

AFFIDAVIT

I, the undersigned

JAKOB JAN DEKKER

do hereby state under oath that:

1.

I am an adult male and a senior investigator at the Commission of Inquiry into Allegations of State Capture ("*The Commission*").

2.

The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief, both true and correct.

3.

I am duly authorised to depose to this affidavit by virtue of my position as an investigator at the Commission.

4.

4.1. I am a qualified Chartered Accountant registered with SAICA, a Registered Auditor registered with IRBA and an associate member of the ICFP.

4.2. During my tertiary education, I completed the following degrees and diplomas:

4.2.1. BCom (Chartered Accountancy) – PU for CHE

4.2.2. Hons BCom (Accountancy) – PU for CHE

4.2.3. Certificate in Theoretical Accountancy – UNISA

4.2.4. Diploma in Forensic Investigations – UJ

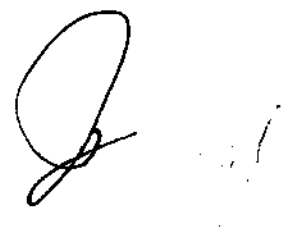
4.2.5. MPhil (Fraud Risk Management) – UP



- 4.3. I have been practising as a Forensic Accountant and Investigator for the past eleven years.

5.

- 5.1. I was requested by the Commission to perform an analysis of the business and trading activities of Alexkor SOC Ltd, with registration number 1992/006368/30 ("*Alexkor*"), the Pooling and Sharing Joint Venture ("**PSJV**"), between Alexkor and the Richtersveld Mining Company (Pty) Ltd, with registration number 2006/034807/07 ("**RMC**"), and Scarlett Sky Investments 60 (Pty) Ltd ("**SSI**"), with registration number 2009/002967/07.
- 5.2. I am informed that the business relationship between these entities has been set out in the submission made by Gavin Craythorne and is accordingly not set out fully herein. Suffice to state that in terms of the sole marketing and selling agreements concluded between the PSJV and SSI, SSI was afforded the soled and exclusive right to market and sell 100% of the diamonds produced by the PSJV.
- 5.3. The tasks I was requested to carry out were to:
- 5.3.1. gain an understanding of the process of marketing and selling of diamonds produced by Alexkor and to identify shortcomings in this process, if any; and
 - 5.3.2. verify and evaluate the findings made by Gobodo Forensic and Investigative Accounting (Pty) Ltd, ("**Gobodo**"), in its report titled "*Forensic Accounting Investigation into the relationship between Alexkor, Alexkor PSJV and its Marine Mining Contractors*", ("**the Gobodo Report**"), with specific reference to section 14 of the Gobodo Report under the heading, "*Diamond valuation, pricing and purchases*," in light of the further relevant documentation obtained by the Commission through its investigative powers. This additional information obtained by the



Commission includes the following:

- 5.3.2.1. the monthly registers compiled in terms of Section 57 of the Diamonds Act, 1986, as amended (“the Diamonds Act”), (“the monthly registers”) for the PSJV for the period January 2015 to December 2019 [**Annexure JD1**];
 - 5.3.2.2. the monthly registers compiled in terms of Section 57 of the Diamonds Act for SSI, later known as Alexander Bay Diamond Company (Pty) Ltd, (“ABDC”), for the period March 2015 to June 2019, and August 2019 to November 2019 [**Annexure JD2**]; and
 - 5.3.2.3. the monthly registers compiled in terms of Section 57 of the Diamonds Act for Daniel Nathan Trading CC, (“DNT”) for the period February 2014 to March 2019, May 2019 and September 2019 to December 2019 (**Annexure JD3**).
- 5.3.3. compare the monthly registers of PSJV to the Annual Financial Statements of Alexkor for the 2016, 2017, 2018 and 2019 financial years and determine if the revenue incorporated by Alexkor from the business activities of the PSJV was consistent with the information relating to the sale of diamonds for the respective financial years;
 - 5.3.4. analyse additional information obtained by the Commission regarding parcel 248, and to compare my findings against the information contained in the Gobodo report;
 - 5.3.5. evaluate if the procurement process that was followed with regard to parcel 248 that was analysed by Gobodo in light of the information provided to Gobodo and the additional information provided to the Commission to determine whether this was consistent with the procurement process described by Gobodo and the findings made by




them in their report.

6.

6.1. For the purpose of conducting the aforementioned forensic investigation, I was provided with the following information:

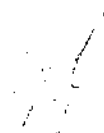

- 6.1.1. The Gobodo report with annexures and exhibits. Where necessary, I also referenced to this affidavit relevant documents obtained from the Gobodo report's annexures and exhibits separately;
- 6.1.2. A report issued by James Allen titled "*Alexkor / Richtersveld Mining Company Pooling and Sharing Joint Venture*", dated 29 May 2019 ("**the Allen Report**");
- 6.1.3. A report issued by Jennifer Jentle during September 2019 titled "*Observations and Concerns raised on current Marketing and Sales Process*" ("**the Jentle Report**");
- 6.1.4. The monthly registers referred to in paragraph 5.1.2 above relating to the PSJV, SSI and DNT;
- 6.1.5. The Annual Financial Statements of Alexkor for the 2016, 2017, 2018 and 2019 financial years. Where reference is made to the specific extracts from these financial statements, the extracts are referenced individually as annexures; and
- 6.1.6. Exhibit 65 of the Gobodo report, dealing with parcel 248, the May 2016 monthly register of the PSJV dealing with the declared information following the sale of parcel 248, and the diamond contractor, Ocean Diggers' invoice dated 31 March 2015 for diamonds that were extracted and sold as part of parcel 248.

A large, stylized handwritten signature in black ink is positioned on the left side of the page. To its right, there are smaller, less distinct handwritten initials or marks.

7.

7.1. My understanding of the process involved in the selling and marketing of the diamonds produced by Alexkor is based on the Gobodo, Allen and Jentle reports and appears to be as follows:

- 7.1.1. The PSJV is a joint venture between Alexkor and the RMC, with Alexkor having a 51% interest and the RMC 49% interest therein;
- 7.1.2. All diamonds produced by Alexkor and that RMC pursuant to both its sea-based and land-based operations, are provided to the PSJV for marketing and selling;
- 7.1.3. The PSJV entered into agreements with SSI to market, value and sell the marine diamonds produced by Alexkor and the land diamonds produced by RMC. The first agreement [**Annexure JD4**] was signed on 4 March 2015 and the second [**Annexure JD5**] on 6 October 2016.
- 7.1.4. It was contractually agreed that all the diamonds produced by the PSJV were to be marketed and sold by SSI at the highest prices obtainable.
- 7.1.5. SSI was registered on 16 February 2009.
- 7.1.6. As per the CIPC search conducted by Gobodo on 6 September 2019, SSI has one director, Daniel Mark Nathan ("**Daniel Nathan**"), identity number 7402285156080, appointed on 20 November 2014. As at 20 April 2020 Daniel Nathan was still an active director [**Annexure JD27**].
- 7.1.7. The previous directors of SSI were:
 - 7.1.7.1. Christiaan Gouws, ID 5908285147087, appointed on 16 February 2009 and who resigned on 2 November 2011;
 - 7.1.7.2. Hazel Moira Ammann, ID 8105060026084, appointed on 2



November 2011 and who resigned 20 November 2014;

7.1.7.3. Kubentheran Moodley, ID 7108075115083, appointed on 20 November 2014 and who resigned on 5 November 2015; and

7.1.7.4. Kasavan Govender, ID 6912135221083, appointed on 4 November 2015, and who resigned on 4 November 2016;



7.1.8. The CIPC search conducted by Gobodo reveals that the name of SSI was changed on 11 September 2018 to *Alexander Bay Diamond Company* ("ABDC").

7.1.9. The diamonds were sold from the premises of SSI, situated at 1 River Road, Houghton, Johannesburg. These are the same offices used by Danial Nathan's company, DNT.

7.1.10. Prior to the dispatch of diamonds by the PSJV to SSI, the quantity of diamonds (carats) to be dispatched were determined by an inexperienced valuator, Ms Adams, who calculated the carat weight of the diamonds, from which she estimated the value of diamonds sent to SSI for insurance purposes. Gobodo concluded that Ms Adams did not take into consideration the colour, clarity and cut of the diamonds, which are crucial elements in ascertaining the value of the diamonds produced.

7.1.11. The value of a diamond is determined by four factors: the colour, clarity cut and carat of the diamond. The colour, clarity and cut are factors of quality of the diamond and the carat is the quantity or weight of a diamond. The value of a diamond is influenced by all four factors, i.e. a diamond of better colour, clarity and cut would obtain a higher value than a diamond with a lesser colour, clarity and cut of the same size or carat.

7.1.12. On receipt of the diamonds by SSI, processes were in place to ensure that the total weight in carats dispatched from the mine by the PSJV



coincided with the weight in carats received by SSI. There was no similar mechanism to determine that the value of the diamonds dispatched, in terms of carat, colour, clarity and cut, were the same as those received.

7.1.13. This is because it is only on receipt of the diamonds in Johannesburg by SSI, that the diamonds undergo a process of cleaning. It is only after the diamonds have been cleaned that the diamonds are valued by Daniel Nathan (diamonds larger than 2.5 carat / 8 grams) and Dale Horne, appointed by SSI, for the smaller diamonds. There is no independent valuation by a person representing the PSJV at this stage, leaving the determination of value solely to Daniel Nathan or a representative appointed by SSI.

7.1.14. Following cleaning and valuation, the diamonds are sorted for sale according to the contract which requires that:

7.1.14.1. 10% are set aside for sale to the State Diamond Trader ("SDT");

7.1.14.2. 5% are made available for beneficiation purposes (5%); and


7.1.14.3. the remainder (85%) be set aside for sale in a closed tender process.

7.1.15. The following process is followed with regard to the sales to the SDT:

7.1.15.1. A selection of diamonds, 10% of run of mine production, is prepared by Daniel Nathan on behalf of SSI for inspection by the SDT.

7.1.15.2. A process of price negotiations follows between SSI and the SDT until a price is agreed between the two parties.

7.1.15.3. Following agreement of price and determination of exchange



rates, an invoice is generated by the PSJV to the SDT. On payment of the invoiced amount, the diamonds are released to the SDT.

7.1.15.4. During the process, the Government Diamond Valuer values the diamonds offered to the SDT. However, Allen concluded this value does not determine the negotiated price but is used to ensure that the SDT did not overpay for the diamonds.

7.1.16. In selecting the diamonds to be sold for beneficiation purposes (cutting and polishing), the following process is followed:

7.1.16.1. A selection of 5% diamonds is prepared by SSI for beneficiation purposes. Daniel Nathan is personally involved in this process and diamonds with very few imperfections are selected for beneficiation;

7.1.16.2. Daniel Nathan's company, DNT, buys the diamonds selected by him for beneficiation at the average closed tender price paid for each category the diamonds were selected from in the relevant parcel.

7.1.16.3. The beneficiation diamonds are then sent to Joe Gaddie Diamonds for planning, cutting, grading and polishing.

7.1.16.4. The gross profit, calculated as the selling price of the beneficiated diamonds less the price of the rough diamonds purchased, is then split, with 70% being allocated to DNT and 30% to the PSJV.

7.1.16.5. The purchasers of the beneficiated diamonds are foreign parties.

7.1.17. The remaining 85% of the diamonds are sold in a closed tender process




by SSI, where the process followed is as follows:

- 7.1.17.1. The remaining diamonds to be sold via the closed tender process are sorted into smaller parcels by Daniel Nathan;
- 7.1.17.2. Potential qualifying bidders are offered scheduled opportunities to view the diamonds and place bids, using a system named the "*fantasy system*";
- 7.1.17.3. As per Allen's findings, although the bids are closed, the top three bids for each parcel are visible prior to closing at the offices of DNT;
- 7.1.17.4. After payment by the winning bidder for each parcel, the diamonds are collected by or couriered to the winning bidder.

8.

- 8.1. In my view, the process utilised by the PSJV and SSI for the selling and marketing of diamonds is unlawful in that:
 - 8.1.1. The PSJV sells all of its diamonds to SSI in terms of its agreement with SSI, who then on-sells them as aforementioned. SSI, however, is not permitted to sell the diamonds as it has at no time been the holder of a diamond trader's license. This fact is confirmed in the affidavit of Martinus Mamphenyane Mononela ("**Monomela**") from the South African Diamond and Precious Metal Regulator ("**the Regulator**") [**Annexure JD24**].
 - 8.1.2. In selling diamonds to SSI, the PSJV thus contravenes section 21 of the Diamonds Act, which provides that the dealing in unpolished diamonds is restricted to those who have the requisite diamond licence.
 - 8.1.3. SSI, by purchasing diamonds from the PSJV, contravenes sections 18 (which prohibits the possession of unpolished diamonds), section 20



Handwritten signature

(which prohibits the purchasing of unpolished diamonds) and section 21 (which restricts the dealing in unpolished diamonds) of the Diamonds Act.

- 8.1.4. In the circumstances, all sales concluded by the PSJV to SSI constitute a contravention of sections 18 (possession of unpolished diamonds), section 19 (sale of unpolished diamonds) and section 20 (purchase of unpolished diamonds) of the Diamonds Act.
- 8.1.5. I noted from the Allen report that Allen failed to identify the fact that SSI did not have a license to trade diamonds, and further that Allen did not comment at all on the licenses held by parties involved in selling the Alexkor PSJV diamonds.
- 8.2. Furthermore, it would appear that the sales have been effected pursuant to a fraudulent misrepresentation made by Daniel Nathan to the South African Diamond and Precious Metal Regulator ("**the Regulator**"):
- 8.2.1. From the affidavit and related annexures provided to the Commission by Mononela from the Regulator [**Annexure JD24**], it was noticed that ABDC had been issued with a diamond trading house licence, which had an effective date of 6 March 2015 and expiry date of 5 March 2020. This is suspicious as SSI applied to the CIPC for a name change to ABDC, which was only approved and effective from 11 September 2019. Mononela confirms in his affidavit that SSI never applied for, nor was issued with, a diamond trading licence.
- 8.2.2. Based on these facts, ABDC was not entitled to seek a diamond trading licence in its name by virtue of the change of its name from SSI to ABDC, as SSI never was a licence holder; it was obliged to apply for a new diamond trading licence in its own name;
- 8.2.3. From the application dated 22 January 2019 submitted by Daniel Nathan for a name change of the licence holder which was provided to the



Commission by the Regulator [**Annexure JD 25**], it is apparent that the application was submitted in the name of DNT, which had a trading licence but did not change its name to ABDC, SSI did.

- 8.2.4. However, in ABDC's application signed by Daniel Nathan, he informed the Regulator that the name of his own company, DNT, had been changed to ABDC, which was not true. It was on the basis of this misrepresentation made by him that the Regulator changed the licensee (DNT)'s name to ABDC. The Regulator issued a name change endorsement on 15 February 2019 from DNT to ABDC, effective from 6 March 2015 and valid until 5 March 2020, on the basis that the same legal entity, which it was told was DNT, had been granted a licence from this date.
- 8.2.5. In this manner, Daniel Nathan acquired a back-dated license for ABDC on the pretext of a name change when no licence was ever conferred to or in the name of SSI and without having to satisfy the rigorous requirements in the Diamonds Act for an entity to acquire a diamond trading licence.
- 8.2.6. The only reasonable inference to draw from these facts is that Daniel Nathan intentionally misled the Regulator in an attempt to obtain a license in the name of ABDC, back dated to 6 March 2015, in order to legalise the diamond sales concluded by it, both under its previous name, SSI, and its current name, ABDC. I am advised that this constitutes an offence in terms of section 86 of the Diamonds Act.
- 8.2.7. Because this licence was wrongfully obtained, I am advised that all the diamond sales concluded by SSI and ABDC pursuant to its exclusive and marketing sales agreement with the PSJV would be unlawful and constitute an offence in terms of sections 82 to 85 of the Diamonds Act. The validity of the consequent sales would also be in question.
- 8.2.8. It is possible that the provision of a licence in the name of ABDC

A handwritten signature in black ink, consisting of a large, stylized capital letter 'Q' followed by a smaller, cursive flourish.

purportedly pursuant to a name change of the licence holder (DNT) was done in collusion with persons at the Regulator's office as, attached to DNT's application for a name change to ABDC, was a copy of the CIPC document reflecting that SSI, and not DNT, had changed its name to ACDC. Notwithstanding this, the Regulator, either wrongfully or negligently, issued a back dated diamond licence to ABDC on the basis that DNT, which had a valid licence, had changed its name to ABDC.

- 8.2.9. The effect of the Regulator issuing the back dated diamond trading licence to ABDC creates the wrongful impression that SSI, now called ABDC, had a diamond trading licence from when the first marketing and sales contract was concluded by it with the PSJV. The Commission's investigators are engaging with the Regulator's executive management in relation to this.

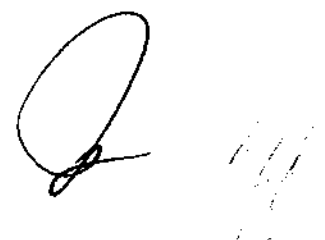
9.

- 9.1. These is not the only major difficulties with the process followed to effect the sale of the diamonds produced by the PSJV. Further material difficulties in determining the value of the diamonds sold by SSI/ABDC detected are as follows:

9.2. Valuation of the diamonds:

- 9.2.1. The PSJV dispatches the produced diamonds to SSI with only knowledge of the carat weight of the dispatched diamonds. However, as aforementioned, carat weight is only one factor in determining the value of a diamond and a proper valuation of diamonds would include the quality factors of colour, clarity and cut. As the PSJV does not conduct a proper valuation of diamonds prior to dispatching the diamonds, an accurate value of diamonds produced is not known to it. This means that it would not be able to detect any loss of value pursuant to the sales and marketing process conducted by SSI.

- 9.2.2. On receipt of diamonds by SSI, Daniel Nathan is left to value the diamonds



received. As the diamonds are not properly valued prior to their dispatch from the PSJV, there is a real risk that the diamonds may be undervalued by Daniel Nathan and thus, the PSJV and the mining contractors (who are paid on the basis of the value of the diamonds produced by them) are being paid less than that to which they are properly entitled.

9.2.3. This is the nub of the complaint by Gavin Craythorne, who represents a large contingent of contractors and has made a submission to the Commission.

9.3. **The sale of the diamonds to the State Diamond Trader:**

9.3.1. The SDT is a national government business enterprise under schedule 3B of the Public Finance Management Act. This means that the State Diamond Trader is a juristic person under the ownership and control of the national executive which has been assigned financial and operational authority to carry on a business activity. Its principal business is to acquire rough diamonds from diamond producers to sell to local beneficiators (persons or entities that are entitled to cut and polish rough diamonds). Its sole shareholder is the Government of the Republic of South Africa, represented by the Minister of Mineral Resources, who exercises executive authority on behalf of the government. It is financed fully through the margins achieved on the sale of rough diamonds, and not from the National Revenue Fund.

9.3.2. The PSJV made a misrepresentation to the SDT relating to the party responsible for selling the diamonds to the SDT. In a letter dated 9 March 2015 [**Annexure JD26**], Mr MJ Carstens ("**Carstens**"), the CEO of the PSJV, informed the SDT that DNT would facilitate the buying and selling of diamonds on behalf of the PSJV. There was no mention of the fact that the party in fact entitled to market and sell diamonds to the SDT was SSI.

9.3.3. In terms of the agreement between the PSJV and SSI, SSI was granted the


A handwritten signature in black ink, appearing to be 'J. M. Carstens', is written over a faint, illegible stamp or watermark.

exclusive right to market and sell all of the diamonds produced, including the portion which it is obliged to make available to the SDT. The PSJV had no mandate to appoint DNT to facilitate sales on behalf of SSI to the SDT or to act as its agent. As SSI had no license and was the only party authorised to sell diamonds to the SDT, the SDT has unknowingly been buying diamonds from an unlicensed dealer.

- 9.3.4. On 1 September 2016, Carstens was appointed Chairperson of the SDT by Mr Mosebenzi J Zwane (“Zwane”), the Minister of Mineral Resources, whilst still in his position as CEO of the PSJV and thus, had a fundamental conflict of interest in agreeing the prices of the diamonds offered by the PSJV, through SSI, to the SDT.
- 9.3.5. Daniel Nathan was further conflicted in the process in that he was responsible, not only for the selection of the diamonds to be offered to the SDT, but also for negotiating the price of the diamonds to be sold to the SDT.
- 9.3.6. Jentle concluded in her report that the selling prices agreed between Daniel Nathan and the SDT were consistently below market values to the benefit of the SDT and to the detriment of the PSJV. In addition, she found that the cherry picking by Daniel Nathan of high value diamonds for purposes of beneficiation (and to his company DNT as set out below), meant that the high value diamonds were not available for sale on closed tender. This obviously reduced the overall final parcel prices for diamonds sold on closed tender, which constituted 85% of the diamonds sold. Both of these practises resulted in the PSJV not obtaining the best return for the diamonds it sold to the SDT and on closed tender.

9.4. The sale of diamonds for beneficiation purposes:

- 9.4.1. Daniel Nathan was involved as seller, in his capacity as a director of SSI,



in the selection of diamonds to be sold for beneficiation purposes, and as purchaser of the selected diamonds, in his capacity as the sole member of DNT. Therefore, he was equally conflicted when acquiring diamonds from SSI on behalf of DNT.

9.4.2. Jenkins concluded, that the best diamonds with very few imperfections were cherry picked by Daniel Nathan for purposes of beneficiation, prejudicing the PSJV as only average prices were paid for each category of diamonds purchased by DNT. In this way, he was able to ensure that DNT purchased top quality diamonds at average prices to the detriment of the PSJV.

9.4.3. DNT, furthermore, purchased diamonds for beneficiation from an entity which Daniel Nathan knew was not licenced to sell diamonds to it, which constituted an offence.

9.5. The sale of the remaining diamonds on closed tender:

9.5.1. All the buyers of the remaining diamonds purchased diamonds from an unlicensed dealer as the remaining 85% of the diamonds sold on closed tender were sold using the licence of DNT, which was not permissible.

9.5.2. In addition, the top three bids were visible to Daniel Nathan, and thus to DNT, prior to the closing of the bid. The process was, therefore, not a closed bidding process as the bidding prices were known to DNT, who could thus share this information with bidders and influence the outcome of the closed bidding process.

9.5.3. Furthermore, Daniel Nathan, being in a position of knowing the top three bidding prices and the true value of the diamonds in the parcel sold, having conducted the valuation himself as a director of SSI, was, therefore, in a position to advise potential bidders of high value diamonds being sold at below market prices. This information could be used to influence the



outcome of the closed bidding process.

9.5.4. Jenkins ultimately concluded that the marketing of diamonds by SSI was not aggressive, resulting in the best prices not being obtained for the diamonds sold by it.

9.6. Analysis of the monthly registers required in terms of Section 57 of the Diamonds Act, 1986, as amended, for the PSJV:

9.7. I analysed Information obtained from the PSJV monthly registers for the period from May 2015 to July 2019, the same period for which parcel information was provided to Gobodo.

9.8. It was noted that each monthly register contained two sections, firstly a section for production of diamonds, and secondly, for the sale, disposal and export of diamonds during the month.

9.9. I did not have any information to verify the accuracy of the diamonds produced during the months as indicated in the registers and did not conduct any further procedures relating to the production of diamonds.

9.10. I did, however, note from the monthly registers relating to the production of diamonds, that only the mass in carats of diamonds produced were recorded; no values were indicated. This confirms that the PSJV did not value the diamonds at the time of production. By not valuing the diamonds produced, the PSJV was inherently at risk of not knowing if the valuations by SSI was undervalued or not. Although in the second contract SSI was not the sole arbiter of the value at which it acquired diamonds from the PSJV, and was obliged to propose a price for the diamonds produced which had to be agreed by the PSJV, without knowledge of the true value of the diamonds produced, the PSJV was not in a position to evaluate the price proposals being made to it by SSI.

9.11. Further risk of loss as a result of not accurately determining the value of the



diamonds before they were sent to SSI includes:

9.11.1. the PSJV not being in a position to properly value the diamonds in submitting an insurance claim, should the diamonds be lost or stolen;

9.11.2. the PSJV being at risk of diamonds being produced substituted with lesser value diamonds of the same carat weight, but of inferior quality, prior to their valuation; provided the carat weight of the diamonds substituted was the same as that of those produced, the PSJV was not in a position to detect if a substitution of its diamonds prior to valuation was taking place.

9.12. The PSJV, thus, had no control over the profitability of its own business as it relinquished control of the valuation of its key asset to an outside party.

9.13. I also noted, with regard to the diamonds reflected in the register as having been sold, disposed of or exported, that the following information was reflected in the registers:

9.13.1. the date of the transaction;

9.13.2. the purchasers or consignees;

9.13.3. the carats purchased by each purchaser or consignee; and

9.13.4. the value of the diamonds purchased by each purchaser or consignee.

9.14. My analysis of the aforementioned sales information contained in the Registers for the period May 2015 to July 2019, which were not available to Gobodo, is reflected in **Annexure JD6**. This is the same period analysed by Gobodo.

9.15. My expectation prior to conducting the analyses was that the PSJV would sell 100% of diamonds produced to SSI, as stipulated in section 5 of both the first and second agreements between the PSJV and SSI. The first contract stated the following:

A handwritten signature in black ink, consisting of a large, stylized letter 'Q' followed by a smaller, less distinct mark.

"5.1 It is recorded that the PSJV shall deliver to SSI hundred percent (100%) of all diamonds produced by the land mining, beach mining and shallow mining contractors as clearly stipulated in RFP 03/2014 (the "Supply")."

The second contract stated that:

"5.1 It is recorder that the PSJV shall deliver to SSI hundred percent (100%) of all diamonds produced within the land mining and marine mining concessions referred to in 3.1.15 above ("the Supply")."

Both the first and second contracts included the following clause:

"5.2 For the avoidance of doubt, this shall include the obligatory ten percent (10%) production that is required to be offered to the State Diamond Trader as required by the Diamond Act 56 of 1986."

- 9.16. The 10% SDT portion would therefore be included in the total sales by the PSJV to SSI.
- 9.17. Both the first and the second agreement, thus, left no option for the PSJV but to sell all diamonds produced by it to SSI.
- 9.18. From the sales analysis conducted by me, it was noted that the total sales declared by the PSJV during this period was 327 541.73 carats, with a value of R2 003 779 205.42. However, not all of the sales were effected to SSI. The following purchasers or consignees were recorded as purchasing or acquiring diamonds from the PSJV in terms of volume (carats) and value (rand):
- 9.18.1. The SDT – 32 657.24 carats, R137 707 446.59;
 - 9.18.2. SSI – 79 018.92 carats, R634 919 431.74;
 - 9.18.3. DNT – 177 059.93 carats, R1 118 350 585.21;



9.18.4. Anthony Peter Rough Diamond Dealer – 12 330.41 carats, R47 653 890.51; and

9.18.5. Blue Cloud Investments 210 (Pty) Ltd – 26 475.23 carats, R65 147 851.37.

9.19. The aforementioned sales by the PSJV to SSI were sales to an unlicensed diamond trader and were therefore in contravention of section 21 (which restricts the dealing in unpolished diamonds) of the Diamonds Act.

9.20. The sales to the following parties were also contrary to the express terms of the agreements between the PSJV and SSI and were, therefor, irregular:

9.20.1. In terms of the agreements, the PSJV was not permitted to sell diamonds directly to the SDT; all diamonds were to be sold by the PSJV to SSI which would then facilitate the sales to the SDT. As noted earlier, Carstens issued a letter on 9 March 2015 on behalf of the PSJV, misinforming the SDT that it was DNT that was offering the diamonds for sale to the SDT, when it was in fact purchasing diamonds from the unlicensed trader, SSI;

9.20.2. All the sales to DNT, Anthony Peter Rough Diamond Trader and Blue Cloud Investments (210) Pty Ltd were contrary to the contracts between the PSJV and SSI as all diamonds were to be sold by the PSJV to SSI and it could not sell directly to another entity.

9.20.3. If DNT acted as consignee to SSI, the sales would be unlawful as SSI was not licensed;

9.21. The combined total sales to SSI and DNT was calculated as 256 078.85 carats, with a total value of R1 753 270 016.95.

9.22. The total sales of diamonds as per the monthly PSJV registers differed from the information per sales parcel analysed for the same period by Gobodo, with the



46

monthly registers indicating total sales of 133 459.64 carats, with a value of R476 975 284.23 more than the parcel information provided to and analysed by Gobodo. The reasons for the differences between the parcel information disclosed to Gobodo and that appearing in the monthly registers are not known to me.

9.23. I analysed this difference of volume and value on a month to month basis and identified the specific months in which differences existed. This is reflected in the table prepared by me annexed as **Annexure JD7**.

9.24. I noticed differences for 36 of the 51 months. Some differences, on face value, were timing differences.

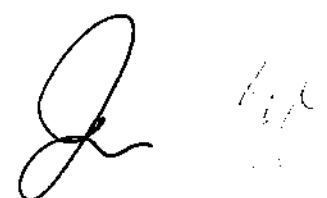
9.25. I will in subsequent paragraphs attempt to explain, at a high level, the categories of difference noted by me:

9.25.1. The first category of difference noted was that of sales not disclosed to Gobodo, consisting of sales to Anthony Peter Rough Diamond Dealer – 12 330.41 carats, valued at R47 653 890.51, and Blue Cloud Investments 210 (Pty) Ltd – 26 475.23 carats, valued at R65 147 851.37. The combined sales thus not disclosed to Gobodo, were 38 805.64 carats, with a value of R112 801 741.88.

9.25.2. I noticed this from a comparison of **Annexure JD6** and **Annexure JD7** during September 2016, which revealed that the difference in carats and rand value matched the sales to Anthony Peter Rough Diamond Dealer. Similarly, my comparison between the sales reflected during January 2017 precisely matched the sales to Blue Cloud Investments 210 (Pty) Ltd declared on the PSJV's monthly registers.

9.25.3. The second category of difference relates to sale of diamonds to the SDT.

9.25.4. Section 5 of both agreements contemplated that 100% of diamonds

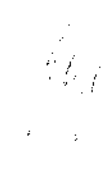

A large, stylized handwritten signature in black ink is positioned on the right side of the page. To its right, there are smaller, less distinct handwritten initials or marks.

produced by the PSJV would be sold to SSI, including the 10% SDT portion. In terms of section 7 of both contracts, SSI would then facilitate the inspection and selling of diamonds on behalf of the PSJV to the SDT.

- 9.25.5. The total sales to the SDT based on the PSJV monthly registers for the period May 2015 to July 2019 was 32 657.24 carats, with a value of R137 707 446.59, compared to the parcel information analysed by Gobodo, which indicated total sales to the SDT of 19 457.96 carats, with a value of R92 526 497.89. The reasons for the differences in the parcel information disclosed to Gobodo relating to the sales to the SDT and that reflected in the PSJV's registers are not known to me.
- 9.25.6. I analysed the difference of 13 199.28 carats, with a value of R45 180 948.70, by comparing the sales to the SDT on a monthly basis reflected in the table contained in **Annexure JD8**. It was found that the records of the SDT corresponded with the monthly registers submitted by the PSJV and it would therefore appear that Gobodo was not provided with the correct information relating to the sales to the SDT.
- 9.25.7. The third category of difference related to sales to SSI earmarked for the beneficiation process.
- 9.25.8. In section 8 of both agreements, provision is made for a portion of the diamonds to be earmarked for beneficiation:
- 9.25.8.1. The first agreement stipulated that the beneficiation order be 5% of the total value of diamonds produced;
- 9.25.8.2. The second agreement did not stipulate a fixed percentage for beneficiation and specified that SSI would select, in consultation with the PSJV, which diamonds would be selected for beneficiation.



- 9.25.9. Both agreements make provision for a portion of the gross profit realised, to be paid to the PSJV. It is my understanding that the contractors who produced the diamonds were entitled to receive additional payment relating to the beneficiation diamonds due to the contractual arrangement and partnership that exists between the PSJV and the Contractors.
- 9.25.10. The beneficiation portion sales were recorded on the monthly registers for SSI and the differences between the information reflected in the registers and that provided to Gobodo were identified. The parcel information provided to and analysed by Gobodo is reflected in **Annexure JD9**.
- 9.25.11. The total sales per the SSI monthly registers for the purposes of beneficiation was 2 947.32 carats, with a value of R49 424 775.98; the calculations done by Gobodo were based on information that the parcels contained of 2 218.01 carats with a value of R38 002 576.79. Sales of 729.31 carats, with a value of R11 422 199.19 by SSI for beneficiation were therefore not disclosed to Gobodo.
- 9.25.12. On taking into account the differences noted above, the relevant information pertaining to the sales of diamonds by the PSJV were not made available to Gobodo for the purposes of its investigation. This has resulted in Gobodo' s total carat and sale values (total sales) being understated.
- 9.25.13. Gobodo' s findings relating to total carats and value of diamonds sold to the SDT were, similarly understated:
- 9.25.13.1. Gobodo made a finding that 6.06% of value of diamonds produced by the PSJV were sold to the SDT. Based on the information contained in the PSJV monthly registers,



the percentage of value of diamonds sold was 6.87%.

9.25.13.2. If Gobodo had, had the information contained in the sales registers, Gobodo' s finding based on the percentage of value would remain materially unchanged;


9.25.13.3. However, the further amounts projected in Gobodo' s findings relating to sales to the SDT would change according to the sales volumes and values reflected in the registers and Gobodo' s projections were made on a lower base.

9.25.13.4. I noted that, based on the information provided to Gobodo, the carat volume sales to the SDT represented 10.03% of total sales by the PSJV. Based on the monthly registers, the carat volume sales to the SDT represented 9.97% of the total PSJV sales. Gobodo did not make a finding regarding the carat volume sales to the SDT. However, the volume percentages remained similar and in line with the requirements of the first and second agreements which required 10% of production to be sold to the SDT.

9.26. My analysis of the monthly registers produced in terms of Section 57 of the Diamonds Act for SSI revealed that:

9.26.1. The SSI monthly registers for the period March 2015 to June 2019 and August 2019 to November 2019 were received.

9.26.2. As no register was received for July 2019, the information for the period May 2015 to June 2019 were analysed and compared to the similar date range of information analysed by Gobodo for the purposes of comparison.

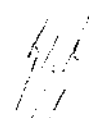
A large, stylized handwritten signature is written in black ink. To its right, there are smaller, less distinct handwritten initials or marks.

- 9.26.3. It was noted from the SSI monthly registers that several different names were entered as DTH Licence holders. The following names were noted:
- 9.26.3.1. Daniel Nathan Trading CC – May 2015.
 - 9.26.3.2. Daniel Nathan Trading House – December 2016.
 - 9.26.3.3. Alexander Bay Diamond Company Trading House (“ABDC”) – March 2019. Reference to ABDC was first made after the letter by Daniel Nathan requesting the licensing name change from DNT to ABD.
 - 9.26.3.4. Alexander Bay Diamond Company – April 2019.
- 9.26.4. All names indicated by SSI as the DTH license holder mislead the Regulator as based on the names used, the Regulator would not know that the diamonds were in fact traded by an unlicensed party, namely SSI.
- 9.26.5. As with the monthly registers analysed for the PSJV, the monthly SSI registers contained two sections, one relating to the diamonds purchased, imported or received and the second, regarding the diamonds sold or disposed of.
- 9.26.6. I noticed that for all the SSI monthly registers, the total mass in carats and rand values of diamonds purchased mostly coincided with the total mass in carats and rand values of diamonds sold, with only minor differences noted. This was surprising as with most open market buying and selling agreements, the purchase prices and selling prices would normally differ.
- 9.26.7. I compared the purchases declared by SSI on the SSI monthly registers to the diamonds disposed of by the PSJV as per the PSJV monthly
- Page **24** of **34**



registers. I would expect the volumes and the values to be consistent as the sales declared by one party should agree to the purchases by the other party.

- 9.26.8. The schedule of comparison of purchases by SSI from the PSJV and sales by the PSJV to SSI is annexed as **Annexure JD10**.
- 9.26.9. Contrary to my expectation, the PSJV recorded sales to SSI of 253 507.78 carats, with a value of R1 736 249 769.88, compared to purchases recorded by SSI from the PSJV of 253 311.63 carats, with a value of R1 731 113 508.54. Therefore, 196.15 carats with a value of R5 136 261.54 were sold according to the PSJV records which were not recorded as purchased by SSI.
- 9.26.10. In my view this difference should be further investigated to identify potential civil recoveries and/or criminal offences.
- 9.26.11. I wish to point out that numerous monthly differences were identified, as indicated in **Annexure JD10**, and that numerous differences in volume, value or both volume and value were noted. Although the cumulative effect of the differences identified were 196.15 carats, with a value of R5 136 261.54, each monthly difference should further be investigated and understood to ensure appropriate action.
- 9.26.12. Regarding the diamonds sold and disposed by SSI, I analysed and summarised per calendar year the information pertaining to the purchasers or consignee, the weight in carats and the value of the diamonds as recorded in the monthly registers:
- 9.26.12.1. During the period May 2015 to June 2016, diamonds were disposed of to 102 different parties as categorised per calendar year in **Annexure JD11**;



- 9.26.12.2. Included in the list of purchasers or consignees was that of Joe Gaddie, with the words "*beneficiation*" written next to his name. This concealed the fact that DNT in fact purchased the beneficiation diamonds and only thereafter, handed them over to Joe Gaddie for the beneficiation process.
- 9.26.12.3. It was noted that the SDT was not recorded on the monthly returns of SSI as a purchaser of diamonds. This was contrary to the agreements between the PSJV and SSI, as the agreements required that 100% of diamonds produced by the PSJV be sold to SSI, which in turn, was obliged to offer 10% of the diamonds to the SDT.
- 9.26.12.4. I noticed from the list of SSI clients, that the entity Blue Cloud Investments 210 (Pty) Ltd, that was earlier identified as purchasing directly from the PSJV, also purchased diamonds from SSI. However, the volumes and values recorded in the register of the PSJV differed from that recorded in SSI's records.
- 9.26.13. I also examined the monthly registers compiled in terms of Section 57 of the Diamonds Act, 1986 for DNT:
- 9.26.13.1. On perusal of the monthly registers I found no indication of any purchases made by DNT from the PSJV.
- 9.26.13.2. These monthly registers thus, would not affect the diamond sales by the PSJV and would not influence the findings made in the Gobodo report.



10.

- 10.1. I was provided with the Annual Financial Statements for Alexkor for the financial years 2016, 2017, 2018 and 2019. For purposes of clarity, a financial year for Alexkor was a 12-month period running from 1 April until 31 March the following year.
- 10.2. I evaluated the additional information obtained by the Commission and compared this to the annual financial statements of Alexkor and found the following:
- 10.3. According to the International Financial Reporting Standards (“**IFRS**”) regarding an entity’s share in a joint operation, the entity is obliged to incorporate its share of profits and losses and its share of assets and liabilities into its financial statements, with a disclosure note revealing all the assets and liabilities of the joint venture and the entire income and expenses of the joint operation.
- 10.4. From the financial statements for Alexkor for the 2016, 2017, 2018 and 2019 financial years, I noted the total revenues and expenses were disclosed for the PSJV as required by IFRS. Furthermore, the total balance of assets and liabilities of the PSJV were disclosed.
- 10.5. I did not have any information to test the accuracy disclosed regarding the expenses, assets and liabilities of the PSJV. Based on the PSJV’s monthly registers, the total revenue for each financial year could be calculated by adding the total sales value per month of that financial year.



10.6. Based on the disclosure notes for each of the aforementioned financial years, and with references to the annexures indicated, I compared the total revenue for the PSJV disclosed to the total revenue calculated for the same period based on the PSJV's monthly registers, as indicated in the table below:

Financial year	Alexkor Financial Statements disclosure of Alexkor PSJV revenue (R)	PSJV Revenue as per monthly registers (R)	Difference (R)	Annexure reference to Financial Statement disclosure note
2016	386 547 232	379 776 498	6 770 734	JD13
2017	757 510 249	751 829 494	5 680 755	JD14
2018	409 122 314	408 595 340	526 974	JD15
2019	411 571 514	410 376 989	1 194 525	JD16
Total	1 964 751 309	1 950 578 321	14 172 988	

10.7. From the table above, the revenue for the PSJV's operations disclosed in Alexkor's financial statements for the 2016, 2017, 2018 and 2019 financial statements correlated with the sales declared in the PSJV's monthly registers. Although a total difference of R14 172 988 was noted, this difference only equated to 0.72% of total sales as per the financial statements and it can be concluded that the revenue declared in the financial statements materially agreed to the sales of diamonds as per the PSJV's monthly registers.

11.

11.1. The Commission further used its extended powers to obtain documentation from the SDT relating to purchases made from SSI.

11.2. Amongst the information obtained were monthly summaries of the quantities of diamonds purchased, the date on which diamonds were received and the invoices received from the PSJV for payment [**Annexure JD17**].

11.3. This information and documentation were analysed to prepare a schedule of total

purchases by the SDT from the PSJV, based on the SDT information, and compared to the PSV's monthly registers which indicated sales to the SDT. The period analysed was from May 2015 to July 2019 [Annexure JD18].

- 11.4. From the summary and comparison performed, no difference in the value of sales were noted and the total reflected as purchased by the SDT per the SDT documentation, R137 707 446.59, was in line with the sales declared by the PSJV in the PSJV's monthly registers.
- 11.5. A total difference of 4.13 carats was noted consisting of 0.27 carats for March 2017 and 4.4 carats for August 2018. Compared to the total purchases by the SDT reflected in the SDT documentation, being 32 653.11 carats, these differences were not material.

12.

12.1. The Commission obtained information relating to parcel 248 which was analysed by Gobodo from the following sources:

12.1.1. The Gobodo report, Exhibit 65, [Annexure JD19];

12.1.2. The PSJV's monthly register for May 2015, [Annexure JD20];

12.1.3. SSI's monthly register for May 2015, [Annexure JD21];

12.1.4. An invoice from the contractor, Ocean Diggers [Annexure JD22].

12.2. My understanding of the process followed, from production of diamonds by the contractor, to the sale thereof, during 2015 is the following:

12.2.1. The contractor was tasked with producing or retrieving diamonds. In the case of the contractor, Ocean Diggers, gravel containing diamonds was produced by Ocean Diggers from its sea-based operations.

12.2.2. The gravel produced was then sorted at the PSJV's operational facilities

The page concludes with two handwritten marks in the bottom right corner. On the left is a large, stylized signature in black ink. To its right are smaller, less distinct initials or a stamp, also in black ink.

and the contractor was provided the opportunity to view the diamonds produced and was informed of the carat weight of individual diamonds larger than 6 carats, and the weight of all the smaller diamonds combined.

12.2.3. The PSJV would then make up a parcel containing the diamonds produced by all contractors. This parcel would include individual diamonds larger than 6 carats produced by each contractor and the so-called "*run of mine production*", for stones smaller than 6 carats by all contractors.

12.2.4. The parcel of diamonds would then be dispatched by the PSJV to SSI.

12.2.5. Following receipt by SSI, the diamonds would be valued by a valuator.

12.2.6. Following valuation, SSI would market and sell the diamonds in three streams as follows:

12.2.6.1. 10% of carat weight of diamonds would be allocated to the SDT;

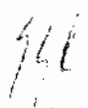
12.2.6.2. 5% of the total value of diamonds would be allocated for beneficiation, based on the valuation performed by Nathan; and

12.2.6.3. The remaining 85% of diamonds would be sold by SSI on closed tender.

12.3. The analysis of the information from the aforementioned sources revealed the following relating to parcel 248:

12.3.1. the total volume and value of diamonds sold relating to parcel 248 was 6 277.18 carats, with a value of R48 214 904.37. Of this:

12.3.1.1. 629.20 carats, with a value of R2 531 489.86, was sold to the



SDT;

12.3.1.2. 86.94 carats, with a value of R2 367 608.06, sold for beneficiation purposes; and

12.3.1.3. 5 561.02 carats, with a value of R43 315 806.45, was sold on closed tender;

12.3.2. Based on the PSJV's monthly register for May 2015, the total sales for the PSJV were:

12.3.2.1. 629.20 carats, with a value of R2 531 489.86 sold to the SDT;

12.3.2.2. 5 647.96 carats, with a value of R45 033 677.42, sold to SSI. The sales to SSI were the combined sales for beneficiation purposes and that to be sold on closed tender.

12.3.3. Based on the SSI monthly register for May 2015, the total purchases from the PSJV was 5 647.96 carats with a value of R43 315 806.45;

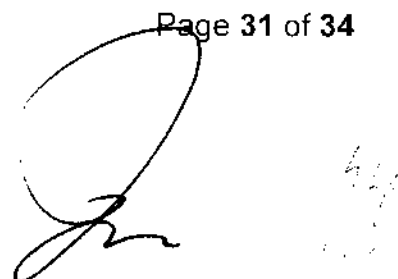
12.3.4. Based on the SSI monthly register for May 2015:

12.3.4.1. the total sales to different clients was 5 647.96 carats, with a value of R43 315 806.45; and

12.3.4.2. the sales for beneficiation was 86.94 carats. However, there was no value indicated in the monthly register for the beneficiation diamonds.

12.3.4.3. Therefore, total sales on closed tender was 5 561.02 carats at a value of R43 315 806.45.

12.4. I noted a difference in the total carat volume sold to SSI with regard to parcel 248 of 1 carat, when compared to the total sold to SSI as per the PSJV's monthly register and the total purchases from the PSJV based on the SSI monthly register.

A large, stylized handwritten signature in black ink is positioned over the page number. To its right, there are smaller, less distinct handwritten initials or marks.

I am, however, satisfied that the diamond sales for parcel 248 were recorded in the PSJV's and SSI's monthly registers for May 2015.

12.5. I then compared the information relating to identifiable single stones above 6 carats for diamonds produced and invoiced by Ocean Diggers on 31 March 2015 to the single stone diamonds above 6 carat information forming part of parcel 248:

12.5.1. I noticed that all 12 single stones invoiced by Ocean diggers in carat volume and USD\$ value was in line with the schedule named "*COULOURS ARE COMBINED AS ONE LOT AND SOLD TOGETHER,*" forming part of the parcel 248 information.

12.5.2. Furthermore, the total carat volumes sold to each bidder from the schedule "*COULOURS ARE COMBINED AS ONE LOT AND SOLD TOGETHER*" was in line with the sales declaration in the SSI monthly register for May 2015.

12.5.3. I was, therefore, satisfied that the sales to customers by SSI on closed tender as indicated in parcel 248 was recorded in the SSI monthly register for May 2015. The analysis of sales per customer for parcel 248 is annexed as **Annexure JD23**.



12.6. Following the analysis of the information obtained for parcel 248, the PSJV's monthly register for May 2015, SSI's monthly register for May 2015 and the Ocean Diggers invoice dated 31 March 2015 were examined. I observed the following:

12.6.1. The sale of diamonds from parcel 248 were recorded in the monthly registers for the month May 2015 by the PSJV and SSI.

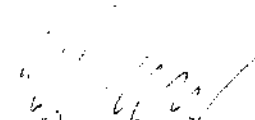
12.6.2. The single diamonds above 6 carats as invoiced by Ocean Diggers on 31 March 2015 was sold as part of parcel 248. I make this observation based on the matching of exact carat volume and USD\$ values for the individual diamonds.



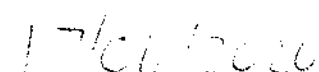
- 12.6.3. The declared volume of diamonds purchased by SSI from Alexkor PSJV for the month May 2015, was in conformity with the declared volume of diamonds sold by the PSJV for the same month, being 5 647.96 carats.
- 12.6.4. I noted, however, that the value of diamonds purchased by SSI from the PSJV for the month May 2015, to the value of R43 315 806.45, differed from the declared value of diamonds sold by the PSJV to SSI for the same month, which was for the value of R45 033 677.42. I would expect these values to agree as the same diamonds were sold by the one party to the other in an agreed process.
- 12.6.5. I noted that the SSI monthly register for May 2015 indicated that the diamonds sold for beneficiation, 86.94 carats, were sold at no value. The reason for selling the diamonds at no value is unknown to me. However it indicates that DNT obtained 86.94 carats without having to pay for the diamonds.
- 12.6.6. I noted that all the single stone diamonds invoiced by Ocean Diggers on 31 March 2015 were included in parcel 248 at matching values.
- 12.6.7. I further noted that all diamond sales from parcel 248, including identifiable single stones, was recorded in the May 2015 monthly register for sales at matching volumes and values.
- 12.6.8. Therefore, the values used for single stone diamonds produced by Ocean Diggers during March 2015 was in line with the selling prices achieved for the same single stone diamonds during May 2015 in a closed tender process.
- 12.6.9. This in my view is impossible as one cannot determine a value during March 2015 of a single stone diamond to be sold during May 2015. This fact indicates that the closed tender process was potentially fraudulent and/or that the values reflected in the registers have been manipulated.



12.7. Through my analysis of the information pertaining to parcel 248 and the other anomalies referred to in this affidavit, I am able to state that the PSJV was in no position to determine if the diamonds produced were sold at fair market prices, as it conducted no valuation of the diamonds prior to the diamonds being dispatched to SSI, therefore potentially resulting in losses to the PSJV at the expense of the South African taxpayer, the contractors and the Richtersveld community.



Signature of Deponent




Date

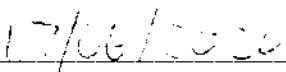
After completion of the statement, the following questions were put to the deponent and his answers were recorded accordingly:

1. I know and understand the contents of this statement.
2. I do not have any objections in taking the prescribed oath.
3. I consider the oath as binding on my conscience.

I believe the statement gives a fair account of the events that happened.



Signature of Deponent



Date

I certify that the above statement was signed in my presence and that the deponent has acknowledged that he knows and understands the contents of this statement. He signed the statement in Pretoria on 17 June 2020 at 15:30.



Gideon Jones

Commissioner of Oaths

Ref. no: 9/1/8/2 Country Wide

Dated the 17th July 2008

476 Kings Highway

Lynnwood

Pretoria