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**VIA E-MAIL (aboss@parliament.gov.za)**

Parliamentary Portfolio Committee on Mineral Resources  
c/o Ms Ayanda Boss  
The Committee Secretary  
P.O. Box 15  
Cape Town  
8000  
Republic of South Africa

September 6, 2013

**RE: Mineral and Petroleum Resources Development Amendment Bill (B15-2013)**

Dear Portfolio Committee Members,

We appreciate the opportunity to comment on the Mineral and Petroleum Resources Development Amendment Bill, B15-2013 ("**Amendment Bill**"). ExxonMobil Exploration and Production South Africa Limited ("**EMEPSAL**") is excited about offshore petroleum exploration potential in the Republic of South Africa. We are the operator and hold a 75% participating interest in the offshore Tugela South Exploration Right 12/3/154 and hold a 100% participating interest in Technical Cooperation Permit 12/2/62 covering offshore acreage to study the hydrocarbon potential of the Deepwater Durban Basin. In addition, EMEPSAL has signed an agreement with Impact Africa Limited ("**Impact**"), to acquire 75 percent participating interests in future exploration rights in three offshore areas covered by technical cooperation permits currently held by Impact. EMEPSAL and Impact have submitted appropriate documentation to the Department of Mineral Resources (via the Petroleum Agency of South Africa) relating to these exploration rights and EMEPSAL's participating interest in them. Such documentation is pending South African government approval.

In light of the proposed Amendment Bill we would like to provide our thoughts and comments. We hope to achieve future success in our South Africa offshore petroleum exploration working under the terms of a fair and stable fiscal system.

While we appreciate the Amendment Bill has admirable goals such as streamlining administrative processes and removing ambiguities that exist within the Mineral and Petroleum Resources Development Act, 2002 ("**MPRDA**") many of the proposed changes appear to address issues particular to the mining industry. The Amendment Bill's broad application would have several adverse consequences for the growth potential of the Republic of South Africa's oil and gas industry. We believe that the current regulatory framework provides an atmosphere to promote, regulate, and encourage exploration in the oil and gas

industry as demonstrated with the recent activity in the offshore arena. We would appreciate the Parliamentary Portfolio Committee on Mineral Resources taking into account the following high level comments regarding the Amendment Bill to ensure the Republic of South Africa retains a fiscal system to attract investment and accelerate oil and gas exploration activity so as to develop the potential resources which, if successful, will create local jobs and result in revenue growth for the country.

Below are our comments regarding certain key amendments proposed in the Amendment Bill that could have a significant impact on the South African oil and gas industry:

#### *Amendment*

- **Proposed Free Carried Interest** (*clauses 1(k), 54(f) and 59(d) of the Amendment Bill amending sections 1, 80(7), 84(6) and 84(7) of the MPRDA*). While we understand the Republic of South Africa's ("State") desire to become a participating interest holder in oil and gas production rights, the proposed language in the Amendment Bill regarding a "free carried interest" requires additional clarity. For example, the percentage of "free carried interest" reserved for the State and the nature and extent of the contribution, if any, that the State would make towards development, production and past exploration costs is not specified. Additional clarity is also required pertaining to the State's option to acquire a further interest. The current standard forms of exploration and production rights provide the clarity to attract investment in the oil and gas industry but the new proposed language provides a lot of ambiguity as to the State's intent.

Further, additional clarity is required regarding the concept that the State would be issued "special shares" if it exercises an option for a further interest and to have the right to appoint two directors to a management board of a production operation. Given that common practice in the oil and gas industry is to use unincorporated joint ventures to conduct exploration and production operations and that the rights and obligations of the participating interest holders are governed through a joint operating agreement, it is not clear how the proposed legislation could be applied.

- **Historically Disadvantaged Persons** (*clauses 1(l) and 54(b) of the Amendment Bill amending sections 1 and 80(2) of the MPRDA*). The Amendment Bill proposes new language regarding Historically Disadvantaged Persons ("HDPs") which requires additional clarity as to the intent, purpose and implications. In particular, the proposal to amend the definition of HDP to exclude juristic persons may be in conflict with MPRDA requirement that participating interest holders must have the ability to satisfy the technical and financial requirements of the exploration and production work programmes. The oil and gas industry requires specific technical expertise and significant financial investments (especially offshore) and the proposed amendment may therefore limit the opportunity for near term investment by HDPs. Growth in the oil and gas industry would provide opportunities to facilitate training and development of HDPs in the future.

Further, additional clarity is sought regarding the proposal to require compliance with the Amended Broad Based Socio Economic Empowerment Charter for the South African Mining and Minerals Industry versus the Liquid Fuels Charter which

incorporated input from the petroleum industry (including offshore upstream petroleum activities).

- **Beneficiation** (*clauses 1(b), 2, 21, and 21 of the Amendment Bill amending section 1, 2(e), and 26 of the MPRDA*). Previously beneficiation requirements were not applicable to petroleum and the Amendment Bill will provide the Minister of Mineral Resources wide discretion to determine whether petroleum may be exported, and the percentage of production required to be offered to local beneficiators and the price at which it must be offered. Petroleum pricing is very sensitive, and is determined by a variety of international market forces and the oil and gas industry needs to operate under a free market price system to remain competitive. In addition, particularly for the offshore oil and gas industry, it will be critical to understand any domestic obligations as such requirements may have a substantial impact on additional capital investment.
- **Proposed Disbandment of PASA** (*clauses 1(g) and 46, 47 and 48 of the Amendment Bill amending section 1, 70, and 71 and repeal of section 72 and 73 of the MPRDA*). As you are aware, many successful oil and gas producing nations have dedicated petroleum regulators with a similar role as the Petroleum Agency of South Africa (“PASA”). The oil and gas industry has some unique characteristics, especially pertaining to South African offshore petroleum exploration, which lead to issues that are different from the mining context. These issues include geological exploration risk, limited work windows due to the combination of very harsh metocean conditions off the South African coast and protection of the environment (for example whales and turtle migration), data acquisition (seismic, etc.) and significant investments (millions of dollars) before potential discoveries and developments may be achieved. Retaining an agency such as PASA with their demonstrated expertise in oil and gas matters, maintaining the repository of South African exploration and production data, wealth of South African oil and gas knowledge and oversight of the oil and gas industry would help the Republic of South Africa to attract and retain investment in the oil and gas industry. As oil and gas exploration takes several years, it is important to maintain a central agency and streamlined regulatory process to accelerate exploration.
- **Environmental Matters** The current environmental management plan approval process, as implemented by PASA and approved by the Department of Mineral Resources, provides a mechanism to address the appropriate level of environmental assessment for the particular type of exploration activity. The stricter environmental assessment processes provided for in the Mineral Petroleum Resources Development Amendment Act of 2008 (MPRDA 2008), particularly regarding exploration (which requires a more thorough scoping and environmental impact assessment process under the National Environmental Management Act for exploration activities), may result in delays in implementation of certain types of exploration work programmes (such as seismic acquisition). Along with the proposed disbandment of PASA, EMEPSAL believes that transitional arrangements in the environmental approval process should be clarified in both the Amendment Bill and associated regulations for a) new exploration right applications lodged before the MPRDA 2008 transition and b) renewal and amendment of existing exploration rights thereafter.

Further, in *clause 30(e) of the Amendment Bill amending section 43(6) of the MPRDA*). EMEPSAL requests an explanation of the rationale for the proposal in the Amendment Bill that environmental liability of a holder of an exploration or production right extends 20 years beyond the issuance of a closure certificate by the Minister of Mineral Resources.

- **Proposed Changes to Time Periods** There are several sections in the Amendment Bill which would replace fixed time periods with a “prescribed period”. EMEPSAL understands the proposed changes provide more flexibility, but cautions this may also result in much uncertainty with the potential to have an adverse impact on conduct of exploration and production operations, particularly given the short time frame in which initial exploration operations are currently contemplated.
- **Proposed Changes to Fines and Penalties** (*clause 70 of the Amendment Bill amending section 99 of the MPRDA*). EMEPSAL is committed to complying with laws and regulations applicable to our activities in the Republic of South Africa. The Amendment Bill seeks to impose broad amounts of fines and penalties which may not be appropriately applicable to the nature of the offences under the MPRDA. These proposed fines could compromise the viability of certain petroleum operations and discourage expenditure on exploration and development work programmes.
- **Proposed Relinquishment** (*clause 56(b) of the Amendment Bill amending section 82(g) of the MPRDA*). EMEPSAL is familiar with the concept of relinquishment of an area at the renewal stage and while we understand that proposed future regulations or a government notice would provide more specificity, we would like in the near-term to obtain a general idea of the extent of area proposed to be relinquished.

We appreciate your consideration of our comments and look forward to discussing the Amendment Bill with you in further detail at your earliest convenience.

Additionally, EMEPSAL respectfully requests the opportunity to make an oral submission to present our concerns to the Parliamentary Portfolio Committee on Mineral Resources. Could you please advise as to the date and time to make such oral submission?

Sincerely,

**EXXONMOBIL EXPLORATION AND  
PRODUCTION SOUTH AFRICA LIMITED**

By: 

Name: Russ A. Berkoben

Title: President