

Richtersveld Restitution Implementation Challenges

Terance Fife

Rural Development and Land Reform Services

Paper presented at the Conference on 'Land Divided: Land and South African Society in 2013, in Comparative Perspective', University of Cape Town
24 – 27 March 2013

ABSTRACT

The Richtersveld land claimants entered into an agreement with the Department of Public Enterprises and Alexkor for the return of land, mineral rights and financial compensation. A number of entities were created as an outflow of this agreement. The paper outlines progress made with the implementation of the agreement and reflects on the management challenges of a highly complex structure.

CONTENTS

Introduction	2
Section One	2
Table 1: Summary of Current Status of Restitution Award	3
Implementation of the Restitution Settlement Agreement	7
Richtersveld Restitution Entities	8
Community Trust Structure	9
Investment Trust Structure	10
Section Two	12
Sida !hub CPA	12
Richtersveld Community Trust	16
Richtersveld Investment Trust	18
Table 2: Loans to Richtersveld Entities	20
Richtersveld Investment Holding Company	21
Richtersveld Self-Development Company	23
Richtersveld Agricultural Holding Company	25
Richtersveld Mining Company	27
Richtersveld Environmental Rehabilitation Company	30
Richtersveld Property Holding Company	31
Observations Regarding Entities	32
Communication	32
Evaluation of Boards	33
Vacancies on the Boards	33
Table 3: Summary of Board Vacancies	34
Declaration of Interests	34
Director Fees	34
Financial Administration and Record Keeping	35
Company Performance	35
Conclusion and Recommendations	36
References	38

1. Introduction

The largest land Restitution settlement agreement in South Africa was confirmed by the Land Claims Court in 2007. This paper illustrates the complexity, and enormity of the task of implementing the agreement.¹

Section One provides a context of entity formation processes and the general challenges facing the entities. Section Two is a summary report on each of the entities, followed by Conclusions and Recommendations.

a) Section One

The Land Claims Court Order of 12 October 2007 under Case Number 151/1998 confirmed that the Settlement Agreement entered into between the Sida !hub Communal Property Association (“CPA”), Alexkor and the Government of South Africa was valid and binding on the parties to the Settlement Agreement. The Court Order also confirmed the following:

- the extent of properties to be transferred to the claimants;
- the monetary value of financial compensation;
- the framework for the Pooling and Sharing Joint Venture between Alexkor and the Richtersveld claimants; and
- the Companies and Trusts to be created to implement the Deed of Settlement.

It is worth noting that a number of claimants opposed the Deed of Settlement as it was seen as a major compromise from what had originally been claimed from Alexkor and Government. It was also no longer a Nama claim, but was now recognised as a community claim. The land claim had been for:

- More than R1.5bn for the loss of income from diamond mining;
- Repairs of the environmental damage caused by mining to the value of R1.067bn;
- A *solatium* of R10 for the dispossession which took place; and

¹ The writer has been present during many of the debates and meetings of the Richtersveld Sida !hub CPA between September 2011 and March 2013. An earlier version of this paper was Commissioned by The Land Rights Management Facility of the Department of Rural Development and Land Reform in preparation for the CPAs Strategic Planning in May 2012.

- Restoration of the right to ownership of the mining area stretching from Port Nolloth to Alexander Bay.

The land claim struggle was led by the CPA with the support of the Legal Resources Centre (“LRC”). The eventual outcome of the claim is illustrated in the Table below:

Table 1: Summary and Current Status of the Restitution Award

Restitution Entity	Restitution Award	Has the award been transferred? If not, why not	To be transferred from which party?
Richtersveld Sida !hub CPA	1. Remainder of Farm 1 (excluding the township of Alexander Bay, the harbour, old HMS plant, land on which the airport is located). Servitudes to be registered allowing access for municipal and other essential services.	No, this will occur after Township Establishment by the Richtersveld Municipality	Alexkor
	2. Farm 155 (T32346/94)	Yes	
	3. Remainder of Erf 678, Port Nolloth (T32346/94)	Yes	
	4. Remaining Extent of the farm Gypsum No 5, held in terms of Deed of Grant No T939/1993	Yes	
	5. The Farm Brandkaros, No 62, Consolidated Title T71691/1993	Yes	
	6. Farm 625, held in terms of Deed of Transfer No T69531/94	Yes	
	7. Portion 17 (a portion of Portion 8) of the Farm Korridor Wes No 2, held in terms of deed of Transfer No 1939/1993	Yes	
National Government	8. Remaining Extent of Portion 8 (known as Pagvlei) of the Farm Korridor Wes No 2, approximately 9,9543.6874 ha	Yes	National Government
	9. Remaining Extent of Portion 6 (known as Witbank) of the Farm Korridor Wes No 2, approximately 10,136.3020 ha	Yes	
	10. Portion 4 (known as Swartbank) of the Farm Korridor Wes No 2 approximately 9710.5201 ha	Yes	
	11. Remaining Extent of Portion 9 (known as Witvoorkop) of the Farm Korridor Wes No 2, approximately	Yes	

Richtersveld Sida !hub CPA	13,861.1263 ha		
	12. Portion 1 (Uitkyk) of the Farm Korridor Wes No 2, approximately 10,725.6658 ha	Yes	Provincial Government
	13. Portion 2 (Windwaai) of the Farm Korridor Wes No 2, approximately 10,953.2675 ha	Yes	
	14. Portion 3 (Muisvlei) of the farm Korridor Wes No 2, approximately 10,196.5723 ha	Yes	
	15. That portion of remainder of Korridor Wes depicted on SG Diagram 6555/1957, approximately 10,377.6031 ha	Yes	
	16. Portion of the Remainder of the Farm Rooibank, depicted on SG Diagram 6555/1957, approximately 11,592.4916 ha	Yes	
	17. Remainder of Portion 10 (known as Arries) of the Farm Korridor Wes No 2 approximately 12,217.9525 ha,	Yes	
	18. Remainder of Portion 12 (a portion of Portion 10) of the farm Korridor Wes No 2, approximately 42.8266 ha	Yes	
	19. Portion 3 (Beauvallon) of the Farm Groot Derm No 10, held in terms Deed of Transfer No 43637/92	Yes	Alexkor
Richtersveld Property Holding Company	Alexander Bay Erf Numbers: 72-76, 78, 79-83, 84, 87-88, 91, 94, 111-112, 114-136, 138-141, 143-145, 147-150, 153-182, 184-189, 192-200, 202-203, 205, 207, 213, 215-223, 225-229, 232-236, 238-255, 257-285, 293-296, 298-307, 309-336, 338-340, 342-343, 345, 347-439, 441-445, 447-485, 487-494, 496-498, 500-531, 533-535, 113, 142, 201, 204, 224, 231, 291, 341, 344, 440, 446, 495, 532, 137, 146, 151-152, 183, 190-191, 214, 230, 237, 286-290, 292, 297, 337, 346, 486, 499, 536-549, 550-554, 555-558, 106-110, 559-583. These properties include sport fields, halls, meeting places, houses, shops, and a filling station and so on.	No. This is subject to the process of Township Establishment by the Richtersveld Municipality	Alexkor
Richtersveld Investment Holding Company	R190, 000, 000 extraordinary reparation	Yes, in three instalments	National Treasury
	R50, 000, 000 for recapitalization of the agricultural and maricultural enterprises	Yes	

	R45, 000, 000 for use of the properties for ten years	No. Will take place after Township Establishment by the Richtersveld Municipality	Alexkor
Richtersveld Mining Company	Land Mining Rights as part of Pooling and Sharing Joint Venture (PSJV)	Yes	Alexkor
Richtersveld Environmental Rehabilitation Company	R1, 331, 100 “community implemented for environmental restoration at Alexander Bay”	Yes, project implemented	Minerals and Energy Affairs
Richtersveld Agricultural Holding Company	All the moveable assets relating to (Alexkor’s) agricultural and maricultural businesses	Yes	Alexkor
	R700,000 for project management costs pending the identification of a strategic partner for the agricultural business	Yes	Alexkor

Two rounds of dividend payments have been made to the three-thousand-one-hundred, (3100)² members of the Richtersveld Sida !hub CPA. The first amounted to R1,500 per member in 2008 and R3,000 in 2011. Thus members have received a total amount of R4,500 each in direct financial benefit. These dividends have been derived from interest earned on the above mentioned funds. The CPA members took a decision during their Annual General Meeting in August 2012 that 40% of the R190,000,000 should be released as cash and paid to them directly. Engagements on this critical question are now underway with Alexkor and the Department of Public Enterprises (DPE).

The 2007 Land Claims Court Order required that a development plan should:

- guide the use of the farms;
- determine the eco-tourism potential of the settlement land and the existing land;
- provide an assessment of the present and future needs, planning and development of residential settlements of Sanddrift, Kuboes, Lekkersing, Eksteenfontein and the farm Beauvallon;
- assess the current and anticipated future prospecting, mining and other activities resources of identified settlement land; and

² The membership list must be managed by the CPA Committee. This is prescribed in the Constitution and remains one of the Committee’s biggest challenges.

- be developed with reference to the development plan of the Richtersveld Municipality and the Richtersveld Commonage-Use Plan.

The Court Order noted the following: *“the development plan shall not be binding but shall be taken into account by the CPA and the other entities...when they take planning, development and land-use decisions”* (Land Claims Court Order, Item 7.3, p17)

An extensive research and planning process, at the village and committee level, followed during 2009 and 2010. Whilst the development plan did not deal with all the elements mentioned in the Court Order, the result is a comprehensive development plan which serves as a benchmark for other CPA’s. For the purposes of this paper, it is worth noting two important themes.

The first theme relates to institutional readiness. The conclusion of the research process noted that much needs to be done to prepare the foundation for development.

“The main conclusion of the research was concluded as follows: “Sida !hub is vulnerable and wounded by the legacy of its political and economic history, its isolation, harsh climate and the struggles to overcome and survive. The result is that the community and its leadership have lost faith, trust, leadership, structures, policies and capacity / or never built capacity to tackle social, educational and economic development. Sida !hub is not ready for development.”
(Development Plan, p32, Volume 1)

The development plan notes that events and realities in the political, economic, cultural and environmental field have had a lasting effect on behaviour, worldview, beliefs and relationships within the community. It impacts on the soul and spirit of the Sida !hub community.

The development plan therefore advocated a comprehensive range of engagements such as on-going debate and reflection to understand the economic and political legacy, and the compensation received, the management of conflict, and systems to improve communication. (Development Plan, p19, Volume 4)

The second important theme in the development plan relates to the impact of the Settlement Agreement. The following quote from the development plan gives a strong signal to the dynamics which would plague the implementation processes related to the Deed of Settlement:

“The one issue that has impacted most negatively on relationships in the Richtersveld in the recent history is the Land Claim against Alexkor. Throughout the long legal battle, the community and its leaders were united, but this changed dramatically when the leaders negotiated a settlement with the defendants (the State and Alexkor). The depth and nature of the wounds resulting from this “Settlement” cannot be underestimated. As the practical implications of some of the clauses and conditions in the Settlement become clear, new reasons for accusations and conflict emerge”. (Development Plan, Vol 3, P18)

These conflicts have been waged in many forms since the Settlement was first announced. Most prominent have been court cases between the CPA Committee and the members. More recently the Committee itself has been hamstrung by disputes about the election of its Chairperson and Vice Chairperson, and the status of members who no longer live in the four towns of the Richtersveld (Lekkersing, Eksteenfontein, Kuboes and Sanddriest). Allegations’ relating to fraud, nepotism, incompetence, and conflict of interest, is regularly levelled at leadership figures within Committee, and during general meetings of the CPA membership.

Implementation of the Restitution Settlement Agreement

Once the Land Claims Court confirmed the validity of the Deed of Settlement, the task of implementing the agreement fell on the CPA leadership and their nominated attorneys – Bisset Boehmke McBlain.

It was then the duty of members on the CPA committee to lead the establishment of the various entity boards, nominating and electing Community and Independent Directors and Trustees, securing office space and furniture, coordinating meetings and processes, and prepare for the transfer of assets from Alexkor and government. The Deed of Settlement, Court Order, Company Statutes, Trust Deeds, and the eventual institutional arrangements have resulted in what is a complex web of business entities. This set-up phase required many laborious processes to establish the entities. Sophisticated and unpopular decision making was also needed.

It can be safely said that the enormity of the undertaking was much larger than anticipated by all concerned. It was complicated by the nature of the agreement as many participants saw this as a politically driven process wherein former Minister of Public Enterprises, Alec Irwin, led negotiations as a means to restructure Alexkor, and resolve the land claim in one swoop. The ten-year process of negotiations and court cases to finalise the claim had led to great uncertainty over the mining operations and the Governments’ future role in the business.

A lesson learned in the Land Reform environment at that stage was that the compensation (assets, finance and mineral rights) needed to be protected as best as possible to prevent abuse of hard won resources. In addition, the need for partnerships between Government, the private sector and communities was seen as critical for skills transfer, technical know-how, and management support. Because Alexkor is a national asset, the Settlement Agreement needed to ensure that this asset would not lose capacity and not be stripped at great cost to the fiscus and the claimants.

The Richtersveld Restitution Entities

The CPA, with legal support from Bisset Boehmke McBlain Attorneys, led the formation of the following entities:

- i. Richtersveld Investment Trust ('RIT');
- ii. Richtersveld Community Trust ('RCT');
- iii. Richtersveld Investment Holding Company ('RIHC');
- iv. Richtersveld Self-Development Company ('RSDC');
- v. Richtersveld Agricultural Holding Company ('RAHCO') (which had four subsidiary companies – fodder, ostriches, citrus and mariculture);
- vi. Richtersveld Property Company ('RPC');
- vii. Richtersveld Mining Company ('RMC'); and
- viii. Richtersveld Environmental Rehabilitation Company ('RERC')³.

The immediate challenge faced was how to ensure that the 'institutional memory' of the land claim struggle, knowledge of the Richtersveld community, and the Deed of Settlement could be built into the early phase of the entity development process. The Diagram on the next page illustrates the complex institutional arrangement, the number of Directors and Trustees required to implement the Deed of Settlement, as well as their reporting lines.

The role played by the CPA committee and general members would later lead to many accusations of self-interest being prioritised over community-interest. The entities would sometimes have the same CPA committee member represented on the Mining Company, the Agricultural Company, and the Property Company. In addition, the nomination of family members to entities (albeit it as a temporary measure until elections could take place) was perceived as blatant nepotism.

³ The need to form RERC was not included in the Deed of Settlement or Court Order. This entity was created because of the rehabilitation opportunities identified as implementation unfolded.

COMMUNITY TRUST STRUCTURE

REGISTERED MEMBERS OF RICHTERSVELD SIDA !HUB COMMUNAL PROPERTY ASSOCIATION

Beneficiaries

RICHTERSVELD COMMUNITY TRUST

7 TRUSTEES

- 4 community trustees → 1 from each town (each nominated by the town he/she is representing)
- 3 independent trustees nominated by CPA committee

100% shareholding

RICHTERSVELD SELF-DEVELOPMENT CO (PTY) LTD

11 DIRECTORS

- 4 community directors → 1 from each town (each nominated by the town he/she is representing)
- 4 persons nominated by each of the 4 subsidiary companies below
- 3 independent directors to be nominated by trustees of the Richtersveld Community Trust

100% shareholding

RICHTERSVELD AGRICULTURAL HOLDING COMPANY (PTY) LTD

6 DIRECTORS

- 4 community directors (1 from each town – each nominated by town representing)
- 2 independent directors nominated by Self-Devco

RICHTERSVELD ENVIORNENTAL REHABILITATION COMPANY (PTY) LTD

6 DIRECTORS

- 4 community directors (1 from each town – each nominated by town representing)
- 2 independent directors nominated by Self-Devco

RICHTERSVELD PROPERTY HOLDING COMPANY (PTY) LTD

6 DIRECTORS

- 4 community directors (1 from each town – each nominated by town representing)
- 2 independent directors nominated by Self-Devco

RICHTERSVELD MINING COMPANY (PTY) LTD

6 DIRECTORS

- 4 community directors (1 from each town – each nominated by town representing)
- 2 independent directors nominated by Self-Devco

INVESTMENT TRUST STRUCTURE

REGISTERED MEMBERS OF RICHTERSVELD SIDA !HUB COMMUNAL PROPERTY ASSOCIATION

↓
Beneficiaries
↓

RICHTERSVELD INVESTMENT TRUST

9 TRUSTEES

- 4 community trustees → 1 from each town (each nominated by town he/she is representing)
- 1 trustee nominated by Minister of Finance as per Settlement Agreement
- 1 trustee nominated by Minister of Agriculture and Land Affairs
- 3 independent trustees nominated by the CPA committee [*chairperson to be elected from amongst independent trustees*]

↓
100% shareholding
↓

RICHTERSVELD INVESTMENT HOLDING COMPANY (PTY) LTD

8 DIRECTORS

- 4 community directors → 1 from each town (each nominated by town)
- 3 independent directors nominated by trustees of Richtersveld Investment Trust
- 1 director nominated by Minister of Finance as per Settlement agreement

(Source: Bisset Boehmke McBlain Attorneys)

It can be argued that the Committee had very few options due to the skills shortage in the Richtersveld, and that this assisted the sharing of knowledge and continuity from the days of pursuing the land claim. Many decisions must have been taken mindful of mounting criticism and dissatisfaction with the Settlement Agreement.

However, this strategy also led to justifiable allegations of conflict of interest and abuse of power being levelled against prominent members of the CPA Committee. The following passage from the Development Plan reflects the sentiment well:

“Another result of the isolation and the closely-knit family ties is the sensitivity around nepotism. Every appointment, application and nomination in the Richtersveld is accompanied with major debates on this double-edged issue. On the one hand it is obviously something that should be avoided. On the other hand, one could safely state that almost everybody in the relatively small and isolated community is somehow related to everybody else, which seriously limits the choice for any selection if you intend to avoid accusations of nepotism.”
(Development Plan, p15-16, Vol 3)

This matter is not easily resolved as it is still bedevilling the structures today. For instance, two members of the CPA Committee are employed full-time in the Mining and in the Environmental Rehabilitation Company. This point is not intended as a slur on the CPA Committee members concerned – it simply points to the difficulty Committee members face when they choose to stand for election to a community structure which does not compensate office bearers for their services, in a community where there are limited numbers of managers, business opportunities, and jobs. The result is that the Committee is constantly at war with itself on this issue – reports on the functioning of the Companies these committee members are involved are not tabled (as the Companies do not report to the CPA), and the access this provides to individual Committee members is a constant source of conflict.

The view is that having a position on a number of entities is incorrect and unfair as it “robs” other CPA members of an opportunity to serve the community, and earn an income.

As mentioned above, opposition to the Deed of Settlement was signalled early on. Despite the positive and courageous role that CPA Committee members played in the formation of the entities, their role as Directors or Trustees or as employees of entities has fuelled many of the tensions still evident today.

One important institution was not prominent in the post-settlement phase. The Legal Resources Centre (“LRC”) had been a very close partner in the Richtersveld land claims struggle, providing strategic and legal advice throughout the various court challenges. This came to an abrupt end when the CPA signed the agreement with Alexkor and government (after negotiations directly with Minister of Public Enterprises - Alec Irwin.) The secretive and unexpected manner in which the signing took place led to the LRC resolving that it would not involve itself with the Richtersveld CPA for the next five years.

Another stakeholder which should have been more intimately involved is Government. The CPA Constitution specifically requires that the Department of Land Affairs (now the Department of Rural Development and Land Reform), nominate a representative in consultation with the provincial Member of the Executive Committee for Local Government, and the local municipal manager. Two Committee members should also be nominated by the local municipality. The attendance of the Rural Development and Land Reform official in Committee meetings between July 2011 and May 2012 was consistent and effective. Attendance before and after the above mentioned period was extremely limited.

Interviews with independent Directors show that expert and technical advice was often ignored, especially in the Agricultural Company. It was inevitable that Independent Directors were often out-manoeuvred in meetings and would eventually withdraw from some of the Companies.

It is highly probable that should there have been an ongoing participation of the LRC and DRDLR, this would have led to an emphasis on democratic procedures, rights adherence, legal compliance, and transparency.

b) Section Two

This section gives a status report on the nine (9) entities which are implementing the Restitution Settlement Agreement. The reports summarise the core elements which make up the entity.

(i) Sida !hub Communal Property Association (“CPA”)

The CPA Constitution and the Communal Property Association Act (28 of 1996) serve as the founding documents of the CPA. The mandate of the Richtersveld Sida !hub CPA is to:

- Access, hold and manage identified land, rights to land and any other assets, including compensation, financial compensation and shareholding through land claims and restitution processes, directly or indirectly on behalf of the Richtersveld community;
- Enter into agreements with suitable development and management bodies; and
- Ensure that its assets are properly managed and developed. (CPA Constitution)

Elected members from the four towns serve for a period of two years. The CPA has two full time staff members and the Chairperson and Vice Chairperson play an executive role. Portfolios have been established in 2012 but have not been implemented.

The CPA derives its operational funding from loans made from the Investment Trust and Holding Company. To date the CPA has borrowed R12,176,000. This covered operational costs, vehicles, meetings with members, committee costs, litigation, legal support, and the appointment of a Receiver (Taswell Papier) during 2011.

The CPA and restitution entities have been involved in a number of litigation processes since 2007. Some of the more recent examples are listed as follows:

- 2009 - INTERDICT AGAINST CPA regarding membership list
- 2010 - INTERDICT AGAINST CPA
- 2010 - APPLICATION BY CPA AGAINST "NEW COMMITTEE" (1822/10)
- 2010 - APPLICATION AGAINST FARM LIQUIDATION
- 2011 - APPLICATION IN TERMS OF THE APPOINTMENT OF DIRECTORS TO COMPANIES

The Community Based Public Works Programme is being implemented by the Project Manager. A membership commission has been established and has taken representations from CPA members whose membership has been called into question. The report of the Commission was tabled during June 2012.

During 2009 a detailed Development Plan was constructed by the CPA and its members under the guidance of 'Development Works'. The following objectives were developed and remain relevant. The Development Plan identified the following objectives, issues and strategies.

Objective 1: A community ready for development

Priority Issues: Destructive attitudes, discord, limited debate, unsafe atmosphere, no dispute management systems, poor communication, limited documentation of decision making.

Strategies: Create a positive environment for healthy debate, attitude, manage conflict, improve communication capacity and systems.

Objective 2: Visionary, resourced and effective governance.

Priority Issues: Role clarification of entities, limited capacity in all structures, limited financial management policy and mobilization ability, no culture of reflection on effectiveness of policy, plans, and performance.

Strategies: Rationalise and coordinate actions of entities, invest in leadership, improve implementation planning and capacity, monitoring and evaluation, establish transparent financial management systems.

Objective 3: Ownership, with models for utilisation and management of assets

Priority Issues: Insecure and incomplete ownership and a lack of procedures to protect and control assets, absence of models, policy and resources to protect, share and develop assets of Sida !hub, ambiguous membership criteria.

Strategies: Design policy and models for asset management, manage membership and share revenue.

Objective 4: Social responsibility, involvement and excellence.

Priority Issue: Limited social interaction and pride in community, destructive social behaviour, child rearing skills being lost, teenage parenting, excellence not valued, limited access to education, concerns about respect for and survival of indigenous cultures.

Strategies: Build community wellbeing, excellence and pride, support vulnerable people, encourage child rearing capacity and parent support, support survival of cultures in modern society.

Objective 5: An economy with expertise, opportunities and choices.

Priority Issues: No skills audit and strategies to grow and retain expertise, limited financial literacy, entrepreneurship, poor infrastructure, trading venues, very limited local economy, insufficient beneficiation (sun and wind), absence of strategies for mining, agriculture, stock farming and tourism.

Strategies: Prepare community for participation in economic activities and beneficiation, improve infrastructure, establish economic activities around natural resources, develop agricultural potential, establish sustainable stock farming, design long term strategic utilization and management of Alexander Bay properties, manage an ecologically friendly and sustainable diamond mining industry, design a process to consolidate the tourism industry .

The CPA is at a turning point in its history. It has managed to remain intact compared to many other CPA's. It also had to implement a very complex settlement agreement with no support from Government. It has been marred by court cases, and since June 2011, conflict within the Committee. Failure to develop a focussed Committee which can deal with the many developmental challenges as contained in the Development Plan will lead to more members venting their frustration on the Committee. However, should the Committee commit to and implement a coherent vision, plan and programme much support will flow from the membership and other potential partners, including Government.

Commitment to resolve disputes is not shared by all members of the Committee. The full CPA Committee needs to take greater ownership and interest in the working of the Companies and Trusts. Thus far the impression created is that the other entities cannot be interfered with, or that they cannot be called to account by the Committee, or the membership. The reality is that the CPA is the 'mother body' and has the moral authority to ensure that communication, transparency and accountability is drastically improved in its own programme, as well as that of the other entities created to implement the Restitution Settlement Agreement.

A CPA is primarily a land-holding entity. It is not normally geared towards land and human development. Therefore it needs solid working relationships and agreements with entities which have the mandate of service delivery, rural development, social, and economic development. Most prominent of these is the local and district municipalities, mining and agricultural companies, national and provincial Departments. A special effort needs to be made to harness these resources.

Recommendations

- A programme to enhance governance must be undertaken. The recommendations contained in the Governance Assessment (November 2012) should be implemented without delay.
- Implementation of the Interest Register must receive priority, as it is the one issue which is clouding the work of the Committee. A rigorous approach should be followed and Committee members will have to make choices. If members are required to stand-down from structures, they could still play an advisory role where needed.
- The implementation capacity of the CPA needs extensive strengthening given the role it needs to play in implementing the Development Plan and Settlement Agreement. A project management unit and a revised structure are planned. Finding the resources to establish this must be prioritised.
- Partnerships and engagement with other entities which can support the development agenda must be pursued programmatically.
- The implementation of a standardised meeting agenda, receiving written reports from executive members, forming portfolios, task teams and sub-committees, and implementing a programme of action must receive priority from the Committee.
- The role of the various members of the Committee must be defined. The Code of Conduct must be vigorously implemented. A council of stakeholders which receives a report annually from the Committee should be considered.
- Constructive dialogue should be promoted on an ongoing basis amongst the Committee. Committee members should be coached in communication techniques, and dispute resolution.

(ii) Richtersveld Community Trust (RCT)

The Deed of Settlement elaborates on the formation of a Community Trust. Four community Trustees and three independent Trustees were appointed. The Deed allows for a reduced number of Trustees to continue to act in the interest of the beneficiaries.

The objectives and purpose of the Trust is to acquire and hold the Self-Development Company shares and any other Trust assets. These should be for the benefit of the beneficiaries with the intention of achieving long-term capital appreciation for the beneficiaries. They should carry on such other activities which support the objectives of the Trust.

A distribution policy guides the Trust. The Trust must minimise its tax implications by paying over to the beneficiaries any income earned in the same year, to distribute income earned from the sale of assets, and it may not reinvest income from the sale of assets. In other words, the Trust should ensure that beneficiaries derive maximum benefit from any income.

The Trust is required to report to the Richtersveld beneficiaries annually. The Self-Development Company is wholly owned by the Community Trust. Each of the operating companies report to Self-Devco, which should then report to the Community Trust. It is expected that the Trust would then convey these reports to the Richtersveld beneficiaries.

The Trust does not have any operational funds at its disposal, primarily as the operating companies have not declared profits as yet. It has made a loan from the Richtersveld Investment Trust to the value of R904,000 to fund its operational costs. The Trust currently does not have funds to have Trustee meetings or to communicate directly with beneficiaries.

This Trust is critical to improving communication on matters affecting the performance of the Richtersveld companies. At present, no reports have been presented to the community for the last three years. As the owner of the Self-Devco and the Companies, the Trust must rise to the challenge to improve communication, and to ensure that the Companies begin to pay their rightful role of economic and social development in the community. The dividends earned by the investment of the R190,000,000 and the balance of the R50,000,000 will have to be supplemented by dividends from the Companies or else the beneficiaries will not see meaningful benefit. The urgent reinvigoration of the Trustees should result in the improvement in community level communication.

The lack of budget prevents the communication with beneficiaries. Communication about the performance of Companies is an important area that needs substantial enhancement.

Recommendations

- The process of communication by the Community Trust must be supported with the necessary funds from the Investment Trust and Holding Company (in the absence of dividends from the companies).
- Emphasis on supporting the performance of the Trustees and Directors of Self-Devco and the remaining active Companies should be strengthened.
- The Trust must ensure that King Code III is implemented across all related entities.

(iii) Richtersveld Investment Trust (RIT)

The Deed of Settlement makes reference to the establishment of a Community Trust. The R190, 000,000 payments will be made to Investment Holding Company, 100% of the shares of which must at all times be held by a community trust to be formed by the Richtersveld community.

The Trust receives a membership list from the CPA which it uses to distribute income. The Trust Deed is specific about the process to be used to call meetings, where these meetings should be held, the election and nomination process of Trustees, communication after the AGM and so forth.

There should be nine (9) Trustees made up as follows:

- A nominee by the Minister of Finance;
- A nominee from the Minister of Agriculture and Land affairs (now called Department of Rural Development and Land Reform);
- Four (4) members from the community (one per town) via nomination and election who have a term of four (4) years; and
- Three (3) independent Trustees who have reasonable commercial knowledge and expertise in investment management and/or merchant banking and are nominated by the CPA Committee for a term of five (5) years.

If the number falls below nine(9)Trustees, the remaining members may continue to exercise their powers. The Board also has the power to co-opt Trustees when vacancies arise.

The purpose of the Trust is to acquire and hold the Richtersveld Investment Holding Companies shares and any other Trust assets for the benefit of the beneficiaries. These

are held with the intention of achieving long term capital growth for the beneficiaries and to provide the Trust with an income. This income can be utilised for the social upliftment and benefit of the Richtersveld community on an ongoing basis.

The Trust implements its programmes via two policy statements:

1. An Investment Policy - which is to provide a reference point for the Trustees and the Directors of the Richtersveld Investment Holding Company and which will guide the management of the assets of the Trust and the Holding Company; and
2. A Distribution Policy – to guide the Trustees in striking a balance between uplifting each of the beneficiaries by making distributions of Trust assets directly to each of the beneficiaries. It also makes distributions of Trust assets (funds) for the purposes of community social upliftment projects. The Trustees should promote educational programmes and facilities aimed at encouraging beneficiaries to continue living in the Richtersveld. Lastly, the Trustees shall promote social upliftment projects which do not fall within the scope of business of the Richtersveld Self-Development Company. This translates into 40% being paid as dividends directly to beneficiaries, 20% for education, 20% for entrepreneurship and job creation, and 20% for social development.

The Investment Holding Company declares dividend to the Trust for distribution from the returns on the R50, 000,000 development grant, the R190, 000,000 transferred as part of the settlement, and the R45, 000,000 received for the use of the Alexander Bay properties by Alexkor.

An interest register is in place, but needs updating. The Trust Deed states that *“no trustee shall have any interest in any contract entered into by the Trust, unless he or she shall have disclosed such interest or benefit to the other trustees in respect of the contract before the conclusion of such contract and such contract is approved, in writing, by unanimous consent of all the remaining trustees.”*

In support of the mandate, the Trust has made the following loans to the Richtersveld Restitution Entities from the R50, 000,000 allocated as part of the settlement agreement (as reported in November 2011):

Table 2: Loans to Richtersveld Entities

Entity	September 2007 to February 2009 (Rand)	March 2009 to February 2010 (Rand)	March 2010 to February 2011 (Rand)	March 2011 to September 2011 (Rand)	Total (Rand)
CPA	1 620 000	3 904 000	3 073 000	3 579 000	12 176 000
Richtersveld Investment Trust	4 895 000	0	-3 600 000 (repaid)	-1 295 000 (repaid)	0
Richtersveld Investment Holding Company	824 000	1 970 000	1 596 000	-2 684 000 (repaid)	1 706 000
Richtersveld Community Trust	771 000	133 00	0	0	904 000
Richtersveld Self-Development Company	301 000	82 000	631 000	218 000	1 232 000
Richtersveld Mining Company	5 400 000	0	0	0	5 400 000
Richtersveld Rehabilitation Company	542 000	49 000	0	0	591 000
Richtersveld Property Holding Company	918 000	253 000	0	0	1 171 000
Richtersveld Agricultural Holding Company	12 715 000	6 151 000	5 010 000	65 000	23 941 000
TOTAL					47 121 000

The R190, 000,000 which was received in 3 instalments of R63, 333,000 had increased to R216, 540, 000 by 29 February 2012 due to the investment strategy adopted by the Trust. (2012 Annual Report)

Engagements have been undertaken with school principals to better understand the needs of the Richtersveld Schools. This has taken place through a 'Principals Forum'. In addition, Ad-hoc applications for funding are received from Richtersveld institutions. These are then considered in terms of the Trust guidelines referred to above and on the

merits of each application. Once the Development Plan of the CPA has been operationalized the Trust will use this as a framework for community level projects.

The dividends declared in 2011 amounted to R3, 000 per beneficiary. It was noted at the Trust AGM during 2011, that the interest on the R190, 000,000 does not allow for such a dividend to be made available in the near future. Dividends will have to be sought from Mining, Property and Environmental Rehabilitation to supplement the income derived from the Investment Trust to ensure a reasonable benefit to CPA members.

The proceeds of investment of the R190, 000,000, the R45, 000,000 (for property rental over ten years from Alexkor), and the balance of the R50, 000,000 development capital are inadequate for the operational needs of the Richtersveld Restitution Entities and reasonable dividends. The dividends which reach the members are too small and far between. Loan approvals should be based on clear stipulated criteria and supporting documentation, with firm reporting guidelines and timeframes.

(iv) Richtersveld Investment Holding Company (Investment Holdco)

The Deed of Settlement states that the R190, 000, 000 will be paid over to an Investment Holding Company of which 100% shares must at all times be held by a community trust to be formed by the Richtersveld community.

An investment policy and strategy guides the Directors in their management of the assets of the Company and the Trust.

The CPA would determine the nomination procedure for community Directors, and the Investment Trust will nominate independent Directors who have investment management and or merchant banking experience. One Director is appointed by the Minister of Finance.

If the number of Directors fell below eight (8) the remaining Directors could continue in the interest of the Company. Community Directors have a term of 4 years and Independent Directors have a term of 5 years, and they can be re-appointed or re-elected.

The Holding Company's role is to:

- grow and preserve the capital (R190, 000,000) and provide a sustainable income stream to the Trust;

- ensure that the level of growth and income is made with the long term needs of the beneficiaries in mind; and
- Limit the investment risks of the Holding Company and the Trust.

The Richtersveld Investment Holding Company is 100% owned by the Richtersveld Investment Trust. One Director is also an Independent Trustee (Johan Redelinghuis) on the Investment Trust which allows for direct inter-entity communication. Administrative support is provided by two staff members, one of whom is an Independent Director.

The Richtersveld Investment Holding Company is 100% owned by the Richtersveld Investment Trust. The Directors annually provide the Trust with a report summarizing the business and financial affairs of the Company. Annual meetings also take place with the CPA where the dividend status is discussed and other information shared. The Company and the Investment Trust coordinate their activities in such a way that the trustees are informed on an ongoing basis regarding the activities and financial matters of the Company.

The R50, 000,000 development fund and the interest earned on the R190, 000,000 as part of the settlement amount is the core source of funding for the operating Companies (Mining, Agriculture, Environmental Rehabilitation and Property), the Trust and the Holding Company. Two independent Trustees need to approve any funding application made to the Trust and the Investment Holding Company.

The Company is focused on investing the Restitution Settlement funds received within the guidelines adopted by the Trust and the Company.

All investment decisions are only made by the company after receiving written recommendation from two of the independent trustees. Before providing loans a business case including a budget is considered. Holdco and the full trust would then consider the request and approve or not approve. In several cases external expertise to consider the business cases was used. In some instances the approved money would be held in Trust at Bissets Boehmke McBlain and only released when required for a specific payment or when conditions were adhered to. Conditions were set in some loan agreements where it was appropriate.

There has been some feedback on what the loans was used for and Holdco also received copies of annual financial statements. In most cases with RAHCO and the CPA

the Holdco did not have a choice but to make the loans. The payment of the Receiver, various court cases, feeding the animals, start-up capital for entities, etc. required the Holdco to approve funding.

The Company is dependent on investment returns. The remaining funds relating to the use of property in Alexander Bay by Alexkor (R45, 000,000) will increase the interest earned on investments. However, the balance of the R50, 000,000 development fund is under pressure as many developmental challenges affect the community.

Recommendation

- The Development Plan of the CPA should form the framework for inviting project and funding applications from the Richtersveld community.

(v) Richtersveld Self-Development Company (Self-Devco)

The number of Directors were stipulated at four (4) community members (one from each of the four towns) who would be nominated by the Richtersveld Investment Trust in a process approved by the CPA. There would also be three independent Directors, who have reasonable commercial experience, to be nominated by the Investment Trust. Each of the subsidiary companies (Agriculture, Mining, Environmental Rehabilitation and Property) would each nominate one of their Directors to the Board of Self-Devco. This would make up a total of eleven (11) Directors.

The main role of the Self-Development Company is business development in the Richtersveld.

The Company has 100% shareholding in each of the Richtersveld Property, Rehabilitation, Mining and Agricultural Companies. Administrative support is provided by the Investment Holding Company.

The Directors of the four operating companies report to the Self-Development Company on an annual basis. The Self-Development Company in turn reports to the Community Trust annually. There is no requirement that community interaction or reporting be undertaken by Self-Devco.

The Company has acted as a conduit in taking loans from the Investment Trust and Holding Company as start-up and investment capital in the subsidiary companies (Agriculture, Mining, Environmental Rehabilitation and Property). These loans to

operating entities amount to R31, 103, 000. The Self-Development Company also took a loan of R1, 232, 000 for its own operational costs since its formation

The Self-Devco has applied to have the Agricultural Company liquidated during March 2012.

This Company is dependent on the performance of the subsidiaries which will enable it to declare dividends. To date, only mining has shown profit generating potential. It is also critical for ensuring that the various company assets are utilised for wealth and job creation in the Richtersveld. The Mining, Environmental Rehabilitation and Property Companies have the potential to make major contributions to the wellbeing of the Richtersveld CPA members.

The Agricultural Company has been the most problematic in terms of performance and governance. Self-Devco needs to consider carefully the role of Agriculture in its portfolio and then play a leading role in revitalising this subsidiary.

The responsibility for communicating the programmes, performance, challenges and opportunities of the Richtersveld Companies is primarily that of the Community Trust. While the subsidiary companies are required to report to Self-Devco, it in turn is required to report to the Richtersveld Community Trust. The Trust is then supposed to communicate with the CPA members who are the sole owners of the Richtersveld Community Trust.

It is unfortunate that due to the relatively late establishment of Self-Devco, it was only able to assert control over RAHCO once substantial damage was inflicted on the farming operations. (See the RAHCO report) The performance of this Company in ensuring that the governance and development programmes of the Companies are on a solid footing cannot be over-emphasised. The fact that subsidiary companies are only required to report once a year, is cause for concern. It must have its finger on the pulse of the Companies which are the life-blood of the post-restitution programme.

Recommendations

- This entity must play a greater hands-on performance management and governance monitoring role over the subsidiary companies;
- Appropriate tools and skills should be procured for this role; and
- The election and nomination of suitably qualified Directors to fill the vacant posts should receive priority

(vi) Richtersveld Agricultural Holding Company (RAHCO)

The Deed of Settlement makes direct reference to the transfer of all Alexkor Agricultural moveable assets to an Agricultural Holding Company. The main business of the Richtersveld Agricultural Holding Company *'is that of farming and trading in all its aspects in the Richtersveld'*. The Company is now liquidated.

The sole Director of RAHCO reported to the Self-Development Company since it owns 100% shares in the Company. A farm foreman was employed with a labour corpse of fifteen (15) staff members. In the early stages, the Company had a number of farming operations, such as fodder, dairy, citrus, oyster and ostrich farming activities. In the last few years of the Company, Beauvallon Farm and Brandkaros were the two remaining active components.

A verbal lease agreement between the CPA and RAHCO means that RAHCO owned no fixed property, preventing the farms from being attached in the liquidation process. RAHCO was liquidated during March 2012 in terms of a Court Order granted in the Northern Cape High Court (Case Number 410/12). An application for liquidation was brought by the Richtersveld Self-Development Company (Self-Devco). The debt owed to Self-Devco amounts to R23, 876, 288.16. If this action was not taken, other creditors would dictate the terms of the liquidation process.

The Annual audited Financial Statements were qualified in 2009 after the accounting company which had been appointed absconded, it is alleged. This had a ripple effect on subsequent years. The accounting systems and practices have improved over the years, especially since the Investment Holding Company provided administrative and accounting support.

Various court processes have ensued since 2009 as it relates to the liquidation processes and the sale of livestock. The most recent relates to the non-appointment of Directors elected by the CPA membership in the four (4) towns.

All the operations have ceased. A process to appoint a Strategic Partner in terms of the Recapitalization and Development policy of the Department of Rural Development and Land Reform is now underway. A new lease agreement should be entered into with the Strategic Partner or a new Company. The CPA Committee should carefully consider the terms under which it will lease out the farm Beauvallon, and the future use of Brandkaros.

The formation of a new Company should be initiated, followed by a partnership agreement with suitably qualified commercial partners. It has long been intended that a suitable partner is sourced who will bring investment, skills, management capability, and access to markets.

The option of community farming on some of the agricultural properties should be seriously considered as the option of creating cooperatives has been mooted. A transparent and detailed process should be followed when deciding on the appropriate partnership and land use options.

There have been ongoing calls from CPA members for a forensic audit of the farming operations. This has been requested at meetings of the CPA and Richtersveld Investment Trust as it is common knowledge that there was a decline in the management and performance of the farming operations towards the end of ownership by Alexkor. This decline accelerated after transfer from Alexkor. The liquidation process should add detailed light onto what is already commonly known about the early days of RAH CO. During this research project, the following came to light:

- Governance of the Company was fraught with difficulty as a number of Board decisions were never implemented;
- Two highly experienced and qualified Independent Directors resigned within a few months of the transfer of the farming operation to RAH CO as their views and advice were not being taken seriously;
- A partnership was to be introduced within the first nine months of transfer – this approach was not implemented;
- The separation between the operation of the farm and the Chairperson of the Board, and the segregation of duties on-farm was often non-existent;
- The records of the farming operation were in a poor state as it was poorly managed by the appointed service provider;
- The formation of Self-Devco occurred after the damage had been done at the operational level;
- Self-Devco therefore exercised control over RAHCO at a late stage;

- This led to the dismissal of the first RAHCO Board in 2009;
- Loans were granted to RAHCO despite poor proposals and weak budgeting being presented; and
- A lack of technical farming skills, managerial experience and systems, a demotivated work-force, and emotional decision-making contributed to the collapse of production on the farm.

It has been decided by the DRDLR to instruct the Special Investigations Unit to investigate the collapse of the farming operations.

Recommendations

- A comprehensive communication exercise be undertaken once the Special Investigations Report is available;
- Responsibility for the break-down in control should be acknowledged;
- Serious consideration should be given to encouraging communal or new-farmer farming options on Richtersveld agricultural land through lease agreements with appropriate legal entities;
- The formation of various partnerships should be considered to ensure that a commercial partner is attracted to parts of the agricultural land available in the Richtersveld; and
- Regular reports are tabled at the community level on progress being made in this regard.

(vii) Richtersveld Mining Company (RMC)

The following founding documents are important for the understanding the work of the RMC:

1. The Deed of Settlement;
2. The Unanimous Resolution of Interim Joint Board Appointed in Terms of Clause 8.4 of the Deed of Settlement Dated 22 April 2007. This is simply called the 'Unanimous Resolution'; and
3. Company Statutes.

The Deed of Settlement confirmed that mining rights would be transferred to the community through a negotiated process between Alexkor and the Richtersveld community. The Unanimous Resolution was the result of the negotiations.

The Unanimous Resolution forms the implementation framework for the Pooling (combining land and sea mining resources) and Sharing (of the profits) Joint Venture between Alexkor and the Richtersveld Mining Company. This agreement is known as the 'PSJV' (Pooling and Sharing Joint Venture). The agreement is made up as follows:

- Alexkor will remain the holder of its marine mining rights;
- Richtersveld Mining Company (RMC) will be the holder of its land mining rights;
- Alexkor & RMC will respectively place their marine and land mining rights under full control of a Joint Board of the PSJV;
- Alexkor and RMC will each have 3 members on the Joint Board;
- Alexkor will invest R200m in the PSJV;
- Alexkor will have 51% interest in PSJV;
- RMC will have a 49% interest in PSJV;
- The Joint Board will appoint an Executive Committee (Exco);
- Exco oversees the conduct of day-to-day sea and land mining operations;
- Exco reports to the Joint Board;
- Exco will put in place a Development Plan and Programme (DPP) for a viable mining venture;
- The DPP will provide plans in which upgrading of marine and land diamond resources will occur;
- The DPP will provide for the manner in which prospecting and mining activities shall take place in Alexkor sea mining area and RMC land area;
- The actual mining work will then be done by Independent Contractors;
- The Independent Contracts (ICs) are appointed through a tender process in terms of the Public Finance Management Act (PFMA);
- The Exco make a recommendation to the Joint Board which will then make a decision on the appointment of ICs;
- Alexkor must ensure that books of accounts and records relating to the pooled operations are accurately reflected; and
- A pooled fund must be created for maintenance of plant and equipment.

The main objective of the company is to mine, invest and trade in all aspects in the Richtersveld.

- RMC has three (3) members on the Joint Board of the PSJV

- The RMC has a General Manager and secretary.

The RMC reports to the Richtersveld Self Development Company on an annual basis. The RMC has received a loan from the RIT to the value of R5, 400, 000 and has not yet declared a profit.

Alexkor's land mining rights has been transferred to the Richtersveld Community (represented by the RMC). A Pooling & Sharing Joint Venture (PSJV) has been formed between Alexkor and the RMC. The State will capitalise Alexkor for it to contribute R200, 000,000, to this PSJV in order to constitute a viable mining venture. This will then make the Richtersveld community the formal owners of the land mining business. Alexkor will retain the sea mining rights.

The mining operations are destined to be the major income earner for the Richtersveld community. A number of new jobs will be created into the future. It is important that maximum transparency and regular communication concerning processes of appointment of Independent Contractors, PSJV performance, and employment of staff receive high priority.

However, this is a resource which will be under threat and must be subject to strong and environmentally sensitive management. It is also an area of great contestation for control of the resource and is interpreted to be a major factor in the ongoing CPA committee tensions.

All mining operations come at great environmental costs. In addition, the PSJV has been clouded in mystery, due to the complex agreement which has been developed. This may be at the core of community conflict which is contaminating the CPA Committee. CPA Committee members need to clarify their interest in the mining operations, whether it is as employees, managers, Independent Contractors, or service providers. Thus far many of the allegations made in the Committee meetings relate to mining operations.

Recommendations

- A simple and dedicated communication process should be embarked upon to ensure that the PSJV is well understood within the Richtersveld community;
- All business interests related to the PSJV should be declared within the CPA Committee;

- A high level of transparency should be promoted in the Independent Contractor selection process; and
- Projected earnings from this Company should be made known and the Board held accountable for performance

(viii) Richtersveld Environmental Rehabilitation Company (REHC)

The Deed of Settlement makes extensive reference to the need for environmental rehabilitation in the Richtersveld. It is linked to the work of the Richtersveld Mining Company, and the Pooling and Sharing Joint Venture. Areas needing urgent rehabilitation were also identified, as well as the nature of research required to establish best practice for re-vegetation.

The main business of the Company is Environmental Rehabilitation in all its aspects in the Richtersveld.

The Company Directors report to the Richtersveld Self-Development Company which has a 100% shareholding in the Company. Two staff members are appointed-administrative support is provided by one staff member; and a Project Manager ensures the ongoing management of the rehabilitation programme.

The Company reports annually to the Richtersveldt Self-Development Company as required in its statutes.

A loan of R 591,000 was granted from the Investment Trust for the purchase of a vehicle and other operational expenditure.

The Company provides rehabilitation services to Alexkor. The labour costs plus 10% commission is paid to the Environmental Rehabilitation Company. This will contribute to the REHC being prepared to tender for such work in the longer term.

This entity is also exploring options in the tourism sector as it has been noted that rehabilitated areas could contribute to tourism in the Richtersveld.

This is an entity which will experience growth and opportunities as the mining business takes off. Once an area has been rehabilitated with vegetation, the tourism potential grows in that area. This may therefore be an area of unexpected growth.

Tourism development could distract the Board and Management from their core business. The option of creating a Tourism Company, or sub-branch within the Environmental Rehabilitation Company needs to be carefully considered.

Recommendations

- A consultation process be undertaken between the Environmental Rehabilitation Company and Self-Devco about the desirability of developing the Tourism opportunities; and
- Consideration must be given to enhancing the profitability of this Company.

(IX) Richtersveld Property Holding Company (RPHC)

The Deed of Settlement refers to properties that will be transferred to the Property Holding Company. The Board must seek the approval of the Minister of Land Affairs (now Rural Development and Land Reform) should they wish to alienate any immovable property. They would also have to consult the Self-Development Company should they wish to borrow money for the operations of the Company.

The mandate of the Property Company is to own property, manage property, invest and trade in all its aspects in the Richtersveld.

The Board has decided that, as the property portfolio will only become active once the process of Township Establishment has been completed by the Municipality, the Company should be de-registered. The Company will be re-activated once the properties are ready for transfer to the Company.

A loan of R1, 171, 000 was granted to the Property Company between 2007 and 2010. No programmes are active as the Alexander Bay properties have not yet been transferred. This will take place after Township Establishment by the Richtersveld Municipality.

The properties to be transferred include sport fields, business premises, a filling station, Churches, many homes and, guest houses (See the Table in Section One). More than 380 properties will be in the Company's portfolio When the Alexander Bay properties are finally ready for transfer the management of these properties will require substantial capacity, systems and policies.

It is important that the RPHC and the CPA engage with the Richtersveld Municipality to agree on timeframes for Township Establishment. In addition, a plan to re-register the company, gear up with the necessary structures, capacity and policies should be established. If there is a substantial delay in the management of properties after transfer from Alexkor, the loss of revenue, income and maintenance backlogs will occur. Confidence in the ability of the Property Company to manage such a large portfolio will be quickly eroded. Rental income losses will accelerate.

Recommendations

- The Company be activated as soon as possible, based on the timeframes for Township Establishment (see below);
- Detailed discussions are undertaken with the Municipality regarding the Township Establishment timeframes;
- An implementation and resource plan be developed for when the Alexander Bay properties are transferred to the Property Company; and
- This plan must spell out the human resource capacity required to manage the properties without the loss of revenue and the decline of assets.

Observations regarding the entities

The following has been observed as affecting the entities in general:

COMMUNICATION

- Only the Richtersveld Investment Trust and Investment Holding Company have recently had information sharing sessions with the CPA Committee. This took place for the first time during November 2011 and has not occurred again since August 2012.
- Communication between the entities is extremely limited. It is usually related to applications and granting of loans, rather than agreement of strategy and alignment of programmes.
- The various Companies are required to provide a written report to Self-Devco on an annual basis. They are not required to report to the membership directly.
- Self-Devco then reports on Company matters to the Community Trust, which is then required to communicate with the Richtersveld community. This has not happened

recently as the Community Trust has no funds. The Self-Development Company undertook a communication exercise about the collapse of the farming business and its vision for the farms in November 2012.

- In an effort to lower the costs of meetings, the Investment Trust and Holding Company have resorted to telephone conferencing and only holding occasional meetings. This has lowered the operating costs but has been frustrating for participants as members are often cut-off or struggle with poor reception.
- Communication processes between the CPA and the membership is usually verbal at information or general meetings. No newsletter is published, and Committee members are not expected to hold membership meetings on a regular basis.

EVALUATION OF BOARDS

- Only one of the entities undertook an evaluation of the performance of Board members. It was said that the Self-Development Company assessed Directors before their appointment.
- There was no ongoing assessment of the performance of Directors reported. Corporate Practice Charters have not been specifically developed as the Settlement Agreement, Land Claims Court Order, statutes and deeds have established the mandates of the various entities.
- The CPA had previously undertaken an evaluation of its Committee – but this has not been done with the current Committee.
- Training and induction of Trustees, CPA Committee and Board members has been limited. While it is expected that Independent Trustees and Directors may have had experience on other entities before joining the Richtersveld entity, the same cannot be confidently said of all the Richtersveld Community Directors and Trustees due to the limited opportunities in the region.

VACANCIES ON THE BOARDS

- The CPA Committee is the only fully compliant structure in that Committee members are participating in the structure as required.
- All the remaining entities are hamstrung due to a large number of vacancies. The large number of vacancies can partly be explained by the fact that the CPA has held back on the election of new Trustees and Directors. This is due to the Committee wanting to resolve its own planning agenda and programme firstly, before engaging with the Independent Electoral Commission (IEC) to manage the election process. It was also felt that since there is a need to rationalize the structure, the filling of posts should be delayed.

Table 3: Summary of Board vacancies

Entity Name	Board Post Filled	Board Vacancies
Richtersveld Investment Trust	5	2
Richtersveld Community Trust	4	3
Richtersveld Self-Development Company	3	8
Richtersveld Property Holding Company	0	0
Richtersveld Mining Company	1	6
Richtersveld Environmental Rehabilitation Company	1	5
Richtersveld Investment Holding Company	1	6
Richtersveld Agricultural Company	0	0
Richtersveld Sida !hub Communal Property Association Committee	13	0
TOTAL	28	30

DECLARATION OF INTERESTS

- The RMC reported that a Board member has a contract to supply consulting services to the RMC, to the value of R85, 000 (eighty five thousand rand). This transparency was encouraging to note.
- It was reported across all entities that Declaration of Interests is a matter taken seriously and affected Director or Trustees are required to declare their interest and where there a conflict, they will then be recused from processes.
- However, interest registers within the Trusts, Companies and the CPA Committee are unevenly managed. Some of the entities have clear policy and apply the policy rigorously, while others, because of the limited business of the entity, have not needed to enforce the recusal of Directors at all.

DIRECTOR FEES

- Attendance (also called Sitting) fees on Trusts and Companies varied between R2, 000 (two thousand rand) and R2, 500 (two thousand five hundred rand) per Board meeting.

- All the Trust and Company documents have been aligned with the Court Order which indicated that reasonable compensation should be payable to Directors and Trustees.
- Travel claims are at the rate of R3.25/km for own private transport. Accommodation costs are refundable, as are meals.
- The CPA Committee members do not receive a sitting fee.
- The CPA Committee is allowed R250 for meals and incidental expenses when travelling out of town on CPA business.
- While the sitting fees are relatively low compared to many other Boards in the corporate environment, there is concern that Independent and Community Directors and Trustees have received 'lucrative' fees, compared to the Restitution benefits received by members.
- A scan of the annual reports of the entities indicated that a number of Directors and some Trustees have received substantially more per year than the total of R4,500 each beneficiary has received since the claim was awarded in 2007. The RMC recently faced criticism for the salaries and fees paid to its manager and sole Director.
- Fees only compensate Board members for some of their time. No compensation is provided for preparation (reading, consulting), or travel time to sessions or when travelling on business of the entity.

FINANCIAL ADMINISTRATION AND RECORD KEEPING

- All the Companies and Trusts have audited annual financial statements. It was only the Agricultural Company (liquidated in March 2012) which had an early history of qualified audits and general non-compliance in this regard. Subsequent audits have shown improvement.
- All the Trusts and Companies (except for the Agriculture Company and the Property Company) are in process with their audits for the 2012/13 financial year.
- Company and Trust minutes of meetings and decisions are available. Again, concern was expressed that the Agricultural Company's records did not comply with basic record keeping in the early years, especially with regard to the operation of the farm.
- Asset registers are available, especially for office furniture, vehicles and computers.

COMPANY PERFORMANCE

- The Agricultural Holding Company is liquidated. While this is a negative development, the institutional arrangements designed in this Restitution Settlement have protected the asset as the land was not lost during the liquidation

proceedings. The Agricultural Holding Company had a verbal agreement with the CPA for the use of the land.

- The Property Holding Company is currently dormant. The costs of keeping the company registered, and the Board active, out-weigh the benefits as none of the Alexander Bay properties have been transferred at this stage. This will only take place after Township Establishment has been completed by the Richtersveld Municipality.
- The Community Trust is the entity which takes final accountability for the performance of the Companies which report to the Self-Development Company. However, the Community Trust is not active. It was noted that it does not have operational funds. This means that the Richtersveld CPA membership has not received reports relating to Company performance. This has resulted in the membership being prone to mis-information and speculation about what is happening within their Companies. The fact that none of the Companies have declared dividends has led to rampant speculation about how they have used start-up capital loaned from the Investment Trust.
- Company performance should not be assessed only in terms of dividends declared and liquidity. The prevalence of Board vacancies, limited reporting to the members through the required structures and an exodus of independent directors and few community directors, show that the institutions are in need of rejuvenation and investment.

Conclusions and Recommendations

The expectations created by the value of the huge claim (approximately R3bn) launched against Alexkor by the CPA, and the content of the final Deed of Settlement confirmed by the Land Claims Court in 2007, have left the Richtersveld community disappointed. Many members are angry and disillusioned. The mood remains hostile towards the leadership of the CPA.

Therefore, implementing the Settlement Agreement was always going to be a tough task for the CPA Committee. The fact that the Committee had no post-settlement support from government, and had alienated community support institutions, made the task even more difficult.

The biggest challenge remains ensuring that the membership of the CPA receive substantive, direct benefits, and that the Deed of Settlement is made to work for the benefit of future generations of the Richtersveld community.

The following recommendations are made:

- The Richtersveld CPA members and community should consider engaging in processes of community healing. This has been identified by the Committee as part of the Development Plan. It should then provide a platform for more meaningful community, social, economic and political development.
- A coordinating capability should be established. At present no visible coordination takes place between the entities with the result that the CPA is called to account for actions they have no control over. This should be accompanied by a governance enhancement programme applicable to all entities.
- The minimum number of vacant posts on the Companies and Trusts should be filled as a matter of urgency. The IEC Northern Cape should be contracted to manage the election process for the filling of the vacant posts. Criteria for the candidates should be developed through consultation with members and then announced by the CPA before nominations begin.
- Once the limited vacant posts are filled a structured programme of rationalizing the structure should be embarked upon
- Where CPA Committee members are active on Company or Trust structures, they should be required to make a choice between the CPA Committee and the applicable entity.
- The declaration of interests should be a standing item on every meeting agenda. The Interest Register must be updated and more rigorously implemented. This should form part of published annual reports and direct communication with the members.
- Where an entity nominates a Director or Committee member to represent it on the Board of another entity, the Director can accept the nomination. Members should be reminded of their responsibility to represent the entity, and to deliver written reports to meetings.
- A communication strategy and programme should be implemented across all the entities. Companies and Trusts must be required to have regular (at least six-monthly) communication sessions at the Richtersveld town level. The CPA Committee needs to receive regular reports from the various entities, and it should not hesitate to convey the concerns of the Committee, or of members, to the applicable entity. An annual report of all the Richtersveld Entities should be simplified and presented to members. The CPA should ensure that this takes place.
- The Development Plan and its proposed capacity building programme and structure should be communicated and budget allocated. Implementation of the Development Plan should begin without further delay.

- The Richtersveld entities which have not yet moved towards the implementation of King Code III should develop plans to implement the Code within the next twelve months.
- Government and other stakeholders should re-commit to working with the CPA and the other entities to ensure that governance is improved and capability built.
- A council of stakeholders should receive reports from the CPA Committee on the performance, transparency and levels of compliance to statutory requirements of the nine (9) entities, annually.

REFERENCES

Court Order: Land Claims Court of South Africa, Case Number LCC 151/1998

Richtersveld Deed of Settlement

Unanimous Resolution

Richtersveld Trust Deeds and Company and Company Statutes

King Code III

CPA Constitution and Committee Code of Conduct

CPA Development Plan

CPA Governance Assessment