

**Progress Report to Parliament**

Investigation into the relationship between Alexkor, Alexkor RMC PSJV and its Marine Mining Contractors conducted by Gobodo Forensic and Investigative Accounting

**19 May 2020**

# Background

## Around 2017, the Department received a number of complaints from the marine mining contractors informing the Department of the unfair exclusion from the 2018 marine mining procurement cycle at the PSJV operations.

## Subsequently, the Department embarked on the mission to understand the extent of the complaints brought forward as well as other allegations that have been raised. Upon the return from the visit to diamond operations in the Richtersveld, the Department proposed that a forensic investigation be initiated to gather and establish the evidence and facts regarding the allegations brought forwards against the PSJV Board and Executive management.

## Gobodo Forensic and Investigative Accounting (Gobodo) was appointed in July 2019 for a period of three months to undertake the investigations into the allegations brought forward. The scope of work included investigations into:

### The validity of the decision taken by Alexkor RMC PSJV to exclude the three marine contractors in the 2018 marine mining services procurement cycle;

### The procurement process in the appointment of contractors in particular the appointment of a diamond marketing and sales company;

### The process followed in the valuation of diamonds from the mine site to the diamond marketing and sales company offices;

### The prices diamonds are realising since the appointment of a diamond marketing and sales company;

### The alleged failure to adhere to giving access to the information relating to sales and marketing of diamonds to the contractors; and

### The legality of coffer dam operations which are allegedly to have an adverse environmental damage.

## The investigation by Gobodo uncovered that there were irregular actions committed by the executive and Board of the PSJV in the management of the diamond operations The PSJV is an unincorporated entity, however the running and management of the pooled operations (which includes matters in respect of which adverse findings have been made by Gobodo) rest with the Interim Joint Board for resolution. This is based on provision of the Deed of Settlement governing the PSJV. In addressing the findings of Gobodo and the recommended actions to be instituted, the PSJV board was directed to act on these findings. The table below provides the summary of the findings, recommendations as well as progress thereto.

| Main Issue | Gobodo Findings | Gobodo Recommended Action | DPE Proposed  Action | Progress |
| --- | --- | --- | --- | --- |
| 1. The validity of the decision taken by Alexkor RMC PSJV to exclude the three marine contractors in the 2018 marine mining services procurement cycle | Fifty-one (51) out of the sixty-six 66 companies were shortlisted and recommended for the award of the Shallow Water Marine Mining Contracts. The recommended companies included Ocean Diggers, PL Marine, Rabsol and Malakaza Diamonds. Thus, it is evident that the companies submitted their bids for the four shallow water tender 02/17 contract. | The PSJV Board / DPE consider disciplinary action against Mr Mervyn Carstens, the CEO, as part of the PSJV Board irregularly excluded the marine miners from being appointed for tender 02/2017. | The Administrator should act against those who were found complicit   The executive management appear to have created a hostile working environment with the contractors leading to breakdown in relationship impacting the current performance of the operations.  The capabilities of the executive management to manage the operations are concerning. The Chairperson should consider review of the current management skills and expertise to ensure that the operations do not deteriorate further. | The CEO of the PSJV, Mr Carstens, was suspended on 31 January 2020 with full pay pending the investigation into the allegations.  Subsequently Mr Carstens referred the matter to the CCMA alleging that dismissal procedures were not properly followed. The matter is still pending at the CCMA, awaiting Mr Carstens attendance at the proceedings |
| It appears that the disputes between the contractors and the PSJV started before the establishment of the PSJV. |
| The enmity and disaccord between the contractors and the PSJV / Executive Management resulted in the exclusion of the four contractors from being appointed for tender 02/2017 |
| 2. The procurement process in the  appointment of contractors in particular the appointment of a diamond marketing and sales company; | **1st Appointment of SSI - 2015** | | | |
| SSI proposal did not meet the requirements of the tender. The proposal made by SSI was similar to the Diamdel model that was used in the past and which created so much unhappiness. SSI should have been disqualified at this stage by the Tender Committee. Subsequently original SSI bid proposal had been changed and they were allowed to proceed to the next stage. The other bidders were not informed about the changes to the proposal. The change of the bid proposal is unfair, uncompetitive and unequitable and not in accordance with Section 217 of the constitution. The other bidders including the bidders that were not shortlisted must also be allowed a fair and equal chance to make changes to their bids | The PSJV Board / Department of Public Enterprises consider terminating the Alexander Bay Diamond Company formerly known as Scarlet Sky Investments 60 (Pty) Limited contract with the PSJV based on the following: i) That tender 03/14 was irregularly awarded to SSI by the PSJV Board in or about 2014. The procurement process was fatally flawed;ii) The procurement process for tender 02/2016 was flawed and irregularly awarded by the PSJV Board; | The Administrator should act against those who were found complicit. It appears that the procurement processes was manipulated in favour of SSI.The PSJV board members representing Alexkor at PSJV tender committee at the time of awarding of SSI contract in 2015 were: (i) Mr Rafique Bagus and (ii) Dr Roger Paul | The matter is still pending, awaiting the regularisation of the PSJV Board.  In the meanwhile, Alexkor applied for a diamond trading license to ensure that the marketing and sales operations are not disrupted post the termination of the SSI contract.  By virtue of his appointed as the Board of Alexkor, Administrator assumed the role of the Chaiperson of the Board as guided by the Deed of Settlement. His departure has left a vacuum in the governance structures and rendered the current PSJV Board unable to conclude matters as the board is not properly quorate. |
| 2 The procurement process in the appointment of contractors in particular the appointment of a diamond marketing and sales company; | **2nd Appointment of SSI - 2016** | | | |
| It appears that about six companies submitted bids for the marketing and selling tender contract. A Board member and Tender Committee member indicated that three companies submitted tenders. The Board minutes appear to contradict the letter by Phillips indicating that 6 proposals were received. | The PSJV Board / DPE consider disciplinary action against Mr Mervyn Carstens, the CEO for misrepresenting that a due diligence had been conducted before the award of tender 03/2014 to SSI | The Administrator should act against Mr Mervyn Carstens as he was found complicit. It appears that the procurement processes was manipulated in favour of SSI    It appears that Mr John Sembie Danana was the only PSJV board member representing Alexkor at PSJV tender committee the time of awarding of SSI contract in 2016 | The CEO of the PSJV, Mr Carstens, was suspended on 31 January 2020 with full pay pending the investigation into the allegations.  Subsequently Mr Carstens referred the matter to the CCMA alleging that dismissal procedures were not properly followed. The matter is still pending at the CCMA, awaiting Mr Carstens attendance at the proceedings |
| It appears that a proper procurement process was not followed in the second appointment of SSI. There appears to have been only the evaluation scoring off the shortlisted bidders. |
| There was no evidence regarding the process followed to shortlist the six bidders. There were no evaluation scoresheets available for the evaluation process before the shortlisting. |
| 3.       The process followed in the valuation of diamonds from the mine site to the diamond marketing and sales company offices | The valuation of the rough diamonds conducted at the mine is only done for insurance purposes. | The PSJV Board should consider appointing an independent valuator to conduct a proper valuation of the rough diamonds before it is delivered for marketing and selling. | The PSJV to strengthen the operation's diamond valuation process. The lack of skills created weakness in the system that exposes both the PSJV and the contractors to revenue losses | The contractors have since appointed an independent valuator to conduct the valuation on their behalf in parallel with the PSJV processes to ensure transparency and fair value of the diamonds recovered. |
| CEO PSJV said that the evaluator, Adams, does not possess the skill to value the diamonds in terms of the 4C’s. She was sent for intermediary training on diamond valuation which enables her to value up to carats per diamond. |
| Since 90% of sales are mixed parcels, the lack of experienced personnel in the valuation of diamonds at the mine site exposes the PSJV to a risk of the diamonds being undervalued at the mine. The concerns raised by the contractors’ in this regard appear to be valid. |
| 4.       The prices diamonds are realising since the appointment of a diamond marketing and sales company | The Ziminsky average dollar selling price for the period was 12,27% higher that the SSI selling price; | The PSJV Board / Department of Public Enterprises consider terminating the Alexander Bay Diamond Company formerly known as Scarlet Sky Investments 60 (Pty) Limited contract with the PSJV based on selling the rough diamonds at a price that is ostensibly lower than the market price. | The Administrator/ Chairperson of the PSJV Board to consider terminating the SSI contract and explore the option of acquiring the diamond marketing and sales services from the State Diamond Trader | The PSJV considered the termination of SSI contract, subsequent to the departure of the Administrator, the matter is yet to be concluded. |
| The Bloomberg average dollar selling price for the period was 9,47% higher that the SSI selling price; |
| 5.       The alleged failure to adhere to giving access to the information relating to sales and marketing of diamonds to the contractors | All segment reporting stopped in 2014. In the past they were given all the segment reporting | The reasons provided by the PSJV were questionable. Management failed to provide information and reports requested to further interrogate the access to information issue. | The Chairperson of the PSJV should further investigate the issue of transparency relating to information on carat production and diamond pricing. It appears that the contractors had valid grounds to raise concerns with the manner in which their production and sales are managed. | Discussions between the PSJV and contractors are ongoing to determine a fair process to be followed. |
| The complaints raised by the contractors were not addressed using the available PSJV policies and procedures in place. |
| The contractors raised complaints about the selling price of rough diamonds and on numerous occasion requested to after sales reports to analyse the prices received for their parcels. The information on diamond pricing was initially disclosed, subsequent to the appointment of SSI, the disclosure was stopped. |
| 6.       The legality of coffer dam operations which are allegedly to have an adverse environmental damage | Beach mining is an activity that can result in the disturbance of ecosystems, loss of biological diversity, pollution and degradation of the environment. The impact on the environment cannot be avoided with beach mining | The PSJV Board / DPE consider disciplinary action against Mr Mervyn Carstens, the CEO, for commencing the construction of the coffer dam without the proper authorisation in terms of the NEM Act | It appears that prior to the establishment of the PSJV in 2013, Alexkor SOC, did not have proper approvals to conduct coffer dam operations in the required manner. The PSJV, in 2013 was subsequently directed to rectify the mining process and seek proper approvals.  The lack of skilled professionals at the operations resulted in the illegal coffer dam operations. The PSJV should embark on strengthen the current management with experienced professionals | The PSJV has since had engagements with the DMRE and DEFF to resolve the issue of the coffer dam operations.  Post revision of the environmental impact assessment report, the PSJV has been given approval to commence with the operation. |
| It appears that in or about 2012/2013, the PSJV started construction of a coffer dam on the concession on plot 16. This activity was started without proper permission in terms of Section 24 of the NEM Act and without an amended EMP. |
| It appears that the local conservation authorities stopped the building of the coffer dam on plot 16 because no permission had been granted to the PSJV for the construction of coffer dams. |