitable Access Campaign), I and many of my fellow



diamond divers were very vocal about the unfair diamond prices Alexkor was achieving due to the lack of competition and transparency.

193. So much so, that I complained to the editor of Mining Weekly, which led to a very hard-hitting expose' [GC74] (written by Ms Jill Stanford) of the situation, which in turn, led to a noticeable trend reversal in Alexkor's diamond prices, the inflection point [GC46] of which is clearly visible in the WASP performance curve at 2004.
194. The trend reversal accelerated with the firing of Diamdel in 2006, as was evident from the sudden dramatic price improvement, recorded in the first sales report [GC81] from the new valuator (Mr Menachem Pelleg). This inflection point [GC46] is also clearly visible in the price performance curve [GC82] in 2006.
195. After Alexkor/Diamdel arrangement was terminated, Alexkor's diamond valuations immediately improved by between 36% and 42%. If Alexkor had heeded the advice and concerns of its producers, they would have saved the company, the community and taxpayers hundreds of millions of rand [GC83].

#### **THE EFFECT OF THE GLOBAL FINANCIAL CRISIS ON DIAMOND PRICES**

196. During 2008, Alexkor's diamond prices continued to closely track the market, but with the onset of the Global Financial Crisis in 2008, the trend again reversed to the downside during 2009, only to reverse again strongly to the upside during 2010, as the market rebounded after the crisis.

#### **THE EFFECT OF CLIMATE CHANGE ON THE DIAMOND DIVING INDUSTRY**

197. During 2011, the margin by which Alexkor was tracking the market into which it was selling remained steady and the Emerging BEE Marine Mining Division posted its biggest operating profit since the onset of adverse climate conditions [GC84] in 2003, of R68 million. It was clear that the severe decline in "diveable" sea days and the commensurate drop in productivity caused by the effects of climate change, was being offset by Alexkor's escape from Diamdel's opaque lowball prices to the more transparent and competitive prices of the open market tender system.

#### **THE EFFECT OF SECTION 20A ON DIAMOND PRICES**

198. During 2011 and on 1 June, judgement in *Saidex (Pty) Ltd and Others v Minister of Minerals and Energy N.O. and Others* (Case No. 49/10) [GC85] was handed

down in favour of the Minister, which resulted in a most unfortunate situation by allowing the controversial Section 20A [GC86] of the Second Diamond Amendment Act of 2005 to stand.

199. Section 20A reads as follows:

*“Assistance by non-licensed persons prohibited*

*20A. (1) No licensee may be assisted by a non-licensee or holder of a permit referred to in section 26(e) during the viewing, purchasing or selling of unpolished diamonds at any place where unpolished diamonds are offered for sale in terms of this Act, except at a diamond exchange and export centre”.*

200. The practical effect of Section 20A is to deny the Emerging BEE Marine Diamond Miners in Alexander Bay and Port Nolloth the benefit of fair rough diamond prices, not to mention Alexkor and the South African taxpayers.

201. These practical effects were later accurately described in a second judgement handed down on 24 July 2017 [GC87], this time from the Constitutional Court over the constitutionality of Section 20A, in *South African Diamond Producers Organisation v Minister of Minerals and Energy N.O. and Others* [GC87].

202. At paragraph 36, the judgement reads as follows:

*“In relation to the diamonds, SADPO contends that producers and dealers are deprived of 30% of the market value of the diamonds they sell, because section 20A prohibits a key part of the price-forming mechanism – unlicensed expert assistance.*

*Without this assistance, producers and dealers are unable to obtain the prices they were previously able to obtain. And suffer loss of 30% compared to the prices they were previously able to obtain.”*

203. At paragraph 50 the judgement continues:

*“The respondents, however, allege that the 30% referred to is actually the lost commission opportunity, rather than the fair market value of the diamonds. Nothing in the way of empirical evidence for this alleged drop in price is included in the papers.*

*SADPO's argument on this score is vague and speculative. As was the case in Link Africa, no loss has been proved. It is not clear how the court can, in the circumstances, make a finding that there has been interference to the extent that constitutes a "deprivation". It is not even clear on the facts whether the interference has any impact on the value of SADPO's member's property at all."*

204. The Court continued at paragraph 51:

*"Further, an attempt to calculate the alleged loss in value is beset by the difficulty of locating the point in time at which the "loss" is to be measured. Measuring the extent of the loss entails comparing the price of unpolished diamonds at a past point in time, to the price sometime after the amendments were effected."*

205. From the above, the following points are worth noting:

205.1. The South African Diamond Producers Organisation, SADPO, believes that the prices of rough diamonds have dropped locally by 30% due to the effect of Section 20A, a belief powerful enough to propel them all the way to the Constitutional Court to seek relief.

205.2. Surprisingly, Government agrees with SADPO on this point, but seems simply to claim that it is justified as the 30% is *"actually the lost commission opportunity, rather than the fair market value of the diamonds."*

206. The fatal flaw in SADPO's case, so it seems, was the failure to provide anything at all *"..in the way of empirical evidence for this alleged drop in price."*

207. That in turn, to my mind, raises two important questions:

207.1. Regardless of whether one chooses to characterise the lost 30% as *"lost commission opportunity,"* as is the term used by Minister Zwane, or by reference to some other semantic description, this in no way detracts from the substance of the loss suffered by the miners. One wonders why Minister Zwane and others have sought to find modes to explain away the losses suffered to the industry they are oath-bound to protect and develop.



- 207.2. Given that SADPO has access to highly reliable data and considerable resources to support the processing of that data, why was such evidence not placed before the Constitutional Court?
208. It seems to me that the amendment to Section 20A was a textbook case of regulatory capture for the benefit of a politically connected elite special interest group.
209. As rough diamond prices around the country plummeted (relative to the global market) in 2012, Alexkor's marine diamond prices dropped from 8.7% below the market to 39.2% [GC46] below, while the division's operating profit dropped by 39.7% [GC88]. Accordingly, I conclude that the dramatic drop in Alexkor's marine diamond prices was a direct consequence of the regulatory changes which took place.
210. The regulatory attack on the profitability of the shallow water marine diamond mining industry was unfortunately only the start of what I call the second state capture era which began with the appointment of SSI as a service provider.

## STATE CAPTURE

211. I turn now to deal with the state capture of Alexkor.
212. The ARC – SSI report [GC9] is a useful document for accessing a timeline of events relating to the award by the PSJV of the marketing and sales tender to SSI. It is a copy of a report that was produced by Alexkor SOE's Audit and Risk Committee for Brown in February 2016.
213. This report was the output of an investigation into a complaint regarding the allegedly irregular awarding of the marketing and sales contract to SSI, as it was known then, which had been initially lodged with the Public Protector on 11 September 2015 by the Richtersveld Mining Company's attorney, Korabie, in protest over the community's bitter dissatisfaction about the unfair diamond prices earned by them [GC89].
214. Subsequent to lodging the complaint, negotiations took place which led to Korabie withdrawing the complaint, subject to an internal investigation being conducted by Alexkor's Audit and Risk Committee [GC90].



215. On 11 February 2016, a scathing letter was sent by the Chairman of the Richtersveld Self Development Company (Pty) Ltd, Mr Pieter De Wet (“**De Wet**”), to the Chairperson of Alexkor board, Matseke (herself now embroiled in state capture allegations related to the former Free State Premier –Mageshule), and the Minister of Public Enterprises to complain about the lack of progress in relation to the Richtersveld Community’s complaint and the failure of Alexkor’s board to begin the investigation [**GC91**].
216. On 29 February 2016, and in response to the complaint from De Wet, Alexkor’s Audit and Risk Committee released an internal investigation report [**GC9**] on the complaint which 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 (sic) 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.*

*We are available to come to answer any questions the ministry might have.  
On behalf of the Alexkor’s (sic) Audit and Risk Committee,  
Ms Lehobye CA (SA)*

*Cc: Honourable Deputy Minister, Mr B Magwanishe, MP*

*Cc: Director General, Mr M Seleke*

*Cc: Chairperson of the Alexkor Board, Ms H Mayeza”*

217. On 23 July 2017, Ms Vytjie Mentor (“**Mentor**”), who was the former chairperson of the Portfolio Committee on Public Enterprises, posted accusations of corruption at Alexkor on Facebook, with particular emphasis on Alexkor’s association with the Guptas [**GC92**].
218. On 13 December 2017, the Amabhungane expose’ on Alexkor was published, thereby widely exposing state capture at Alexkor to a broad audience [**GC64**].
219. During the first quarter of 2018, Alexkor’s diamond prices improved relative to the Zimnisky Index for the first time in more than ten years or 40 quarters. This is indicative of the fact that my criticism was being taken to heart [**GC93** at p 12].



## CONCERNS RAISED WITH THE BOARD AND WITH MANAGEMENT ABOUT THE CAPTURE OF ALEXKOR

220. I have repeatedly voiced my concerns about state capture to the Board and to management:

220.1. I attended a PSJV board meeting in Kimberley on 12 April 2017 to raise the corporate governance issues I had been raising since November 2016 after Alexkor had briefed the Portfolio Committee on Public Enterprises'

220.2. I received a copy of the Kimberley minutes from the company secretary on 5 June 2017 [GC94]'

220.3. I also sent an email to Mr Tshediso Matona ("**Matona**"), who was the director of the Alexkor Board at the time, regarding my concerns over state capture at Alexkor<sup>4</sup> [GC95];

220.4. I sent an email to the Alexkor board regarding concerns for the safety of the PSJV's diamonds and state capture [GC96]; and

220.5. I sent an email to Carstens regarding concerns over the links between the Guptas and SSI after I became aware of Moodley's involvement in SSI [GC97].

221. The feelings of Alexkor's small-scale marine miners are reflected in the results of an online survey [GC98] conducted on the matter.

222. The approval by 100% [GC99] of Alexkor's small-scale marine mining contractors of a letter sent to Mr Pravin Gordhan [GC100], which letter is a subject of the two interdicts brought against me by the PSJV and SSI, is further evidence of the anger amongst this group towards Nathan, SSI, Alexkor, Carstens and PSJV. [GC101 and GC102]

223. In our letter to the Minister we also stated that we had no faith in the forensic investigation that the Department of Public Enterprises launched to look into our grievances. Our lack of faith was vindicated when the Deputy Director General of Public Enterprises disclosed to the Portfolio Committee in Parliament on Wednesday 7 November 2018 that the investigation had been abandoned

---

<sup>4</sup> He was giving oral evidence in Parliament's Eskom enquiry because he was formerly the CEO of Eskom at the time.



under instructions from the Public Enterprises Minister, Pravin Gordhan because the forensic investigators, DM5 Incorporated, had themselves been implicated in state capture at PRASA [GC103].

224. At the contractors meeting in Alexander Bay in the PSJV's board room on 16 January 2019, the contractors' diamond sales representative, Mr Louis Kotze ("Kotze"), made the following startling revelations recorded on audio clip and transcribed by me [GC104]:

**Audio clip 1 transcript: Diamond seals were never checked before the introduction of independent oversight by Ms Jennifer Gentle ("Gentle") (Diamond Valuator and Trader):**

*"Ek het net iets uit gelaat. Heel in die begin van die proses, vroeër as dit hier geseel is dan kom dit daaraan by Daniel. Die groep wat dit opgevat het stap daar uit. Inaudible. Hy maak die pakkie oop. Michelle is by, maak die pakkie oop, Gerry die sekuriteit ou is by. Hy maak die pakkie oop en dan begin hy werk met die pakkie. En vandag is daar 'n tender en dan gaan dit goed aan. Inaudible. Dit wat hier weg is, is dit wat daar aan gekom het? Is alles wat hier weg is dit wat daar aan gekom het? Is dit die selfde goed wat kom op die tender – ek maak nie aantuigings nie. Geen ander myn maatskappy inaudible. Gerone was by Trans Hex. Hy het hom opgestres to hy 'n junior ou daar was en hy moes daai ding geseel het. Hy het een keur die seel nommer half verkeerd geskryf, dood getrek en oor geskryf, hy was in groot moeilikheid. Want daai moet akuraat wees en dit is wat hulle moet tjek daarvoor. Hy het dae wakker gele totdat hy hoor anderkant dinge het daar aangekom, die seel nommers is reg, almal is happy alles is afgeteken."*

*"Jennifer het gese, "man, wie tjek dat die sieels die selfde sieels is? Wie tjek of dit nie gebreek is nie? And what is the answer to those questions? Sy het dit opgehaal en dit geimplimenteer. No, but what was the answer to the questions? Up until the time that she asked the questions, what was the answer? Nobody did it before? Who cares. En dit is deel van die concerns, "Daniel jy hardloop 'n topnotch tender house, oorals in die industrie werk dit so, hoekom is dit nie by jou so nie?"*

**Audio clip 2 transcript: Daniel Nathan monitors live bids during auctions and makes telephone calls to bidders:**

*"Nou monitor Daniel dit, hy se hoekom hy dit monitor is dat daar 'n paar kuur al gebuur – dan sien hy 'n ou bid op die heel onderste goed en hy bid 'n duisend dollar. Dit kan nie reg wees nie, wie gaan 'n duisend dollar betaal vir 'n een karaat steentjie. Dan bel hy die ou en se "is jy seker jy wil 'n duisend dollar beta? I....jus ek het 'n fout gemaak.... inaudible"*

**Audio clip 3 transcript: The entire sales process and associated protocols are undocumented:**

*“GC: Louis, its crucial, ok, that we are provided with documentation setting out what was the process before and what is the process now. You can’t have control and you can’t deal with issues as important as this on a blackboard with a whole lot of people. There’s got to be documentation, it’s got to be documented.*

*LK:My opinie is dus, inaudible. Die oomblik dat ek gaan en probeer guilt vind en ondermekaar baklei, glip hierdie prosess onder my uit. Ek het nie tyd daarvoor nie, wat vir my saak maak is daar was nooit ‘n independent valuator wat ons teenwoordig het nie. Ons het dit nou. Vir die eerste keer as daai parcel daar val is daar iemand wat kyk wat daar is, na die mooi stene kyk en tjek, tjek, tjek en se oraait, nou’s die parseel inaudible”.*

225. I would also like to refer to:

225.1. The meeting follow up email addressed by me to Mr Louis Kotze (“Kotze”) [GC105];

*“Hi Louis,*

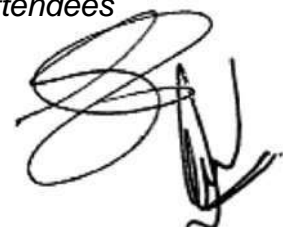
*Thank you for the feedback session on the diamond sales process today.*

*To establish a clear understanding of what was presented by you I have listed the salient points below.*

- 1. All contractor’s diamonds are valued for insurance purposes on the mine by Michelle solely on the basis of carat weight and stone quantity before transport to Daniel Nathan.*
- 2. The diamonds are transported in a sealed tamper-proof container.*
- 3. No information currently available regarding the transporter of the diamonds and the integrity of the chain-of-custody.*
- 4. On arrival at the premises of Daniel, the tamper-proof seal is broken and the diamonds removed from the tamper-proof container in the presence of Jennifer Gentle who is currently the contractor’s independent valuator.*
- 5. Prior to the engagement of Jennifer, the seal would be broken by Daniel and the diamonds removed from the tamper-proof container without the presence of any independent observer.*
- 6. The diamonds are deep-acid boiled and then sorted and valued by Daniel.*
- 7. I presume that Jennifer also does her valuation at this point.*



8. Daniel selects a 10% representative assortment of the production excluding any single stones which is then offered to the State Diamond Trader.
9. The SDT purchases all or a portion of the 10% assortment offered at the price set by Daniel Nathan or an alternative lower price negotiated between himself and the SDT.
10. If a price cannot be negotiated between Nathan and the SDT, the GDV (Government Diamond Valuator) is engaged to settle the matter.
11. Daniel selects a 5% assortment by value of the remaining 90% post the sale to the SDT.
12. This assortment is not a representative sample and ranges between 2-4 carats.
13. The price he pays for his assortment is unclear – please provide clarity on this point.
14. The remaining 85% of the diamond production is placed on tender at his premises at 1 River Street, Houghton Estate, Johannesburg.
15. The tender is a closed system and Daniel determines who will be given an opportunity to view the production and get access to the online tender platform.
16. The bids are made electronically by approved buyers through an online diamond tender platform developed by Daniel exclusively for Alexkor's production.
17. Approximately 80 buyers attend the auction viewing and compete on the bidding platform.
18. The bidding period closes at 14:30 sharp and no further bids can be made.
19. Buyers are able to change or cancel their offers during the bidding period up until the last minute.
20. During the bidding period Daniel is able to monitor all offers made by buyers, live and in real-time.
21. When he suspects that a buyer has made a bidding error he makes contact with the buyer to check with him/her.
22. When the bidding period closes, the system automatically awards the tender to the highest bidder and also publishes the top three bids for each lot on tender to all participants. I would appreciate you providing guidance or corrections where necessary. I also think it would help your meeting tomorrow if you could check the above and distribute it amongst the attendees before the briefing starts.



*PS, please request a copy of the minutes from the initial meeting with Alexkor that led to the establishment of the Diamond Sales Committee and the Diamond Processing Plant Committee.*

*Thanks again for your efforts.*

*Warm regards,*

*Gavin Craythorne.”*

225.2. The e mail correspondence between me and Gentle [**GC106**];

*“Dear Jennifer,*

*Thank you for discussing the diamonds sales with me.*

*Below, please find the notes I made for Louis.*

*As I mentioned, I think it is important to map out the process detailing the following to establish a baseline risk assessment:*

- 1. Product preparation on the mine before leaving the gate.*
- 2. Security and insurance.*
- 3. Chain of custody for transportation.*
- 4. Chain of custody at the tenders.*
- 5. Sorting, assortments and valuation for the SDT's 10%.*
- 6. Sorting, assortments and valuation for Daniel Nathan's 5%.*
- 7. Sorting, assortments and valuation for the tenders.*
- 8. Alexander Bay Diamonds' terms and conditions for buyers.*
- 9. Alexander Bay Diamonds' tender rules for the tender house operator, the seller and the buyers.*
- 10. Alexander Bay Diamonds' independent audits if any.*

*It would be a great help if you could attend to the above.*

*Thanks.*

*Warm regards,*

*Gavin Craythorne”.*

225.3. The further email correspondence between me and Kotze [**GC106**];

*“Hi Gavin,*



*Let me first complete the third information gathering trip to Tender #281. Afterwards I will present all information to the Contractors and then you can present your case to them.*

*Regards*

Louis

- 225.4. A response email from Kotze [GC107];
- 225.5. The copy of Gentle's original diamond sales report [GC108]; and
- 225.6. The sanitised version compiled by Kotze of Gentle's original diamond sales report for distribution to the contractors [GC109].

#### **THE VICTIMISATION OF THE MINING CONTRACTORS**

- 226. I deem it prudent and important to inform this Commission that after I started raising matters on behalf of the members of the EAC about the fraud, corruption, and maladministration at Alexkor SOC with Carstens, my and other marine contractor's contracts were cancelled, which in turn, significantly contributed to the economic decline in Alexander Bay, not to mention our own economic hardship.
- 227. We have been subjected to ongoing intimidation tactics from the PSJV executive management [GC101] and SSI [GC102]. No less than two gagging orders have been brought against me to prevent me from further raising concerns about the wide scale fraud and corruption at Alexkor and to prevent me from communicating with persons who have an interest in the sale of diamonds which are recovered by Namaqualand's emerging BEE Marine Diamond Miners, many of whom are members of the Richtersveld Community.
- 228. To silence me would in effect be to silence all Northern Cape small-scale marine diamond miners and allow the destruction of a unique seafaring heritage to continue [GC110].
- 229. As I have said, it is imperative that we, as the mining contractors who have been directly affected by state capture, be afforded a voice [, GC111, GC112, GC113, GC114, GC115, GC116] as borne out by the 2010 report produced by the Mineral Resources Portfolio Committee [GC117].

#### **PARLIAMENT HAS FAILED THE PEOPLE OF ALEXANDER BAY**



230. On 30 November 2017, the Equitable Access Campaign (EAC)'s Mr George Nicolaai ("**Nicolaai**") travelled to Cape Town to hand deliver a warning about the serious governance problems and state capture at Alexkor to numerous Portfolio Committees [**GC118**].
231. Nobody responded in any meaningful way, except Ms Zukiswa Rantho ("**Rantho**"), who responded positively to my email in November 2016 warning the Portfolio Committee about the problems at Alexkor and requested further information which I provided. As a result, she requested Parliament to arrange an oversight visit to Alexander Bay, but she was told that it would be too dangerous as the Portfolio Committee members' safety could not be assured [**GC119**].
232. In May 2017, the State Capacity Research Project released a report on state capture titled "*Betrayal of The Promise: How South Africa Is Being Stolen,*." In relation to the Gupta's and Alexkor diamonds the following was noted:
- "Another example of the Gupta's attempts to externalise (placement phase) the proceeds of their operations happened six days after the Gupta family infamously 'fled' South Africa in April 2016 on a late-night flight. On 13 April 2016, a Gupta plane allegedly tried to leave with a box believed to have been full of diamonds. According to an AmaBhungane investigation, a Gupta business jet was preparing to depart Fireblade Aviation's VVIP terminal at OR Tambo International Airport when X-ray scanners picked up something suspicious inside a suitcase belonging to the departing party. In the suitcase was a box containing diamonds, according to AmaBhungane claims (a claim that has not been refuted by the Gupta family). When Fireblade security asked to look inside, a Gupta security staffer apparently refused, took the bag from the counter and left. Fireblade confirmed to AmaBhungane that a "potential security incident" had taken place early one morning in April last year but would not identify which client was involved."* [**GC120**]
233. On 22 May 2018, Bonita Van der Berg, the managing member of Adams RCV Diamonds CC addressed a letter to Rantho, the Competition Commission and the Deputy Shadow Minister of Communications to complain about the decimation of the Richtersveld mining community. A copy of this complaint is annexed marked [**GC121**"]
234. Perhaps if Parliament had acted, the wholesale theft of Alexkor's diamonds by the Guptas and their associates could have been avoided.



### THE FORENSIC REPORTS CONDUCTED INTO THE CONTRACT WITH SCARLET SKY

235. During October 2019, the Department of Public Enterprises mandated Gobodo to investigate the relationship between Alexkor, Alexkor PSJV and its Marine Mining Contractors and in particular, SSI. The report was provided to the Commission in November 2019 [GC11].
236. The Department of Public Enterprises commissioned the report after four marine mining contractors informed the Department that they were excluded from the 2018 procurement cycle. The contracts with the said miners expired between December 2017 and January 2018 and were not renewed. The reason for the exclusion of the said contractors from the procurement cycle was that the relationship between the PSJV and them had "*irretrievably broken down.*" In truth it was because we had complained about the poor diamond prices being achieved for the sale of the diamonds produced by us by SSI.
237. In October 2019, Gobodo presented their findings to the Department of Public Enterprises [GC11] and recommended that the PSJV Board/Department of Public Enterprises consider terminating the Alexander Bay Diamond Company formerly known as SSI contract with the PSJV based on the following:
- 237.1. That tender 03/14 was irregularly awarded to SSI by the PSJV Board in or about 2014 as the procurement process was fatally flawed;
  - 237.2. That the procurement process for tender 02/2016 was flawed and irregularly awarded by the PSJV Board;
  - 237.3. 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 SDT and Gaddies was 10% and 5% respectively, as required in the contract;
  - 237.4. That SSI placed the PSJV at risk by not ensuring that 15% in value of the rough diamonds were sold for beneficiation purposes to Joe Gaddies Diamonds in order to allow the PSJV to be exempted from the export levy in terms of Section 8 of the Export Levy Act;



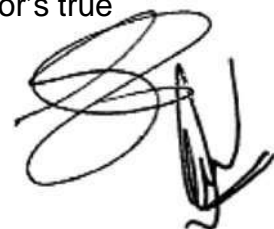
- 237.5. That SSI failed to disclose information relating to the buyers of the rough diamonds to the PSJV and misrepresented SSI as the buyer and for selling the rough diamonds at a price that was ostensibly lower than the market price;
- 237.6. That the contract for the reclamation of the stockpile tailings awarded to Ambicor be investigated;
- 237.7. That further investigation be conducted to identify the buyers of the 85% rough diamonds and the related prices for the rough diamonds and to ensure that the buyers have the required licenses and that the sales have been registered with the relevant authorities; and
- 237.8. 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.
238. I might add that this report was preceded by a report commissioned by Carstens to deal with the complaints levelled by the contractors which was compiled by Allan dated 29 May 2019 [GC40]. It is my submission that this report was a whitewash, which has been incontrovertibly discredited by the Gobodo report and the facts set out by me above. His recent article published in Mining Weekly dealt with me below is testimony to this.
239. The Commission has tasked the forensic auditor employed by the Commission to validate and further investigate the findings made by Gobodo. These findings are detailed in the affidavit of Mr Jan Dekker (“Dekker”). [GC122].

#### **THE PROPOSED DIVERSIFICATION OF ALEXKOR INTO THE COAL INDUSTRY**

240. With the appointment of Gigaba as Minister of Public Enterprises in late 2010, a process of twin state capture began: Whilst at the same time, expropriating Alexkor’s diamond assets, initially through SSI and later, through Trans Hex, a group with links to Regiments set about capturing Alexkor itself in pursuit of coal supply contracts to be concluded by Gupta proxies at Eskom [GC123, GC124, GC125, GC126].

A handwritten signature in black ink, consisting of several loops and a vertical stroke at the end, located in the bottom right corner of the page.

241. As it turns out, while I was trying to persuade the Alexkor Board to review the SSI contract and to report on the true value of Alexkor's marine diamond assets, unbeknown to me, Trans Hex, Questco, Khoza and Carstens had devised a plan to persuade Alexkor to dispose of its diamond assets in the region and to diversify into coal.
242. This plan was designed by certain individuals within the former leadership of the Richtersveld Community structures, in collaboration with the leadership of Trans Hex, notably Carstens and Llewellyn Delport, to provide a platform upon which to:
- 242.1. take management control of Alexkor's marine diamond operations;
  - 242.2. construct a false narrative about the future mining potential of the marine mining rights, by telling all stakeholders that the diamonds will be mined out within five to ten years, while simultaneously stripping the assets and running the town and mine infrastructure into the ground; and
  - 242.3. purchase Alexkor's marine diamond operations when government has lost hope in any future success and take over the 51% stake in the PSJV.
243. This plan was given traction as Gigaba had repurposed the Alexkor board in order to implement his Emerging Black Coal Miner Exit Strategy [GC127].
244. I first decided to expose this plan on 16 November 2016, after I attended Alexkor's briefing to the Portfolio Committee on Public Enterprises in Parliament at which I was introduced to the Alexkor board and the Acting Chair, Ms Zukiswa Ntlangula ("**Ntlangula**"). I was also introduced to the members of the Portfolio Committee and their Acting Chair, Rantho
245. I had attended the briefing with the purpose of finding clarity on the strategic plan for Alexkor as the board's decisions were contradictory, as communicated in the annual reports dating back to the 2013 financial year [GC128].
246. While the board made it clear that Alexkor was legally and ethically responsible for, and committed to, ensuring the success of the PSJV, as set out in the Land Claim Deed of Settlement, it was nonetheless diverting significant and vital financial resources away from the operations of the PSJV, in order to diversify into coal- a mandate that was irrational (given the lack of funding) and extremely harmful to the Namaqualand economy. This was also contrary to Alexkor's true



mandate set out clearly in the long form of its name, "*Alexander Bay Development Corporation.*"

247. Despite my in-depth Marine Potential Report, I heard, during Alexkor's briefing on 16 November 2016 in Parliament that Alexkor would not only continue to pursue the coal strategy, for which it had no funding, it was now also investing money it did not have into cutting-and-polishing, while continuing to disregard the largest income driver of the business and, all the while ignoring its growing financial deficit [**GC129, GC130**].
248. On 23 December 2016, CNBC Africa announced that Wiese was entering the West Coast Diamond Industry, yet again by acquiring a 47% stake in Trans Hex [**GC131**].
249. Sometime during February 2017, as I recall, a whistle blower handed me a copy of the aforementioned Questco Plan and explained to me that Alexkor's marine operations would soon be taken over by Trans Hex. This confirmed my view regarding Trans Hex [**GC126**].
250. The document, produced by Questco Advisory Services, in association with Trans Hex, presented to Alexkor on 8 August 2014, sets out a plan to monopolise the entire West Coast Marine Diamond Industry, on the land and in the sea, from Doringbaai in the south, northwards to beyond the Orange River and into Namibia.
251. On receipt of this document, I realised that the central aim of the Questco/Transhex plan was to acquire Alexkor's' marine diamond assets at a reduced value. This has been achieved by:
- 251.1. capturing the PSJV by populating the executive management structure with Trans Hex proxies;
  - 251.2. concealing the world-class potential and true value of the marine diamond assets from Alexkor and Government;
  - 251.3. covertly trying to invoke the Richtersveld Community's option to eject Alexkor out of the PSJV and Alexander Bay; and



- 251.4. ensuring the costs of acquisition of the assets are minimal by having established a false sense of low value regarding the assets and a high level of owner fatigue.
252. Having connected the dots, on 8 March 2017 I informed my EAC colleagues, Klaasse and Nicolaai, that a conspiracy was at play between business and political elites, with Alexkor's marine diamond assets at the centre.
253. Based upon the facts at hand, and though I could adduce no direct evidence, they arrived at the same conclusion. We, accordingly, decided to act by raising awareness of the situation amongst our members, by calling a crisis meeting in Port Nolloth on 8 March 2017 [GC132].
254. The following morning at 05:52 am, a little over twelve hours later, a detailed letter from the Alexkor Chair, Matseke, was dispatched to our members via email from the Alexkor PSJV [GC133].
255. The contents of her missive clearly indicate that she was either not being truthful or was unaware of Alexkor's intention to exit diamonds and the Richtersveld, as stated before Parliament on 19 November 2014 during a briefing on the 2014 annual report [GC125].
256. Alarmed by the sinister overtones, rapid response time and distorted version of what transpired at the meeting, the EAC reached out to the former Minister of Public Enterprises, Brown, on 9 March 2017 [GC134].
257. Ten minutes later, we sent a follow up email to our members to reassure them that there was no need to fear victimisation as our concerns were firmly before Parliament's Portfolio Committee on Public Enterprises [GC135].
258. The EAC responded to Matseke on 10 March 2017 [GC136].
259. On 5 March 2017, prior to the crisis meeting, the EAC had already, in response to numerous complaints from the local small-scale miner community, launched an online satisfaction survey amongst the members to gauge the level of discontent regarding the Alexkor PSJV.
260. While at first we received a steady flow of responses, it stalled abruptly in the wake of the intimidating letter from the Alexkor Chair, Matseke. Nevertheless, we dispatched the results to the former Minister, incomplete as they were with only 15 responses [GC137].



261. On 4 April 2017, the EAC received a reply from the former Minister to our missive of 9 March 2017 wherein she provided a measure of comfort by expressing her concern and informing us of her instructions to the Alexkor Chair [GC138].
262. Consequently, on 6 April 2017, the EAC received a letter from the Chair in which she highlighted her concern regarding the negative responses reflected in the survey and invited me to attend a combined board meeting on 12 April 2017 in Kimberley to discuss our concerns and the negativity reflected in the survey results [GC137].
263. I travelled from Alexander Bay to Cape Town to Kimberley to attend the board meeting on 12 April. At the meeting I first attempted to raise my concerns regarding Alexkor's Emerging Black Coal Miner Exit Strategy and the Questco Plan, but the Chair refused to discuss these matters and pivoted the discussion to the burning issues as reflected in the results of the online survey.
264. During her introductory comments on the matter, it became clear that she understood me to be a consultant of sorts, who was only representing a small aggrieved faction of the broader satisfied contracting fraternity, a misunderstanding she had gained by assuming the survey was only directed at a special interest group whom I was acting on behalf of.
265. I informed her that I am a thirty year plus veteran in the industry with an eighteen-year track record as one of Alexkor's top producers and that the Equitable Access Campaign was in fact the voice of the entire shallow water mining industry in the Northern Cape.
266. I then pointed out that the survey sample was limited only because the heavy-handed letter she sent out to our members in such haste after our crisis meeting had resulted in a high level of fear which in turn created a severe chilling effect.
267. The Chair graciously accepted my explanation and requested that a repeat survey be undertaken so that she could get a true sense of the levels of dissatisfaction among the contractors.
268. I responded that it would be very helpful if she could ease the level of fear among the contractors by circulating a letter encouraging them to participate in the next survey to which she responded that I was "*pushing my luck*".

A handwritten signature in black ink, consisting of several overlapping loops and a vertical stroke at the end, positioned in the bottom right corner of the page.

269. At the Kimberley airport while waiting for my flight back to Cape Town, Phillips approached my table and asked to join me. I then had a very frank and open discussion with her during which I ventilated my concerns regarding the coal exit strategy and the Questco Plan.
270. When the discussion had ended, I looked directly at her and asked if the Questco Plan was dead. To which she paused for a moment, smiled, replied no, and excused herself.
271. On 5 June 2017 I received the Kimberley board meeting minutes from Phillips that reflected the following: [GC139].
272. The following paragraphs are copied verbatim from the minutes:

“Equal access campaign

*Mr Craythorne presented the equal access campaign. Background information on his experience, training and education was provided. He was a resident of Alexander Bay. Due to his technical background, he was involved in the designing and development of equipment, and had recently been focussed on mechanisation. He is a sub-contractor to his wife’s company Ocean Diggers and manage all technical aspects, He was of the view that it is a strategic misstep for Alexkor to venture into goal and not invest more in the marine operations. The Chairperson highlighted that Alexkor SOC has its own strategic role and plans, the responsibility of the marine asset is under the sole discretion of the PSJV Board. Alexkor needs to generate its own revenue stream as it does not rely on the PSJV for financial assistance. The governance and separation of Alexkor and the PSJV was discussed. It was noted that the two entities were operated on an independent basis.*

*History of Mr Craythorn’s engagements with Alexkor and the associated developments were discussed. The relationship with PSJV was good and a Service Level Agreement (“SLA”) was in place whereby Mr Craythorne provided a vessel to a company that contracted directly with Alexkor.*

*The utilisation of the Alexkor asset, being the largest marine diamond field in the world, and the need to accelerate the extent of marine mining was discussed. There was a feeling amongst contractors that Alexkor does not afford optimum attention to the marine mining section, especially when you take into consideration the kind of employees such as Ms Leilani Swartbooi that is appointed to oversee the marine*



*operations. Contractors cannot discuss their operations or concern with her due to her lack of knowledge in the industry.*

*The solution was not to appoint more contractors but to assist the current contractors and to invest in research. Mr Craythorne indicated that Alexkor had had 105 contractors in place in 2004, compared to the 80 in place at present. It could thus be deduced that a higher level of contractors would not necessarily increase production, as could be evidenced by the reduction in contractors.*

*The Chairman indicated that the primary focus of this interaction should be on how to improve the utilisation of the asset and its yield for the PSJV and how this would also beneficially impact the community. Improvements were to be identified that could improve performance.*

*The following matters were suggested as means to improve marine operations performance:*

- 1. Increased investment into support services to contractors.*
- 2. Personnel who are experienced in the industry are required to oversee the support function.*
- 3. Transparency should be increased with regard to the diamond sales channel, processes and data.*
- 4. The Board should engage more with the local community, which included the contractors.*

*It was noted that the concerns would be considered but that the Board should not be involved on an operational basis.*

*The contractor's satisfaction survey was discussed, and it was noted that limited response had been received. The marine mining contractors were nervous of losing their contracts and therefore would not easily voice their concerns. Fifteen out of fifty-six marine contractors had responded to the survey and the feedback had been largely negative. The survey should be recirculated and contractors engaged with to improve the relationship. It was suggested that Mr Carstens empower the contractor community and encourage open communication.*

*A full-time metallurgist was in the process of being appointed and that the Plants was now being maintained, which would improve relations. The PSJV in the process to refurbish the new final recovery, money is being invested in the mine by the PSJV. All records of previous diamond sales were in place. Sensitive information was to be handled in a*



*confidential manner. A meeting could be scheduled on a regular basis with the contractor's community, and if individual contractors wanted their specific data and value chain information then this could be provided. The PSJV always had an open door policy where contractors can voice their concern or give advice on how to improve the business for all concerned. This is also noted in the increase of production amongst marine mining contractors as management is now aware of the problems faced by contractors and in better position to assist contractors. Additionally, the value chain should be verified according to the diamond index and bidding spreads for sales.*

*The building of coffer dams would continue in line with the current EMPA. The building of dams would be reconsidered in the updating of the EMPA upon which new legislation would have an impact."*

273. Today, the Questco Plan is for all practical purposes a reality, as the entire Northern Cape West Coast Diamond Industry is under either the direct control of Trans Hex, or its proxy management team in the PSJV- a situation which has enabled Trans Hex and Alexkor to deny the longstanding mining contractors access to all the Northern Cape shallow water concessions and thereby deprive us of our right to economic freedom as enshrined in Section 22 of the Constitution [**GC140**].
274. In terms of the Questco Plan, provision for a 9% shareholding in the consolidated operations of the West Coast Diamond Industry is ring-fenced for the PSJV management team which Carstens has led since 1 August 2012, a fact that shows that Carstens is hopelessly conflicted, as are the rest of the PSJV management team.
275. In order for Trans Hex to capture the RMC/Alexkor PSJV in pursuit of their plan to monopolise the entire West Coast Diamond Industry, it had to capture the Department of Public Enterprises. To this end, Trans Hex ensured that the Department of Public Enterprises would emerge out of the negotiations for the purchase of the De Beers Namaqualand Mines as a 20% shareholder and thus, a significant partner of theirs [**GC141, GC142**].
276. With the 20% stake officially ring-fenced in a special purpose vehicle for a future black economic empowerment grouping yet to be formed, it is not difficult to see how this could be manipulated to give government enablers an opportunity of acquiring a shareholding in any new black economic empowerment company to be formed. The Special Purpose Vehicle ("SPV") is the company MAIN STREET 1252 (RF) - Physical address is De Beers House, corner of



Crownwood and Diamond Drive, Theta, Johannesburg. The entity was created on 28 March 2014 and De Beers Group Services is listed as a director/member.

277. With these benefits offered, the leadership of Alexkor and the PSJV seem determined to do everything in their power to ignore the obvious state capture of Alexkor's assets, to the detriment of the Richtersveld mining company, which is in desperate need of funding to upgrade and develop its mining equipment.

278. At a time when I enjoyed a good working relationship with Carstens, I provided him with a copy of a lengthy expert Marine Potential Report I wrote to assist him in getting greater support from Alexkor for developing its marine diamond assets [GC143, GC144].

279. Upon receiving my report, which I presented to him in his office on or about 25 January 2016, he expressed his gratitude and in the presence of his personal assistant, informed me that he would provide a copy to the Chairperson, Matseke.

280. This was important to me as I was troubled by the amount of money Alexkor was spending in pursuit of its Emerging Black Coal Miner Exit Strategy, money which is generated by the small-scale marine miners of Alexander Bay and which should have been applied to the maintenance of the mine's vital support infrastructure, which was becoming increasingly dysfunctional [GC143].

281. The costs of duplicating the administrative functions of Alexkor and establishing an office in Gauteng was identified as problematic by the shallow water miners, as far back as June 2010, in a letter to the Acting Mine Manager, Mr Wiaan Basson ("Basson") [GC145].

282. Since 2012, approximately R 40 million per year has been diverted to fund the corporate headquarters in Johannesburg and to pay consultants working on Alexkor's exit strategy. To justify this, Carstens has continued to undermine Alexander Bay's future diamond mining prospects. In Parliament on 22 November 2017 Carstens stated:

*"In ten years' time or five years' time there is not going to be a mine anymore."*

283. This, I had demonstrated to him, was completely untrue.



284. In addition, the amount of money spent on Gigaba's Emerging Black Coal Miner Exit Strategy by financial year 2016 exceeded R175 000 000,00 was a cause of concern, as this could have comfortably recapitalised the entire Alexkor diamond fleet with new technology and semi-mechanised mining vessels capable of mining through sand overburden. Had this money been properly spent, this could have ensured that Alexander Bay could once again become a world class diamond producing centre.
285. The concealment of the true value of the marine diamond assets Alexkor possesses and the misrepresentation of the estimated life of its diamond mining ventures in the region, has provided the new Board with a rationale for exiting its diamond mining business and diversifying into coal. However, should it sell off its marine mining business under the current manufactured climate, it would seriously under-recover for its business. It would also mean that the individual miners would be forced to liquidate their mining operations at substantial loss **[GC146]**.
286. The dynamics of a primary board and executive team that is conflicted by a Gupta/ Gigaba coal agenda and a PSJV board and executive team that is conflicted by a Trans Hex/Questco diamond agenda, has resulted in the decimation of the local economy, dilapidated critical infrastructure and a loss of social cohesion. It has also deprived Alexkor and the Richtersveld community of its share in what could and should be a lucrative diamond industry. This has served to dispossess the people of Namaqualand and South African taxpayers of a mineral asset of immense value and strategic importance.
287. Several approaches have also been made by stakeholders to the Boards and management of, Alexkor Ltd and Alexkor RMC JV about the Questco plan, including:
- 287.1. raising the fact that the PSJV management were conflicted **[GC147]**; and
- 287.2. revealing the extent to which the PSJV had been captured by Trans Hex **[GC148]**.
288. None of these approaches have galvanized any member of the Alexkor or the PSJV Board to protect the states marine diamond resources.

#### **THE INVOLVEMENT OF BAGUS, KELLERMAN, CARSTENS AND KHOZA IN THE QUESTCO PLAN**



289. Bagus was appointed as the Chairman of Alexkor by Gigaba during September 2012. It is readily apparent from Alexkor's own financial records that at this early stage, the intent was that Alexkor would be utilised by the Guptas as another vehicle to supply coal to Eskom, and in 2015, Gupta associate, SSI would gain control of the diamond wealth of Alexkor.

290. In the Presentation of its Annual Financial Statement for the period ending 31 March 2012, there was no reference to it diversifying into coal. In the 2013 Annual Report, Bagus wrote a forward at p 8 as follows:

*"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.*

A handwritten signature in black ink, consisting of several loops and a vertical stroke, located in the bottom right corner of the page.

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

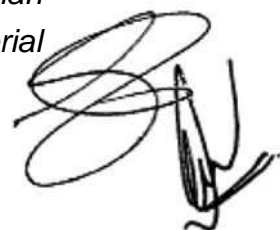
*We will also engage the Department of Mineral Resources (DMR) and the state-owned mining company to coordinate coal mining efforts and secure their support of our strategy.*

*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.*

*The development of the Richtersveld, Alexander Bay and Port Nolloth communities has been neglected for many years and in the ten years since the settlement the community regressed rather than progressed. Failing to turn around the situation will have a material*



socioeconomic impact on the Alexander Bay community and surrounding region.

For this reason, failure is not an option and we will work diligently with total dedication to ensure the success of our turnaround initiatives. The community can be assured of our continued and unequivocal support.

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.

Also, the Honourable Deputy Minister Mr Bulelani Gratitude Magwanishe for his guidance and unconditional support during the past year.

We are excited about Alexkor's future and are looking forward to a prosperous year with the continuous support of an excellent team at Alexkor under Percy and with Mervyn's leadership and guidance at the PSJV." (The emphasis in this and in the subsequent paragraphs has been added.)

291. In the 2013 Corporate Governance Report at p 28 it is stated:

"During the 2012 AGM the board, with the exception of Dr Roger Paul who was retained for continuity and institutional knowledge, was rotated. A new board, under the chairmanship of Mr Rafique Bagus, was appointed on 8 September 2012. The other members of the new and current board are Dr Roger Paul, Dr Nono Yvonne Mohutsioa-Mathabathe, Mr Mohammed Bhabha and Ms Zukiswa Ntlangula.

The board provides the executive management with clear strategic direction, as documented in the company's strategic and corporate plans.

In addition to the monitoring of operational performance, the board also monitors the performance of management through the social, ethics and human resources committee. The board also fulfils this role even in relation to the PSJV board, which operates as a sub-committee of the board of Alexkor. Systems have been put in place for regular reporting and sharing of information between the board of Alexkor and the PSJV board."

292. In the 2014 Annual Report, Bagus wrote a forward as follows at p 8:

*“Alexkor as a State-Owned Company exists to achieve both commercial and developmental objectives. These objectives are made concrete and specific in the strategic intent statement supplied by Alexkor’s Executive Authority, the Minister of Public Enterprises.*

*Key elements of the strategic intent statement include the need to stabilise and then expand all components of the company’s diamond operations in the Northern Cape, build the relationship with the Richtersveld community and position the company to act as a comprehensive vehicle of local development.*

*This includes starting a process of repositioning Alexkor as a coal miner with the aim of unlocking the transformation in the industry and ensuring Eskom’s security of supply.*

*As chairperson of the Alexkor Board, it is my role to ensure that the corporate plans and operations are aligned with this strategic intent. I am pleased to report, that we have made significant progress over the last year in achieving this goal and it is my pleasure to present some of the key highlights in this regard.”*

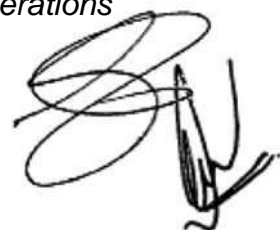
#### **THE COAL-MINING MANDATE**

*The Deed of Settlement requires of Alexkor to exit its 51% equity holding in the PSJV but needs to do so in a socially responsible manner. Already in December 2012 the DPE and the Deputy Minister (Bulelani Gratitude Magwanishe) indicated to the Board that it needed to broaden its focus within the context of its statutory mandate.*

*This prompted the Board’s decision to enter into coal and limestone mining to supply Eskom to help alleviate the energy crisis and to give effect to the emerging miners strategy.*

*Part of the underlying reasons for the energy crisis is the shift in focus by private sector mining companies towards exporting high value thermal and coking coal. Studies show that Eskom will experience a shortage of coal of approximately 60 million tons by 2018.*

*At present the mining environment has seen a reduction in investment, with accompanying job losses and a general decline in the sector. Whereas the private sector is likely to mechanise many of its operations*



*in line with international trends, Alexkor is focused on increased investment, creating jobs and improving output and profitability.*

*This is in line with state owned companies' fiduciary responsibility to the Shareholder and the State to contribute directly to the developmental and transformational agenda of the country. Collaboration between Alexkor and Eskom therefore not only ameliorates the effects of the energy crisis but also makes a positive contribution to the investment climate for the South African economy.*

*In becoming involved in the coal-mining sector in this manner, Alexkor can ably contribute to South Africa's developmental and transformational agenda whilst remaining a commercially viable entity.*

#### **FUTURE OUTLOOK**

*It is likely that 2014 will see a stable balance between demand and supply on the rough diamond market, and the diamond price stability that was the norm in 2013 is expected to continue.*

*We are positive about the immediate future of Alexkor. In a relatively short space of time the Board and management team have been able to turn around both Alexkor and the PSJV.*

*Negotiations for better prices for our rough diamonds will have a further positive impact on future revenues and profitability.*

#### **APPRECIATION**

*The progress Alexkor and the PSJV have made is largely attributable to our Shareholder who invested trust in the Board and management team to deliver on this massive turnaround task.*

*I particularly thank outgoing Honourable Minister Malusi Gigaba for his guidance and support, and in welcoming the new Honourable Minister Lynne Brown, I look forward to continuing our journey under her oversight.*

*I also wish to thank the Honourable Deputy Minister Bulelani Gratitude Magwanishe for his commitment, knowledge and understanding, particularly in securing the turnaround in our finances and our relationship with the community."*



293. In the same Annual Review, Kellerman provided a Governance Report at p 24 as follows:

	Challenges & Risks	Outlook
	Lack of funding for new ventures and inability to give effect to the Coal Strategy	Management, in conjunction with the Shareholder, is engaging with relevant role-players including Eskom with respect to the purchase of specific assets as well as negotiating the conclusion of pertinent contracts to ensure that the company is able to properly leverage itself. The company is also engaging with companies in the private sector on the purchase of various coal assets and looking at private funding opportunities for these assets. The company is strengthening relationships with various emerging miners.

*“The SE&HR committee, under the guidance of the new Board, has made significant strides in changing the face of Alexkor. In 2013 Alexkor undertook to attract skilled and qualified personnel in preparation for the strategic business plans of the organisation.*

*A new Executive Committee (Exco) in the form of the Chief Financial Officer, Mr. Dludla, a Chief Operations Officer, Mr. Mokwena and a Chief Legal Officer, Ms. Z Kellerman were appointed.*

*In addition, the management team consisting of the Group Manager: Technical Services Mr. E Sithole, Group Manager: human resources Ms. B Makwetla and Group Manager: Finance Ms. T Mhlanga have been recruited.*



*The focus will be to build this new team and establish various processes and procedures in order that the team be enabled to deliver Alexkor's new mandated diversified strategy.*

*Salaries paid are based on the total package concept as per the approved remuneration policy. For the period under review, salaries paid to employees amounted to R18 132 429, R3 372 279 for Directors and R7 573 768 for contractors and consultants."*

294. The strategic objectives and new business development were stated to be:

**"7 STRATEGIC OBJECTIVES**

*The Board of Alexkor embarked on a strategic planning exercise on December 2012. The purpose of this session was to define the way forward for the business. The session was held in Johannesburg with the new Board members and representatives of DPE.*

**8 NEW BUSINESS DEVELOPMENT**

*Alexkor has been and still is in the process of identifying new projects to expand its mining operations and diamond resources. Its previous operations in Alexander Bay are now being managed within the PSJV under a separate management team and independent PSJV Board. This forced Alexkor to investigate other new business opportunities to generate alternative revenue streams to enable it to grow and to ensure sustainability. Alexkor received a mandate from the Minister to pursue these opportunities should they prove to be viable. Alexkor is currently exploring these potential opportunities."*

295. On 8 August 2014, Questco and Trans Hex submitted an unsolicited bid to take over Alexkor's diamond interests in light of its intent to diversify into coal.

296. On 19 November 2014 Bagus and Khoza briefed Parliament regarding the need to diversify and exit its diamond interests in the Richtersveld. Its motivation for doing so was set out in Alexkor's Annual Review for the period ending 31 March 2014 as follows:

*"End State of Mining*

*Exiting the Structure*

- *DoS envisages the state will exit to a strategic partner. The exit must however be in a responsible manner to ensure long term sustainability*
- *Options whereby the community can receive cash rather than shares.*
- *The sale must derive maximum value for the State.*
- *The only real opportunity for meaningful job creation and economic development in that region is for there to be a consolidation of the various mining companies including De Beers, Transhex and Alexkor.*

#### *Expansion of Mandate (1 of 4)*

##### *The need to diversify*

- *Exit from diamonds and the Richtersveld*
- *Challenge by the Deputy Minister and the Department at the strategy session in December 2012 to broaden its focus within the context of the mandate specified in the Alexkor Act 116 of 1992 as amended by the Alexkor Act 29 of 2001.*

#### *Expansion of mandate (2 of 4)*

##### *Why Coal Mining*

*The Coal Security of Supply Task Team study, commissioned by DPE, predicted a crisis in coal supply to Eskom by 2018:*

- *By 2022, the coal shortfall could exceed 30 Mtpa, equivalent to 6-10 large coal mines and over 20% of Eskom's total demand;*



- *This is mainly due to mining company's cherry picking mining licence provisions to concentrate mainly on high grade coal for export and moving away from less profitable steam coal.*

*This creates multiple opportunities for Alexkor to reduce Eskom's coal supply risk:*

- *Utilise the current Eskom Infrastructure investment fund to develop a state owned capability in Alexkor;*
- *Agree a cost plus commercial model with Eskom to supply coal;*
- *Renegotiate lossmaking supply contracts with companies like Glencor-Optimum;*
- *Long and expensive litigation can be avoided by ceding coal supply right to Alexkor e.g. Khuthala.*

*Expansion of mandate (3 of 4)*

*Benefits of Alexkor's entry into coal*

- *To ensure security of supply to Eskom*
- *To create a stable economic and investment environment*
- *To improve the national credit rating*
- *To ensure transformation of the sector*

*Perception of conflict of the Mangaung Resolution*

- *Then managing resolution requires that the State Owned Mining Company (SOMCO) should be established and be under the direct supervision of the Department of Mineral*

*Resources. Furthermore, SOMCO should gather all the State's interest in mining including those in Alexkor, AEMFC and other stakes which Government holds in mining corporations.*

- *As a result, Alexkor's entry into coal is actually no conflict to the Mangaung resolution.*
- *This is a policy and political discussion and Alexkor will comply and has no preference as to where it is located.*

***The energy crises is now and the responsibility to resolve it lies with the DPE (with Government through the Integrated Resource Plan)***

*Expansion of Mandate (4 of 4)*

*Steps for Implementation*

- *Collaboration between Eskom and Alexkor including the transfer of certain assets from Eskom to Alexkor in respect of coal.*
- *A policy document being prepared by Alexkor and the DPE for submission to the Economic Transformation Committee by December 2014 to be tabled at the policy Conference in June 2015.*

*\* The implementation set out above will now take effect in January 2015 when the Boards of Eskom and Alexkor have been reconstituted."*

297. Bagus' forward in the 2015 Annual Report at p 12 states:



#### “OVERALL PERFORMANCE

*As shown in the annual financial figures elsewhere in this integrated report, Alexkor boasts a solid performance, despite having posted an after-tax loss of R82 million. PSJV*

*Whilst the PSJV evidently still faces constraints, the Board is of the view that it has been put on a sound footing towards growth for Alexkor and for the benefit of the community.*

*The DoS envisages that the State will exit the structure, but it has to do so in a socially responsible manner.*

#### THE COAL-MINING MANDATE

*In its strategy session with the Minister during December 2012 the Board proposed coal mining as a means to provide coal to Eskom, and thus ensure security of energy supply to the national grid.*

*With the Shareholder having requested a business case from the Company, management has embarked upon a comprehensive submission for Board approval after the AGM.*

#### APPRECIATION

*The Shareholder's support has undoubtedly ensured the achievements of Alexkor and the PSJV in the past year, especially in helping us turn around the business.*

*This support came in large measure from the Honourable Minister Lynne Brown, her Deputy Minister Bulelani Magwanishe and the senior officials of the Department of Public Enterprises.”*

298. Khoza's overview at p 17 records:

#### “NEW BUSINESS

*South Africa has a number of smaller junior emerging coal miners who need some form of consolidation to improve their business case in supplying cost effective coal to Eskom. We will endeavour to find the right partners with existing mining rights to leverage into our relationship with Eskom.”*



299. The Strategy Statement at p 20 records:

*“Alexkor’s new strategy is a departure from the past that will radically transform Alexkor into a diversified mining company. The proposed strategy includes key elements that will ensure the sustainability of Alexkor’s mining operations.*

*These elements are closely dependent on each other and will focus on:*

- i. Unlocking value from the PSJV;*
- ii. Extracting value from South African and African diamond mining opportunities; and*
- iii. Utilising Alexkor’s core mining capability to supply coal and Lime to Eskom and other industries.*

*Alexkor has been mining alluvial diamonds on the West Coast of South for over fifty years. A wealth of experienced senior mining managers and executives with a proven track record have been recruited over the past 18 months who have already turned around the organisation from a production and profit perspective.”*

300. Kellerman’s Governance Report states at p 26:

#### “BOARD OF DIRECTORS

*The Board is responsible for driving the strategic direction whilst ensuring the optimal allocation of resources is accessible, with effective risk management and effective stakeholder communication and engagement in place.*

#### EXECUTIVE COMMITTEE

*The Company has an Executive Committee consisting of the following: Mr P Khoza, CEO; Ms T Mhlanga, Acting CFO; Mr H Mokwena, COO and Adv Z Kellerman, CLO.*

#### RESPONSIBILITIES OF THE BOARD

*The Board provides the Executive Committee with clear strategic direction, as documented in the Company’s Strategic Intent and Corporate Plans.*



### THE PSJV

*The Board also fulfils an oversight role in relation to the PSJV Board, which operates as a sub-committee of the Board of Alexkor for reporting purposes. Governance processes have been implemented to enable regular reporting and sharing of information between the Board of Alexkor and the PSJV Board.*

*The governance framework of Alexkor has been implemented at the PSJV Board. In terms of the Deed of Settlement (DoS) concluded with the community of the Richtersveld, the Alexkor Board is required to have three board members serve on the PSJV Board.*

*The table on pages 35 to 36 reflects the members and attendance at PSJV Board and Committee meetings for the year under review.*

### CORPORATE GOVERNANCE FRAMEWORK

*The Governance Framework that regulates the relationship between the Shareholder, the Company and the Board includes the following:*

- *A Strategic Intent Statement, which sets out the agreed mandate and strategy for the Company. (We need a copy of the statement)*
- *A Corporate Plan, which forms the basis of the Company's operations and outlines the Company's strategic objectives.*
- *A Shareholder's Compact, which sets out annual key performance indicators and targets in support of the Strategic Intent Statement.*
- *A Significance and Materiality Framework, which sets out the requirements regarding matters needing approval in terms of the PFMA."*

301. The SE & HR Committee Report states at p 36 that:



*“The SE&HR committee, under the guidance of the new Board, has made significant strides in changing the face of Alexkor. In 2013 Alexkor undertook to attract skilled and qualified personnel in preparation for the strategic business plans of the organisation.*

*A new Executive Committee (Exco) in the form of the Chief Financial Officer, Mr. Dlodla, a Chief Operations Officer, Mr. Mokwena and a Chief Legal Officer, Ms. Z Kellerman were appointed.*

*In addition, the management team consisting of the Group Manager: Technical Services Mr. E Sithole, Group Manager: human resources Ms. B Makwetla and Group Manager: Finance Ms. T Mhlanga have been recruited.*

*The focus will be to build this new team and establish various processes and procedures in order that the team be enabled to deliver Alexkor’s new mandated diversified strategy.*

*Salaries paid are based on the total package concept as per the approved remuneration policy. For the period under review, salaries paid to employees amounted to R18 132 429, R3 372 279 for Directors and R7 573 768 for contractors and consultants.”*

302. The strategic objectives and new business development were stated to be:

#### **“7 STRATEGIC OBJECTIVES**

*The Board of Alexkor embarked on a strategic planning exercise on December 2012. The purpose of this session was to define the way forward for the business. The session was held in Johannesburg with the new Board members and representatives of DPE.*

#### **8 NEW BUSINESS DEVELOPMENT**

*Alexkor has been and still is in the process of identifying new projects to expand its mining operations and diamond resources. Its previous operations in Alexander Bay are now being managed within the PSJV under a separate management team and independent PSJV Board. This forced Alexkor to investigate other new business opportunities to generate alternative revenue streams to enable it to grow and to ensure sustainability. Alexkor received a mandate from the Minister to pursue these opportunities should they prove to be viable. Alexkor is currently exploring these potential opportunities.”*



303. The Directors Report at p 65 states:

*“14. EVENTS AFTER REPORTING PERIOD*

*The Minister of Public Enterprises also gave Alexkor a mandate to pursue other mining and related opportunities for new business development outside the Alexander Bay region in order to expand on its mining operations and includes expansion into coal mining. A revised strategy intent statement was received from the Shareholder on the 12<sup>th</sup> May 2015. These opportunities are being investigated and decisions to proceed will be based on the viability and sustainability of such ventures. The Board accepts the risks related to new business development and believe that this expansion to be in the best interest of Alexkor’s long-term sustainability going forward.”*

304. In the 2016 Annual Report, Matseke’s overview states at p 8:

*“INTRODUCTION*

*We, the board, whose credentials appear on pages 12 to 14, undertook a comprehensive review of the business, which indicated that the Company’s operational and financial performance needs to be placed on a firmer footing than it currently is.*

*This review was conducted across the entire value chain of the business, to address structural challenges that have impacted performance over time. Building on the varied and effective steps taken to contain operational costs in recent years, the objective of the proposed action was to create a safe, sustainable, competitive and profitable business for the long-term benefit of all our stakeholders.*

*In order to achieve the above, it was necessary to align baseline production with long-term demand expectations and focus on a high-quality portfolio of assets, to produce diamonds on an economically sustainable basis, both on land and marine operations.*

A handwritten signature in black ink, consisting of several loops and a vertical stroke, located in the bottom right corner of the page.

*Overheads have been reviewed and reduced while a new organisational design is in the process of being developed to ensure that the operations are appropriately supported.*

*Our commercial strategy has been revised to guarantee value and stability for diamonds and its customers, while also examining our participation in other mineral exploration and supply, including thermal coal to have a diversified portfolio.”*

305. It is an open secret that a consortium led by Wiese wanted to consolidate the west coast mining industry. Wiese said so himself when he bought into Trans Hex in 2016. It must be remembered that Carstens, the chief executive of the joint venture, outsourced the shortlisting of bids to a company called Gamiro (controlled Sonn), although there were only seven bids.
306. Sonn was a director of Steinhoff with Wiese, who was involved in Trans Hex which has been instrumental in the diversification of Alexkor into coal. However, it is accepted that Wiese only took control of Trans Hex in August 2016.
307. I believe that Khoza was an obstacle to Wiese's plans to monopolise the entire Namaqualand Diamond Industry unveiled in the presentation by Questco.
308. On 18 June 2018, I sent an open letter to Carstens, challenging him to deny the authenticity of the Questco document.<sup>5</sup>(GC149).
309. I never received a response from him.
310. As it turns out, on 26 April 2018, less than two months after I had written to Carstens, Matseke wrote to Minister Pravin Gordhan lamenting his moratorium on the acquisition plans of State Owned Companies as it had effect of stifling its proposed establishment of Alexcoal. A copy of this letter is annexed marked [“GC150”]

## THE ADMINISTRATION OF ALEXKOR

---

<sup>5</sup> 20180618 Open Letter to Carstens Re Questco [GC167]



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

- 311.1. Executive Chairperson of Alexkor;
- 311.2. Chairperson of the Pooling and Sharing Joint Venture (PSJV); and
- 311.3. Chairperson of the Rehabilitation Trust

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

- 312.1. 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;
- 312.2. Review the Alexkor and the Alexkor RMC PSJV cost structure to ensure that procurement of goods and services is at fair value and warranted;
- 312.3. 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;
- 312.4. 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;
- 312.5. Develop a revenue enhancing plan with emphasis on contracting for mid and deep-water mining operations;
- 312.6. Propose a right sizing model for Alexkor and Alexkor RMC PSJV in line with the income streams;
- 312.7. Manage the rooting out of corruption and State capture related practices and individuals at Alexkor and Alexkor RMC PSJV;



- 312.8. Determine the optimal shareholding structure of the state's marine diamond resources;
- 312.9. Incorporate the Alexkor RMC PSJV to ensure adherence to the Act and proper Corporate Governance provisions;
- 312.10. 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
- 312.11. Develop in collaboration with the Department a Key Stakeholder Engagement Plan to ensure support for the implementation of the above plans.
313. In Alexkor's Parliamentary Committee Report dated 27 May 2020 [GC151] it is stated that the contracts with Contractors should be reviewed as they are skewed in favour of the Contractors and against the Joint Venture, which I do not agree with because it is not true with respect to the small-scale marine miners, only the larger contractors.
314. The Administrator records that it launched an investigation into the impropriety of the contract concluded with SSI. This revealed that:
- 314.1. 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
- 314.2. the sales and marketing contract concluded with SSI was irregular.
315. 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 will be issued by end of February 2020.
316. 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.



317. Charges have been formulated and presented to Carstens, the CEO of the PSJV. A suspension letter with charges was sent to him on Friday 31 January 2020. 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.
318. 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:
- 318.1. Alexkor impaired a R200m loan in the 2018/19 financial year that was provided to the PSJV;
  - 318.2. The PSJV currently has outstanding debts of approximately R100m which includes statutory payments such as PAYE, VAT and Pension Fund Contributions;
  - 318.3. 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.
319. After the liquidation process, the Administrator suggests that a new corporatized and adequately recapitalised entity could be established.
320. As an alternative to liquidation, it is proposed that the joint venture be recapitalised on the basis that:
- 320.1. The budget required to do the exploration is approximately R400m;
  - 320.2. The debt excluding the loan to Alexkor is around R100m;
  - 320.3. Further funding will be required to adequately staff the mine with the correct levels of technical skills.
  - 320.4. 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.

321. 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. This simply is not true; Alexkor's diamond rights are extremely valuable and their value is readily ascertainable as I have demonstrated in this affidavit.
322. I regrettably fear that this report provides an excuse to sell off Alexkor's highly valuable mining rights to a private entity (which will include politically connected individuals) pursuant to a sale in liquidation at a rock bottom price, a scenario which I believe was contemplated when Minister Gigaba first arrived at the DPE.
323. Whatever scenario is adopted, this does not bode well for the contractors, the South African taxpayers or the Richtersveld community. Alexkor's marine mining rights are a priceless strategic national asset belonging to the people of South Africa that should under no circumstances, particularly stressed circumstances, be sold off. It will be a calamitous decision.

#### **Allan's response to the Administrator's Parliamentary briefing**

324. Following the briefing of the Parliamentary Portfolio Committee on Public Enterprises and the Select Committee on Public Enterprises and Communication by the Administrator of Alexkor, Sable Metals & Minerals CEO, Allan, expressed the view in the Mining Weekly on 27 May 2020 that a panel of experts should be formed to properly oversee the future of the struggling State-owned diamond mining company Alexkor, and to unlock the greater long-term potential of northern Namaqualand. A copy of this article is annexed hereto marked [GC152]
325. I would like to respond to the averments made by Allan in the aforementioned article. In doing so, I will quote the passage I wish to respond to in italics and respond thereto thereafter:

325.1. *"The diamond deposits of Namaqualand were discovered by Jack Carstens in 1926 and were further delineated by Dr Hans*



*Merensky, who identified Oyster shell as being a significant marker for the paleo beach terraces in 1927.*

*The State Alluvial Diggings (SAD) were proclaimed in 1928 and mining has taken place along this arid coastline since then for 92 years, with the SAD being transformed firstly into the Alexander Bay Development Corporation in 1989, and then incorporated into a public company, Alexkor Limited, with the State as the sole shareholder in 1992.*

*Subsequent to a Land Restitution Claim the local community was granted the mineral rights to the land areas and Alexkor remained with the marine mineral rights. A PSJV was formed between Alexkor (51%) and the Richtersveld Mining Community (49%) to mine and recover diamonds from the land and sea.*

*Notably these deposits have been mined for over 90 years and it is becoming increasingly difficult to mine them profitably. Over the last five years there has been a trend of decreasing stone size in diamonds recovered from land operations and a decreasing contribution in diamonds mined from the sea.”*

- 325.1.1. While true that the Namaqualand diamond deposits have been mined for almost a century, and it is certainly the case that it is becoming increasingly difficult to mine them profitably, I must disagree with Allan’s overall diagnosis of Alexkor’s problems.
- 325.1.2. Firstly, the mining histories of the terrestrial terraces and the marine terraces must be dealt with separately. We agree that the terrestrial diamond terraces have been mined for more than 90 years and that these terraces are now mined out for the most part.
- 325.1.3. The marine terraces, however, are an entirely different matter, the writing of their history will have to wait another hundred years until they too have been mined to the equivalent extent, perhaps even longer.
- 325.1.4. I say this for the following reasons:
- (a) The submerged marine diamond terraces hold the bulk, probably about 95%, of the overall diamond population that was transport to the Atlantic Ocean by the Orange River

drainage system from the volcanic pipes that hoisted them to the earth's surface.

- (b) The extensive onshore mining operations along the coast only constitute what could be described as nibbling along the edges of the greater overall diamond mega-placer deposit.
- (c) Whereas the onshore terraces occupied a coast-wise strip approximately 2 km wide, the marine terrace strip is approximately 45 km wide.
- (d) This massive diamond deposit has not been developed, firstly, because until recently the geotechnical challenges were insurmountable, and, secondly, because it has been at the centre of state capture dynamics that have created an environment too toxic to attract the capital investment, innovation and entrepreneurship such an undertaking requires.

325.2. *"In the recent presentation to Parliament (Mining Weekly 27 May 2020) by Mr Lloyd McPatie, the Administrator for Alexkor, stated that there should be a more scientific method to splitting the revenue from diamonds between the PSJV and the mining contractors."*

325.2.1. McPatie makes a good point but then he discredits himself by recalibrating the small-scale miners deal splits in favour of the PSJV without conducting any of the "scientific" analysis he claims is necessary.

325.3. *"The current split has been found to be appropriate over a long period of time, and if it does favour the contractors, this is appropriate given they carry all risk, including mining, geology, an old and depleted resource, and decreasing sea-days due to climate change, with ample evidence that the mining contractors themselves do not have highly profitable operations".*



*“Alexkor’s land and shallow marine operations are increasingly marginal and changing the revenue split could result in some of the contractors leaving for other, better, options.”*

325.3.1. The small-scale marine miners have no other option and their assets are hopelessly stranded, a situation that has been exploited by both Alexkor RMC JV and Trans Hex for more than a decade.

325.4. *“The awarding of a tender to Scarlet Sky Investments (SSI) has been controversial since it was awarded the contract to run the tender process on behalf of the PSJV”.*

*“This award was approved in a PSJV board meeting and premised on the State’s drive to beneficiate goods locally, which SSI has done in its joint venture beneficiation facility in Killarney, Gauteng, in spite of most of Alexkor’s being too small (60% of production is less than 0.66 carats per stone) to ensure economic local beneficiation”.*

325.4.1. Section 20A of the Amended Diamond Act deprives the local emerging BBBEE marine diamond miners of at least 30% of the market value of their diamonds and the SDT gets 10% of their production at an even greater discount. There can be no doubt that beneficiation was merely a pretext for state capture.

325.4.2. What measures can the regulatory authority demonstrate have been taken to assist the local BBBEE marine miners? None, because as Mr Carstens was fond of telling the EAC, we have *“no political top cover”*. Our members have often lamented this unfair disadvantage.

325.4.3. Furthermore, these existential challenges to the local marine diamond industry have been well documented in Parliament since 2010 and it has also been repeatedly stated and acknowledged in the same forum that the health of this industry is of primary importance to the local economy.

325.4.4. Why then is all the regulatory emphasis on the beneficiation of Alexander Bay’s diamonds when there is no benefit at all for the people who live in Alexander Bay or the people that mine these diamonds? And why are the miners’ contracts cancelled for voicing legitimate concerns while SSI’s contract is untouchable even after revelation upon revelation of state capture participation?

- 325.5. *“An investigation of the mining, recovery and tender process was conducted by the author in early 2019 and comprehensive report showed that while there was room for improvement in certain aspects of the SSI arrangements, the overall tender sale system (sealed auction) was inherently robust, and compatible with the approach followed by most local and international small and medium diamond producers”.*
- 325.5.1. Based upon Allan’s investigation into the sales and marketing of our diamonds, Allan contends that SSI conducts a “sealed auction” on behalf of Alexkor RMC JV, that is *“inherently robust”* and *“compatible with the approach followed by most international small and medium diamond producers”*.
- 325.5.2. The EAC and I contend that SSI conducts a farce of an auction on behalf of a cabal of insiders who use Nathan’s ability to monitor bids in real time and communicate these bids to the cabal as a means to providing its members with a robust and unlawful competitive advantage over non-cabal bidders.
- 325.5.3. Even the process by which SSI won the tender to market and sell our diamonds in the first place has been found to be riddled with irregularities, illegal, unconstitutional, uncompetitive and unfair to the other competing bidders.
- 325.6. *“The appointment of an experienced independent diamond valuator to ensure that the contractor’s interests were taken care of was one of the positive outcomes of this independent investigation”.*
- 325.6.1. Allan’s claim of an *“experienced independent diamond valuator”* being appointed to *“ensure that the contractors’ interests were taken care of”* is naïve as there are volumes of prima facie evidence suggesting that there is no such thing in South Africa’s deeply conflicted rough diamond trading industry. The entire South African diamond value chain needs to be subjected to deep scrutiny and fundamental overhaul in the public interest.
- 325.6.2. Despite numerous attempts, the EAC failed to engage the services of local diamond valuator or for a local diamantaire to go on record about the corruption taking place in Alexkor’s diamond value chain.
- 325.7. *“The Department of Public Enterprises appointed Gobodo Forensic and Investigative Accounting (GFIA) to investigate complaints by a*



*group of contractors into the construction of a coffer dam in 2012, the awarding of the marketing contract to SSI, and the conflict between the contractors and the PSJV”.*

*The GFIA Report on Alexkor presented to Parliament and referred to in the Mining Weekly article is flawed in many respects. The report makes a comparison between the prices achieved on tender with the Zimmisky and Bloomberg long term diamond sales indices, which they (Gobodo) show as prices in the various tables.”*

- 325.7.1. The report may be flawed in certain respects, but this is more indicative of the lack of cooperation the team received from the PSJV management combined with the overwhelming tactical complexity and opaque nature of the diamond trading industry.
- 325.8. *“An index is an index, not a price. Significantly, the diamond production from the PSJV is unique in terms of both its alluvial (secondary) origin, size distribution of the diamond sizes, and quality.*

*By comparison the Zimmisky and Bloomberg Indices which purport to reflect global diamond production are based almost exclusively on kimberlite mine goods, bearing in mind that about 96% of world diamond production is from kimberlite (primary) hard rock sources, and hence any comparison of the two distinct populations is erroneous.*

*The PSJV production is furthermore bimodal with approximately 35% of the value derived from single stones over 6 carats in size (5% in carats) and another 34% from diamonds below 1,5 carats per stone (approximately 80% of carats).”*

- 325.8.1. An index is an accepted statistical measure by which the relative performance of a financial investment in an asset can be assessed. An emerging BBBEE marine diamond miner does not invest in a mining vessel when he builds or buys it to mine Alexander Bay’s world class diamonds, he invests in the diamonds themselves.
- 325.8.2. The suggestion that he must put his life’s savings at monumental risk and not be entitled to benchmark the price performance of his investment against an index because the diamonds he invested in are too high in quality to be benchmarked can’t be taken seriously.
- 325.8.3. In the period from 2008 to 2017, the State Diamond Trader’s selling price in US\$ per carat as presented to Parliament on 10 October 2019, increased by 412% (\$97 per carat to \$496 per

- carat). By all accounts, our business' value should at least match this growth as the law states that the SDT may only trade in representative selections of local mining production.
- 325.8.4. During the same period however, Alexkor RMC JV's diamond prices dropped by 6% (\$463 per carat to \$438 per carat). How is it possible that Carstens, who is the Chairman of the SDT and the CEO of the Alexkor RMC JV, and Allan find nothing untoward about such a glaring difference in price performance?

- 325.9. *"The GFIA report also analyses the total sales and the values sold to the State Diamond Trader (STD) and for beneficiation.*

*It ignores the fact that there is an agreement with the State Diamond Trader not to buy diamonds over 4 carats in size, because there are few diamonds produced in this size range, and for example it would be impossible to 'remove 10% of a single 6 carat stone (or for that matter a 30 carat stone)?"*

- 325.9.1. If what Allan says regarding an agreement between the SDT and the PSJV is true, then more important is the fact that such an agreement is unlawful as it clearly breaches S59B.(1)(b) of the Diamond Act as amended which states:

*"The percentage contemplated in paragraph (a) may be based on carats and value and shall be a representative sample of a production cycle of any diamond producer."*

- 325.10. *"If the STD were to buy single stones in these categories this would furthermore prejudice the contractor and the PSJV.*

*By agreement with the PSJV, the STD has the right to purchase up to 10% of total production from diamonds less than 4 carats per stone. This means that the STD buys a higher percentage of diamonds in the lower size ranges.*

*The legislation allows for the purchase of the 10% in terms of carats. However, inspection of annual reports for the STD shows that this percentage has typically been about 4% of local production anyway. The GFIA report finds that less than 5% by value of diamonds are sold for beneficiation. The South African cutting and polishing industry can only cut and polish certain sizes profitably.*

*Large single stones and small stones or Melee are typically cut overseas where the expertise and cost structures are better suited to maximising the value from large stones and the smaller diamonds (of which the PSJV has a large proportion of their production).*

*Overall Alexkor goods are too small to be manufactured profitably in South Africa because of high labour costs and the inability to compete with the costs of manufacturing in India. Nine out of every ten (90%) of the world's rough diamond production (which averages about 0.30 carats per stone) are manufactured in India due to their competitiveness, cost structures, and cut quality.*

*Thus, only a small range of sizes is selected for beneficiation, mainly in the 2 to 4 carat range. This size range represents approximately 14% in terms of carats and 24% in terms of the Alexkor value.*

*Taking 5% of total production out for beneficiation would represent a large proportion of the diamonds in this size range and it has been decided by the tender house jointly with the PSJV that withdrawing this proportion of diamonds for beneficiation would be detrimental to the overall tender prices achieved, and hence further directly impact the sustainability of Alexkor.*

325.10.1. What Allan is implying is that every transaction between the SDT and Alexkor RMC JV under the watch of Carstens and Nathan has been unlawful. Two parastatals doing business together cannot simply disregard regulations they find inconvenient. After all, they make these regulations.

325.11. *"The contract does allow for the quantity to be agreed between the PSJV and the tender house.*

*The Gobodo report goes on to say that SSI has contravened the Diamond Export Levy Act in that it does not pay any export royalty.*

*GFIA ignores the fact SSI does not sell the diamonds, they facilitate a tender sales process (which is generally acknowledged as the best way for a diamond producer to realise value from production) on behalf of the PSJV".*

325.11.1. In the greater context of state capture, the granular details relating to export royalties and offtakes are not material issues, particularly in light of the uncontested finding by Gobodo that SSI should clearly have been disqualified right at the very start of the tender process in 2014. To be quibbling about offtakes and royalties seems rather incongruous in the circumstances.

325.12. *"All of the buyers of the PSJV goods are South African based (albeit some of them have foreign holding companies) and therefore the sales are exempt from the export levy. It is only when these local buyers wish to export the diamonds that the diamonds are offered on*

*the local bourse, and if they are not sold to local buyers, then the export tax is paid”.*

325.12.1. Most, if not all the significant buyers, whether foreign or local, have been participating in a collusive bid-rigging racket to deprive the miners and the state of fair diamond prices. The export exemption, as with the royalties, is not germane to the issue.

325.13. *“Overall, the situation facing Alexkor is indeed in need of a positive outcome, most of all for the impoverished communities of the Richtersveld and Northern Namaqualand, and the long-term sustainability of the region and its economy.*

*Importantly positive solutions and outcomes need to be achieved on the basis of proper due diligence of the facts by experts, mindful of the need for long term development that will benefit the entire region, and which replace mining which is finite and in decline.*

325.13.1. If there had been any due diligence or concern for the long term development of Alexkor and the region during all the years that the EAC has been fighting for transparency, public accountability, good governance and against relentless state capture, Alexander Bay and Port Nolloth would be hosts to thriving marine diamond mining industries and vibrant diamond tourism attractions today.

325.14. *“There may well be some future in the evaluation and development in the longer term of the deeper offshore diamond resources (the ‘B’ and ‘C’ Concessions of Alexkor). However, at a rough estimate an initial R500-million would be needed for systematic and detailed evaluation of these deposits, money which Government does not have.*

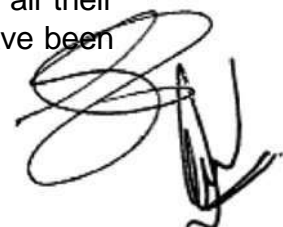
*These deep-water concessions should be sold off to capable and well-resourced private enterprise as a priority, so as to prevent a repeat of Alexkor’s recent history”.*

325.14.1. When the EAC took steps to counter Alexkor’s state capture driven strategy to exit diamonds for coal, and Alexander Bay for Witbank, we took a principled decision to fight to keep Alexkor’s marine diamond rights in the hands of the state and to argue that the privatisation of these rights would deprive the people of South Africa the opportunity to not only recover all the taxpayer money that has been invested into Alexkor but also to participate in the most significant mining play in the history of the diamond industry.

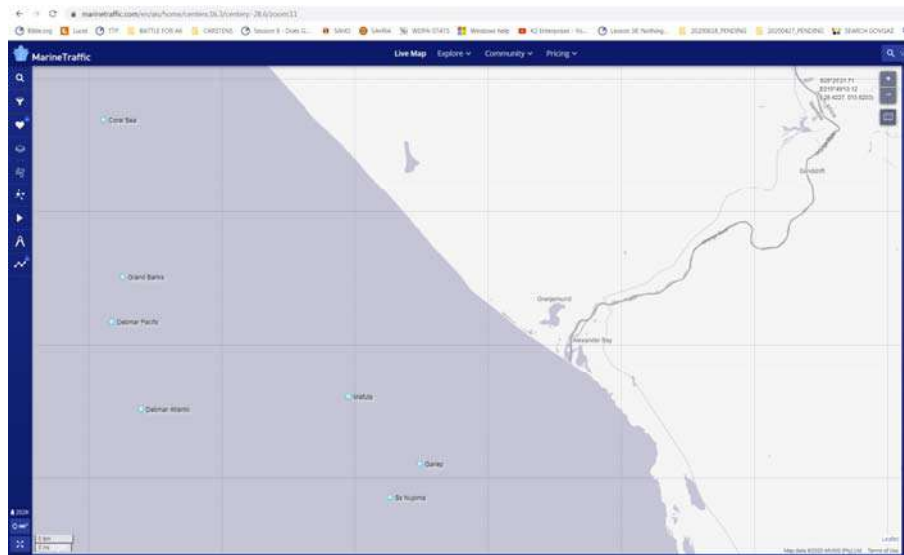
325.14.2. The kimberlite diamond pipes of the Kimberley diamond fields that gave up tonnes of diamonds and placed South Africa at the

centre of global diamond mining for many decades, are only small remnants of the original diamond pipes.

- 325.14.3. The original diamond pipes extended 1.4 km vertically and proportionally in the horizontal plane compared to what remains today. It is a geological fact that 1 400 m of the earth's surface has been removed by denudation from the region.
- 325.14.4. This process liberated every diamond that was trapped in the kimberlite host rock of the original volcanic pipes above the present-day surface elevation and released them into the westward flowing Orange River drainage system.
- 325.14.5. The late Dr John J. Gurney estimated that 3.5 billion carats of diamonds started the epic journey from Kimberley to the mouth of the Orange River, a process that destroyed the low grade diamonds and released about 1.5 billion carats of 97% high grade gem quality diamonds into the sea.
- 325.14.6. The proof of this geological pudding can be found by logging onto the AIS (automatic identification system) portal indicated in the screengrab below. The seven Namibian diamond vessels shown (as of 23 July 2020) are producing about 1.5 million carats of gem diamonds a year, worth approximately R12.5 billion.
- 325.14.7. The Namibians are investing heavily into the development of their side of the Orange River Delta diamond field, training and employing hundreds of their citizens in advanced technologies and professions, making money hand over fist, ordering new multi-billion-rand state of the art mining vessels every three years and generally making us look like backward garimpeiros.
- 325.14.8. What you will notice from the image is that these vessels are all mining a considerable distance from the shore because the sediment thickness increases to the east before it again thins out at the coast, and the tooling is at risk when mining into mud thicker than four metres.
- 325.14.9. What you will also notice from this image is that there is no mining activity south of the provisional maritime boundary, simply because of the destructive state capture dynamics I mentioned above. While the Namibians have been quietly putting all their energy into developing their half of this resource we have been



putting all our energy into either promoting state capture or combatting it.



In conclusion, the EAC and I strongly disagree with Allan’s advice to Government that the marine mineral rights must be “sold off” as they are unquestionably strategic national assets and arguably priceless.

325.14.10. We just as strongly disagree that we need yet another “panel of experts, all of whom already exist, to properly oversee the future of Alexkor, and to unlock the greater long-term potential of Northern Namaqualand”.

325.14.11. What we need is for the shallow, mid and deep-water miners to sit down with the Department of Public Enterprises, Alexkor, local government and the authentic representatives of the Richtersveld Community and negotiate a way out of the disastrous PSJV agreement and into a new, equitable and sustainable long term marine mining industry development plan.

**THE SUSPENSION OF CARSTENS**

326. My misgivings and concerns about the activities of Alexkor have been to some extent vindicated by the suspension of Carstens on 31 January 2020 [**GC153**]. In his letter of suspension, Carstens is accused of, *inter alia*, gross negligence in that he:

326.1. *“failed to act objectively and in the interest of the PSJV by ignoring recommendations by the Bid Evaluation Committee in respect of the award under tender 2/2017”; and*

- 326.2. neglected to take into account Regulations in respect of the appointment of Service Providers in relation to the minimum requirements for tenders. One of which being the award of tender 3/2014 to Scarlet Sky Investments (Pty) Ltd (SSI); and
- 326.3. failed to take relevant and necessary action against SSI for breaching the marketing and sales agreement by not selling 10% of the value of rough diamonds in terms of *the Marketing, Value and Beneficiation Agreements*".
327. Significantly, Carstens was also accused of gross misconduct in that he *"failed to monitor the contract between the PSJV and SSI and thereby allowing the underselling of rough diamonds to Joe Gaddies in contravention with section 8 of the Diamond Export Levy Act"*.
328. He is further accused of his failure to demonstrate acceptable conduct in that *"he failed, without proper cause to perform your fiduciary duties with proper care required from you by:*
- 328.1. *"Placing the PSJV at risk by not ensuring that 15% in value of the rough diamonds were sold for beneficiation; and*
- 328.2. *Expressing bias by his failure to disclose information of buyers and misrepresenting SSI as a buyer"*.

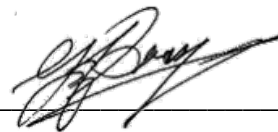
## CONCLUSION

329. In light of the foregoing, I believe that I can credibly claim that Alexkor was captured by the Gupta family; first, by rotating the Board and repurposing Alexkor for diversification into the coal industry and secondly, in the form of SSI, when they were allowed to physically take control of Alexander Bay's diamond value chain.
330. The direct costs as a result of the capture of the marine diamond industry is quantified by the technical analysis of the diamond sales referred to above. It appears from the financial results which have been published by Alexkor that during the period from 2000 to 2019, Alexkor has lost in the order of at least R3.3 billion. This is a direct loss suffered by Alexkor and RMC, as well as the taxpayers of South Africa.
331. This figure has been conservatively estimated as the statistics exclude the data for high value special diamonds because these prices are only disclosed to the

A handwritten signature in black ink, consisting of several loops and a vertical stroke, located in the bottom right corner of the page.

producers thereof in their broker's notes and are therefore, not currently available for analysis [GC154].

332. To illustrate my point, one need only study an Alexkor broker's note and compare the difference in prices between large special stones of 6.8 carats and above and the mixed stones smaller than 6.8 carats.
333. When the special stones are included in the calculation of the average per carat selling price, the value is significantly higher, as illustrated in the example of a broker's note for diamonds produced by myself and my team in March 2015 and the accompanying average prices as per TABLE-A and TABLE-B [GC155].
334. The indirect costs suffered as a result of the Alexkor capture project are equally catastrophic, but are harder to quantify. They are, however, equally as real, some of which are:
- 334.1. the collapse of the local marine diamond mining industry;
- 334.2. the loss of many small businesses in the diamond mining sector; and
- 334.3. the collapse of the economy in the Richtersveld region, including the loss of the livelihoods of the marine mining contractors.



GAVIN JOHN CRAYTHORNE

I hereby certify that on 17 July 2020, in my presence at Alexander Bay

GAVIN JOHN CRAYTHORNE 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.



Dana van Wyngaadt - 0432173-1

COMMISSIONER OF OATHS  
 FULL NAME: DANA VAN WYNGAADT  
 DESIGNATION: CAPTAIN - SAPS  
 AREA: ALEXANDER BAY