



01 March 2021

## **ALEXKOR DEED OF SETTLEMENT AND COMMUNITY STRUCTURES**

### **1. INTRODUCTION**

This paper provides a brief overview of the State Owned Company (SOC), Alexkor, a diamond mining company. It is aimed at providing the Portfolio Committee on Public Enterprises (hereafter, the Committee) with information on the company and its Deed of Settlement and community structures.

The brief provides an overview of Alexkor, the Pool and Sharing Joint Venture, the township establishment of Alexander Bay, and its Social Responsibility projects as well as the number of jobs created. This is in preparation for a presentation to be given to the Committee by representatives of the Richtersveld Interim Committee (RIC) on the matter of Alexkor and its effect on the local communities in a meeting scheduled for 03 March 2021.

### **2. BACKGROUND**

Alexkor was established in terms of the Alexkor Limited Act, No. 116 of 1992, amended in 2001. Alexkor is wholly owned by the government with the Minister of Public Enterprises being the shareholder. The company has two divisions or business units, the Pooling and Sharing Joint Venture (PSJV) and the Alexkor Corporate Unit. The core business of the company is the mining of diamonds on land, along rivers, on beaches and in the sea along the north-west coast of South Africa. The mining division is the core business, exploiting a large land-based diamond resource and extensive diamondiferous marine deposits. Exploration, ore reserve planning, rehabilitation and environmental management complement these activities.<sup>1</sup>

The non-core business activities comprises residential services, community services, outside engineering services, external transport services, guest houses, fuel station and an airport. The management of investment funds, together with the traditional supporting services (information system, human resources, etc.), constitutes additional non-core business activities.<sup>2</sup>

Alexkor is situated in North West corner of the Northern Cape in the coastal town of Alexander Bay, on the South African border with Namibia.

The company's operations and strategic outlook significantly changed when the Richtersveld community successfully instituted a land claim against Alexkor and its shareholder, the South African government. On 14 October 2003, the Constitutional Court held that the community was entitled to restitution. The parties agreed on the nature and extent of the intended

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<sup>1</sup> Alexkor Website (2015)

<sup>2</sup> Ibid.



restitution and signed a formal and binding Deed of Settlement (DoS) on 22 April 2007, which was made an order of court later that year.<sup>3</sup>

The outcome of this land claim settlement impacted on the company's mining and non-mining operations, as the settlement agreement stipulated, inter alia, the following:

- All land and buildings subject to the land claim will be transferred to the Richtersveld Communal Property Association (CPA);
- Certain erven and erected buildings within the to-be-established township of Alexander Bay will be transferred to various social institutions and government authorities to normalise the social and government structures; and
- The land mining rights will be transferred to the Richtersveld Mining Company (RMC), whilst the company will retain its marine mining rights.<sup>4</sup>

The remote location of the mine had obliged Alexkor to take responsibility for certain commercial and community services. It performed these activities as Alexander Bay Trading, a division of the company, which included municipal services for the Alexander Bay township, airport services, sustainable farming and the hospital. Responsibility for these services would be transferred to different Richtersveld community (RVC) entities and local government institutions. Once the township was established by June 2012, the services relating to the township management would be transferred to the Richtersveld Local Municipality. Farming operations were already transferred to the RVC in 2008.<sup>5</sup>

In 2011/12 Alexkor received R350 million from the National Treasury to settle all outstanding liabilities and obligations rising from the DOS)

The DOS, as agreed between government, Alexkor and the Richtersveld community, needed time to get the PSJV up and running. Apart from this, Alexkor also had to deal with legacy issues such as building housing, funding retirement obligations and addressing environmental damage. This put a strain on the entity's ability to invest in the mining business.<sup>6</sup>

Over the past several years, Alexkor has been characterised by steadily falling production and years of successive losses. In 1995, it produced 227 000 carats of diamonds from land and sea, but by 2006 this had slumped to 43 000 carats. In the eight years prior to 2012/13 it had only made a net profit twice.<sup>7</sup> However, this was corrected with successive years of profit in 2012/13 and 2013/14. Although the company made an after-tax loss of R82 million for the 2014/15 financial year, the company stated that it continued to consolidate its progress. After a halt in this progress in 2015/16 and a R35.5 million loss, the company again increased carat production in 2016/17 to 162 172 carats generating R785 million in revenue.

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<sup>3</sup> Alexkor (2012)

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Alexkor Website (2015)

<sup>7</sup> Matthews. (2014)



However, due to a fire on the deep sea vessel in April 2017, there was no production from the deep-sea section, limiting 2017/18 financial year carat production to 41 941 carats resulting in total revenue of R208.7 million. Total operating loss amounted to R13.9 million due to high operating costs. Carat production increased to 67 724 carats in the 2018/19 financial year, generating R412 million in revenue. The marginal increase in revenue was as a result of the quality and size of the diamonds produced, the poor performance was further impacted by the oversupply of diamonds in the market. Operating expenditure increased by 81 per cent year-on-year due to the impairment of the loan to the PSJV of R92.7 million. This resulted in a net loss of R149.6 million for Alexkor in the 2018/19 financial year.<sup>8</sup>

The entity submitted its 2018/19 annual report in November 2019, two months after the due date when it should be submitted to Parliament, due to its financial challenges. The entity was able to submit its annual report once an Administrator was appointed to oversee the entity's operations. Alexkor received a disclaimer of opinion from the Auditor General (AG) due to its going concern status as well as a lack of diversification, which represents a sustainability risk as it only has one major revenue source in the form of its 51 per cent stake in the PSJV.<sup>9</sup>

The entity has no other sources of income which represents a material risk to its financial sustainability going into the future. In response to the Alexkor Board's request to place the entity under business rescue due to financial distress the entity found itself in, the Minister of DPE replaced the Board with an Administrator, whose task it would be to restore normality and stability to the operations of the entity.<sup>10</sup> However, by the end of the Administrators term in February 2020, the entity was still in financial distress.

The entity has to date not submitted its 2019/20 annual report. The entity was unable to finalise its annual financial statements due to serious going concern and other issues raised by the auditors.

### **3. PSJV SUSTAINABILITY**

The PSJV was created through the DOS between the government of South Africa and the Richtersveld community specifically to undertake mining activities in Alexander Bay.

All mining operations are now done in the PSJV, in which Alexkor has a 51 per cent holding. Three Non-Executive members of the Alexkor Board and three Board members of the RMC lead the PSJV. Alexkor endeavours to give full effect to the DOS whilst ensuring that operations at the PSJV are commercially sound and benefit the stakeholders.

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<sup>8</sup> Bramwell (2019)

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.



#### 4. ALEXKOR SUSTAINABILITY

The DOS requires of Alexkor to exit its 51 per cent equity holding in the PSJV but this needs to be done in a socially responsible manner. 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.

Alexkor proposed to seek new mining opportunities that will deliver revenue streams beyond diamonds independently of PSJV operations. This would secure future growth and sustainability and would enable the entity to effectively address its legacy obligations and liabilities. However, the Minister of Public Enterprises, Mr. Pravin Gordhan, has placed a moratorium on all acquisitions and disposals, which was in force during 2017/18. The Board continues to engage the shareholder on new business ventures for Alexkor.<sup>11</sup> Focus has now been placed on improved extraction mining of diamonds and expanding into other precious stones, an area that is closer to Alexkor's core business.

In November 2020, the DPE stated the following regarding Alexkor's implementation of the turnaround strategy:<sup>12</sup>

- Given the dire financial position of Alexkor and PSJV, over the past months, drastic austerity measures including initiating retrenchment process had to undertaken to contain operating cost. Without these alternatives, the diamond operations are at risk of shutting down or face liquidation due to its inability to meet its financial obligations.
- The PSJV Board is currently undertaking an exercise to review the current operating model of the PSJV in an attempt to enhance diamond revenue.
- However for the long term sustainability of the Richtersveld operations, large capital investment is required to undertake, amongst others, exploration studies. Given the constrained fiscus and high investment risk associated with diamond mining, there are limited opportunities for the state to advance funds to the PSJV.
- Six options were proposed, with the preferred option being consolidating state mineral assets in order to optimise and align state's participation in the mineral sector.
- A formal technical task team has been established to conduct further studies on the proposed option to transfer the mineral rights of Alexkor to African Exploration and Mining Finance Company (AEMFC). The Department of Mineral Resources and Energy (DMRE) and DPE are the main members of the task team with other departments invited to participate as and when required.
- The role of the task team amongst others include: comprehensive assessment of the condition and performance of Alexkor assets and development of a stakeholder consultation project to ensure support of the selected preferred option.

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<sup>11</sup> Bramwell (2019)

<sup>12</sup> Department of Public Enterprises (2020)



- Approval from Cabinet on the implementation of the preferred option to be sought. It is envisaged that the process will be completed before the end of the current financial year, 2020/21.

Currently, year-on-year financial performance has been on a declining trend. The decline in performance has eroded the financial position with the joint venture failing the solvency and liquidity tests for the quarter ending March 2021. The PSJV is unable to settle liabilities as they become due and is in risk of liquidation. In order to contain cost and preserve some cash, some operations were curtailed, which regrettably led to about 80 jobs being lost.<sup>13</sup>

According to the DPE (February 2021), the short term objectives is to restore stability of the diamond operations. The main challenges being the governance structures. As the Administrator's term ended in February 2020, the Alexkor Chief Executive Officer (CEO) was entrusted with the responsibility of the Board, which is not an optimal solution with serious governance challenges. The Department stated that it is developing an interim governance solution for implementation before the end of March 2021.<sup>14</sup>

## **5. TOWNSHIP ESTABLISHMENT**

In terms of the DOS, Alexkor was required to establish a formal township in Alexander Bay. Alexkor was then required to upgrade all municipal services to meet the municipal standards. These services comprised roads, stormwater, sewage and reticulation networks, associated pump stations and sewage treatment works, water and associated reticulation networks, source treatment, pump stations and reservoirs, solid waste, electricity and telecommunications.

In addition, the DOS required the transfer of several properties to the community, all of which have been transferred with the exception of one property whose transfer is currently being finalised.

Alexkor provides potable water to the Alexander Bay Town and Port Nolloth.

## **6. SOCIAL RESPONSIBILITY**

After the conclusion of the land claim and the DOS was finalised, relations between Alexkor and the community deteriorated. Therefore, a key priority for the Board was to re-engage with the community and re-establish relationships with the Communal Property Association (CPA) and related community structures. In response to the concerns raised by the community, a task team, headed by the DPE in conjunction with the DMRE and the Department of Rural Development and Land Restitution (DRDLR) was established to restore stability in the area. The task team's interventions resulted in a recapitalisation of farms which are now operational,

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<sup>13</sup> Department of Public Enterprises (2021)

<sup>14</sup> Ibid.



creating employment in the area. A plan to upgrade infrastructure in the four towns was adopted by the DRDLR, and a long overdue election was held that resulted in a legitimate CPA being appointed.

At the 2013 Annual General Meeting (AGM), the then Deputy Minister of Public Enterprises Mr. Magwanishe urged the entity to deepen its engagement with the legitimate community structures, which the Board and management have undertaken to do.

The DOS requires that all overdue historic rehabilitation responsibilities remain the responsibility of Alexkor. An amount of R256 million has been received from the National Treasury for this purpose. A rehabilitation fund was established as required by the Minerals and Petroleum Resource Development Act (MPRDA). The entity was awarded a tender for the development of an optimised historical five-year rehabilitation implementation plan and a service level agreement (SLA) has been concluded with a 100 per cent black female-owned service provider. A team of 40 general workers, consisting of 15 permanent employees on a limited duration contract basis, is working on historic rehabilitation.

The PSJV relationship with the Richtersveld community is questionable with conflict and divisions within the community remaining deep and a matter of great concern. Efforts to address this by the DPE and the Department of Agriculture, Rural Development and Land Reform are ongoing.<sup>15</sup>

As stated above, part of the settlement agreement was to transfer residential properties previously owned by Alexkor to the community. To ensure that the mining operations were not disrupted following the transfer of the properties, the parties agreed that Alexkor would lease back the properties for a period of 10 years. This was to secure accommodation for Alexkor employees. The parties agreed that an amount of R45 million would be paid upfront to the Richtersveld Property Holdings Company for Alexkor to retain the right of occupation of the properties for 10 years upon the conclusion of the transfer process.<sup>16</sup>

The challenge faced by government in concluding the R45 million payment was that the Property Holdings Company where the money was supposed to be paid to lay dormant and the entity was not properly constituted.<sup>17</sup> In a meeting with the then Minister of Public Enterprises Ms. Lynne Brown, on 30 January 2018, the Minister told the Committee that the community had agreed that the money could be paid directly to the 3 000 beneficiaries, however, a court order was needed to enable Alexkor to pay the money to the 3 000 beneficiaries as this differed to the DOS.

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<sup>15</sup> Alexkor (2017)

<sup>16</sup> Department of Public Enterprises (2017)

<sup>17</sup> Ibid.



## 7. RICHTERSVELD INTERIM COMMITTEE

Representatives of the Richtersveld interim Committee and the Richtersveld Community, have submitted affidavits to the High Court and to Parliament setting out its grievances with regard to Alexkor and the PSJV. In the affidavits they innumerate allegations of irregular appointments of service providers and irregular and corrupt behaviour of PSJV and Alexkor executives and Board Members. The affidavits also request an update on activities from the RMC representatives. They are also requesting regular updates from DPE on developments with regards to Alexkor.

The issues raised with respect to the business unit of Alexkor and the PSJV needs to be addressed by DPE, while the community structures needs to be addressed by the DALRRD.

## 8. CONCLUSION

The PSJV, Alexkor and its community structures are in a state of flux. The issues revolving around these structures are in dire need of clarity and formalisation. The Department of Public Enterprises and the Department of Agriculture, Land Reform and Rural Development need to account for the situation the community, the PSJV and Alexkor finds itself in.

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