bbp LAW INCORPORATED OIL & GAS SPECIALISTS

Our Ref: B Petersen
Your Ref:
Email : barrisford@bbplaw.co.za
Date : 8 February 2013

The Honourable Minister of Mineral Resources
Ms Susan Shabangu
Department of Mineral Resources
70 Mantjies Street
Sunnyside
0001

COMMENTS TO THE MINERAL AND PETROLEUM RESOURCES DRAFT AMENDMENT BILL ("Amendment Bill")

Dear Honourable Minister

1. **BBP LAW AND PRACTICING IN SOUTH AFRICA'S OIL AND GAS INDUSTRY**

I am a South African practicing attorney and proprietor of the law firm BBP Law. I have attached hereto as **Annexure 1** my shortened CV for your perusal and consideration.

BBP Law is the only black owned specialist oil and gas legal practice in South Africa. Amongst its clients, BBP Law represents a number of international oil and gas companies (hereinafter referred to as "**IOC's**") that are actively involved in the South African oil and gas industry. For further information on BBP Law and the international jurisdictions within which we have been rendering legal services, I have attached hereto as **Annexure 2** the practice brochure for your perusal and consideration.

I apologise for my lengthy histogram aforesaid, but it is essential that credibility is immediately established in order to convince you that my comments to Amendment Bill set out below and in the document attached hereto as **Annexure 3** be given due and careful consideration.

In order to avoid potential conflicts with clients, BBP Law has chosen to submit comments and recommendations in the name of the practice and not on behalf of clients believing we have a vested interest in the future growth and development of the South African oil and gas industry. While our comments and recommendations relate to the majority amendments proposed by the Amendment Bill, they are primarily directed at the impact of the Amendment Bill on the South African oil and gas industry.

2. SUMMARY OF OUR COMMENTS AND RECOMMENDATIONS

2.1 We recognise Government's need to transform the South African resources industry.

2.2 In managing the resources of South Africa we recognise that we should learn from the mistakes and success in other countries.

2.3 We recognise that the South African minerals industry and oil and gas industry are in different stages of development.

2.4 We recognise that the oil and gas industry has the potential to transform South Africa and provide for its future domestic energy requirements.

2.5 We recognise that since the costs of oil and gas exploration and development are significantly high, the oil and gas industry in South Africa cannot establish itself and mature without significant foreign investment.

2.6 We recognise that an attractive fiscal and stable investor environment must be present in South Africa to attract foreign investment in our oil and gas industry.

2.7 We recognise that under our current legislative regime (prior to the proposed Amendment Bill) IOC's are offered an attractive investment opportunity.

2.8 We are concerned that the proposed Amendment Bill seeks to transform the minerals industry at the expense of the oil and gas industry which is still in the process of establishing itself.

2.9 We are concerned that the Amendment Bill if implemented in its current form will result in the loss of and preclude foreign investment in South Africa's oil and gas industry.

2.10 We recognise that a separate oil and gas act, as currently in place in countries such as Namibia, Botswana Mozambique, Malawi, Zambia, Zimbabwe and Tanzania has now become a critical path for the continued growth of and investment in our oil and gas industry and therefore recommend the establishment of a separate oil and gas act for the oil and gas industry.

2.11 We recommend, in the absence of a separate oil and gas act, that a forum be established comprising of Government, international advisors and the oil and gas industry tasked with the objective of reviewing the impacts of the proposed Amendment Bill and coming up with recommendations that serve Government's transformation objectives while maintaining a stable fiscal and investor friendly environment.

2.12 We recommend that Government takes no further steps as proposed by the Amendment Bill insofar as it relates to the oil and gas industry until such time that it has had the opportunity to implement paragraph 2.11 and/or paragraph 2.10 above.

3. GENERAL COMMENTS

The fact that the majority of South Africa's resources remain vested in the hands of foreign companies and white minorities warrants concern. While we have seen limited transformation taking place in our resources industry, it is clear from the events of the last few years that the perception exists that not sufficient has been done to transform the resources industry. The 2010 audit done in respect of the Liquid Fuels Charter bears testimony to the aforesaid.

The challenge facing Government has and will always be striking the correct balance between transformation and creating a stable and investor friendly environment in the resources industry where domestic capital is insufficient and foreign capital is required.

We have to recognise that South Africa as a jurisdiction for oil and gas investment is still in the early stages of exploration. South Africa is still perceived by many IOC's as being a frontier area with significant amounts of technical and geological risk that has yet to be mitigated. Our minerals industry on the other hand is considered well established with significant mining operations taking place but in serious need of transformation as ownership remains predominantly in the hands of foreign companies and white minorities.

South Africa has been fortunate over the last six years to have had a steady growth of foreign investment in the oil and gas industry. However, there has been very little exploration success that has translated into oil and/or gas production projects.

Exploration in the absence of early exploration success remains an on-going activity that under the current legislative regime will in all likely hood continue for at least nine years from the grant of an exploration right. Investment making decision models within the oil and gas industry and the minerals industry are materially different throughout the life cycle of these projects. IOC's have a significantly longer risk capital exposure periods. For this

reason IOC's exercise extreme caution and react quickly when their stable investment environment is affected.

At present, other the production rights that have been granted to PetroSA (the South African national oil company), we have only one offshore production right and one onshore production right that has been granted to IOCs. It should however be noted that neither of these projects are currently in production. It is common cause that PetroSA's offshore oil production has dwindled and that it is struggling to find more gas to support the needs of the Mossgas gas to liquids plant, having to import condensate to make the plant economic, be that marginally.

In respect of the Ibubezi gas production right on the west coast, this project is also considered marginal. It is well known that additional reserves of gas are required to make the Ibubezi gas production project feasible despite the significant investment that has already taken place. Industry is also well aware that Forest Oil and Anschutz (both IOC's) are in the process of farming out their respective interests in the Ibubezi gas production right and withdrawing from South Africa. We have also recently seen the departure of Pioneer Resources (a USA independent oil and gas company) from South Africa. The other production right was granted to Molopo Energy in respect of a small onshore coal bed methane/biogenic gas production project that is yet to come online but is unlikely to have any material effect on the South African economy as a whole.

During the years 2002 to 2007, South Africa as a jurisdiction for oil and gas investment suffered numerous setbacks. It is important to understand what happened prior to and during this period in order that the mistakes of the past are not repeated once again. Prior to 2002, the Petroleum Agency was established and did a sterling job in attracting numerous IOC's to South Africa. The role of the Petroleum Agency should not be underestimated as an industry standard tool spearheading and encouraging investment in a developing oil and gas industry. The form of granting instrument used prior to the advent of the Mineral and Petroleum Resources Development Act of 2002 ("MPRDA") was an oil prospecting sub-lease granted to IOC's by the Petroleum Agency, being the holder of OP26 (an oil prospecting lease granted over all of South Africa's offshore areas).

I was part of the team responsible for drafting the terms of oil prospecting sub-lease agreements. While many IOC's investing and/or considering investment in South Africa's at that time regarded a sub-lease agreement as a rather cumbersome process and advocated that South Africa should consider the drafting and implementation of a separate oil and gas act, they nonetheless invested in South Africa. The reason IOC's continued to invest in South Africa despite it not having the most sophisticated legislative and regulatory framework was because IOC's could fiscally and commercially model their investment decisions as the regulatory framework was clear and unambiguous. Despite South Africa still being considered as a frontier oil and gas exploration jurisdiction, South Africa when fiscally and commercially modelled by an IOC's offered the IOC's a relatively stable investment environment in relation to the then perceived technical and exploration risk.

When an IOC is looking for a jurisdiction within which to invest, a detailed risk assessment is done of that jurisdiction. South Africa therefore competes with other countries for oil and gas investment funds. This risk assessment involves looking at a number of factors in combination. A few of these factors amongst others are as follows:

(a) exploration risk;

(b) fiscal stability;

(c) political stability; and

(d) legal stability.

Another factor that is taken into consideration is whether separate legislation is in place for the oil and gas industry and the minerals industry. For some time there has been a lobby in South Africa pressing forward for the creation of a separate oil and gas act regulating the oil and gas industry. All countries that have been successful in growing their domestic oil and gas industries and attracting foreign investment have recognised that without a separate oil and gas act this will not be sustainable.

Prior to the MPRDA, the oil and gas industry in South Africa had hoped that Government would take the opportunity of establishing a separate oil and gas

act and numerous representations in this regard were made by industry to Government. At present the perception is that the development of the South African oil and gas industry is being sacrificed to address transformation in the minerals industry. It is quite apparent that had Government established a separate oil and gas act, the situation the oil and gas industry currently finds itself in could have been avoided.

With the advent of the MPRDA in 2002, uncertainty was brought into the South African oil and gas regulatory environment. The MPRDA brought significant changes to the oil and gas investment environment in that it signalled a significant change in the rights previously granted to IOC's under a sub-lease agreement. The situation was exacerbated due to the fact that while the MPRDA was approved in 2002, it was only made effective in 2006 and without the necessary amendments being made to the legislation governing taxation, exchange control and customs. The consequence of Government's short sightedness in permitting this situation of uncertainty to exist resulted in many IOC's no longer considering South Africa as an oil and gas investment jurisdiction and those that had already had sub-lease agreements deferred their expenditure obligations.

It is significant to note that during this period of uncertainty, BHP had planned to drill South Arica's first deep water exploration well which at the time would have been one of the most expensive exploration wells in the world. This well was not drilled and the reason is that the regulatory and investment framework that had previously engendered certainty and stability no longer existed and IOC's could not properly model their investment decisions. Many IOC's left South Africa and this stunted the growth of the oil and gas industry in South Africa for a number of years.

By the year 2008 legislative uncertainty was removed as Government implemented a number legislative enactments, regulations to the MPRDA were published, amendments were made to the Income Tax Act and Customs Duties Act that once again restored stability and certainty. In addition to these factors we saw a steady increase in world oil prices which materially affected oil and gas investment decision economics in respect of frontier areas. We have also seen the growth in oil and gas exploration technologies that de-risked exploration drilling world–wide. All the abovementioned factors when

taken into account by IOC's and applied to South Africa, resulted in IOC's once again considering South Africa as a destination for oil and gas investment. Since 2008 we have seen a significant growth in the number of new IOC's entering South Africa. Amongst these were majors and super majors.

The majority of South Africa's offshore oil and gas exploration blocks are currently under licence and we stand at the precipice of an exciting period of future shale gas exploration that could materially affect the South African economy. It is incumbent on us now to embrace and solidify the work that has been done in attracting the IOC's that are now present in South Africa because as easily as they entered they could exit.

4. AMENDMENT BILL

We have conducted a detailed review of the Amendment Bill and our comments are set out on the attached **Annexure 3**. As a general comment, it is our considered opinion that the legislature has erred in the following respects:

4.1 It has not adequately demonstrate legal skill and precision in the language used creating uncertainty, vagueness and ambiguity;

4.2 It has not used defined terms consistently throughout the document which creates confusion;

4.3 It has introduced new terms and concepts that are either not defined or not adequately defined;

4.4 it has failed to appreciate the differing natures of the mining and oil and gas industry in that many terms that are applicable in the mining industry cannot without significant amendment apply within the context of the oil and gas industry;

4.5 it has granted subjective discretion to the Ministry without properly framing the criteria that will be used when that discretion is exercised;

4.6 by imposition greater obligations with regard to empowerment and the state carry it has increased IOC's exploration fiscal and political risk when fiscally modelled;

4.7 it has diminished IOC's security of tenure by making critical approvals now subject to executive discretion.

4.8 it has significantly eroded the position of existing rights holders without a transitional process being put in place;

4.9 it has failed in not separating the oil and gas industry from the mining industry and taking this opportunity to put in place a separate oil and gas act;

4.10 it has failed to recognise the need for a credible and independent oil and gas licencing authority whether it be the Petroleum Agency or another institution within Government; and

4.11 it has failed to recognise the devastating impact the Amendment Bill if enacted will have on South Africa's developing oil and gas industry.

We thank you for inviting us to provide you with our comments and recommendations. We are available to provide input on the development of a separate oil and gas act based on our experience working in various oil and gas jurisdictions worldwide.

Please do not hesitate to contact writer should you wish to discuss the contents of this letter or require any clarifications.

Yours faithfully

ATTORNEY BARRISFORD PETERSEN
DIRECTOR

ANNEXURE 1

BARRISFORD PETERSEN CV

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1 Sipres Street Loevenstein
7530
Republic of South Africa
Telephone: 0027 (21) 9131384
0027 (0) 723924044

CURRICULUM VITAE

1. BIOGRAPHICAL INFORMATION

SURNAME	:	Petersen
FIRST NAMES	:	Barrisford Brent
NATIONALITY	:	South African
DATE OF BIRTH	:	16th February 1967
HOME LANGUAGE	:	English
OTHER LANGUAGES	:	Afrikaans (fully bilingual)
MARITAL STATUS	:	Married
DEPENDANTS	:	two boys
EDUCATION	:	BA (Law) LLB, Admitted Advocate
SPORTS AND HOBBIES:		Fishing, Motor Racing, Engine Building, Golf and Action Cricket

2. SUMMARY OF WORK EXPERIENCE

- **Private Law Tutor** at University of the Western Cape (1991);
- **Candidate Attorney** to SJ Petersen Attorney (1992);
- **Professional Contracts Advisor** to Sanlam (1993);
- **Contracts Officer** to Soekor (Pty) Ltd Group of Companies (1994);
- **Legal Advisor** to Soekor (Pty) Ltd Group of Companies (1995);
- **Manager: Legal Services** to Soekor/PetroSA (Pty) Ltd (1996 to September 2002);
- **Advocate's Practice** (2002 to 2008) specialising in the oil and gas industry;
- **Director: Bowman Gilfillan Attorneys** (2008 to 2011: Head of oil and gas division); and
- **Advocate's Practice** (2011 to 2012) specialising in the oil and gas industry.
- Director: BBP LAW Inc. (2012 to present)

3. TRAINING AND DEVELOPMENT

- **BA (Law), LLB Degree**: University of the Western Cape (1991);
- **Association of Law Societies**: Practical Law School (1992);
- **Attorney's Admission Exam** (passed in 1992);
- **Sanlam In-House Training Courses**: Assurance Products, Salesmanship, Marketing, Financial Planning, Estate Planning, Investment Planning, Professional Provident Funds and Wills and Estates (1993);

- **Synergy Workshops**: Maximising Organisational Resources and Effectiveness (1994);
- **Oxford College of Petroleum Studies**: Negotiating International Petroleum Agreements (1995);
- **University of Dundee (College of Petroleum, Mineral Law and Policy) held in Dundee (UK)**: Economics of the International Petroleum Industry, Petroleum Service Contracts, Negotiating and Drafting of Contracts in the oil and gas industry, Environmental regulation of the oil and gas industry, U.K. Oil and Gas Law, Cross Border Acquisitions, and Financing international oil and gas operations (1996);
- **International Oil and Gas Law, Contracts and Negotiation: Summer Program held in Dallas (USA)**: International Deal Issues for Senior Management, Due Diligence, Commercial and Fiscal Package, Tax Considerations and Structures, Joint Operating Agreements, International Environmental Issues, Confidentiality Agreements, Joint Study and Bidding Agreements, Participation Agreements, Purchase and Sale Agreements (1997);
- **Scotwork**: Negotiating Skills Training (1999);
- **University of Cape Town (Graduate School of Business)**: Executive Management Programme (2000);
- **CWC GROUP held in Houston (USA)**: Fiscal and Legal Aspects of Global Upstream Petroleum Arrangements (2000);
- **X-pert Academy** (Managing by Project): Introduction to Project Management (2001);
- **X-pert Academy** (Managing by Project): Project Management Tools, Techniques and Processes (2001);
- **21st Century Practices for In-house Legal Counsel** (2002); and
- **Admission as an Advocate to the Supreme Court of South Africa** (December 2002).
- **Admission as an Attorney to the Supreme Court of South Africa** (March 2012)

4. MANAGER LEGAL SERVICES SOEKOR (now PetroSA (Pty) Ltd)

As Manager: Legal Services for Soekor (Pty) Ltd, including its various local and foreign subsidiary companies, my responsibilities were extremely diverse encompassing all aspects of managing the Legal Department and corporate legal work. Such responsibilities included negotiation and drafting of all foreign oil and gas business development contracts. Most of these contracts were with foreign companies.

Additionally, my responsibilities included the development and implementation of the company's insurance and risk management strategy, corporate secretarial and corporate governance matters, establishment of local and foreign subsidiary companies and the development and implementation of the tender and bid evaluation procedures.

I have been actively been involved in the drafting and negotiation of all forms of agreements which include the following: merger and acquisition agreements, farm-in and farm-out, joint venture, joint bidding and participation agreements, asset and share acquisition agreements, onshore and offshore construction project agreements, FSO and FPSO agreements, logistical services agreements, agreements for the charter (bareboat and time charter) of oil tankers, supply vessels, diving support vessels, anchor handling vessels and seismic acquisition vessels, helicopter and aircraft services agreements, offshore and onshore drilling contracts and related oilfield services agreements, project financing agreements, IT

outsourcing and related hardware and software maintenance agreements, leasing of property and equipment, notarial deeds, guarantees, suretyships, oil exploration and mining leases and sub leases, consultancy and employment services agreements, management services agreements, sale of data and information services agreements, telecommunication and navigation services agreements, co-operation agreements.

On the 29th May 1996, South Africa produced for the first time its own natural oil from the Oribi oilfield, 90 km's offshore South Africa in the Bredasdorp Basin. My responsibilities included:

- applying and obtaining South Africa's first mining lease for natural oil from the Department of Minerals and Energy;

- tendering, drafting and negotiating all the contracts related to the drilling and completion of the wells that ultimately would produce the oil with international drilling and offshore services companies;

- drafting and negotiating the following agreements: FPSO contract, helicopter services; supply and anchor handling vessels; oil tankers; logistical services; diving support vessel services; design, fabrication, procurement, fabrication, transportation and installation of sub-sea production trees; and

- drafting and negotiating all the contracts in respect of the purchase, upgrade, modification, management and operation of the FPSO.

In 1997 Soekor started looking for partnerships with international oil companies for exploration drilling in the exploration blocks held by them within South Africa. In this respect, I was responsible for drafting and negotiating the terms and conditions of the Participation and Joint Operating Agreements with the foreign partners.

In May 2000, the Oribi oilfield production was extended by the addition of oil reserves from the adjacent Oryx oilfield. I was responsible for the tendering, drafting and negotiating all the field development contracts related to the Oryx oilfield extension.

During 2001, I was responsible for the tendering, drafting and negotiating all the contracts related to South Africa's third offshore oil production and development project namely, the Sable Project. In this project I acted for both Soekor and its 40% partner Pioneer Natural Resources, one of the largest American independent oil companies.

As part of Soekor's international expansion program, I provided the legal support for the evaluation of all proposed international acquisitions. This process involved the completion of many legal and financial due diligence exercises in various countries. These due diligence exercises involved reviewing inter alia the tax and legal system, exchange control, repatriation of profits, double taxation agreements, security of tenure, production sharing contracts, tax royalty contracts and the many other legal aspects involved in establishing foreign subsidiaries and branches.

Countries where I have been involved in for Soekor are as follows: Egypt, Gabon, Nigeria, Australia, Vietnam, Ivory Coast, Equatorial Guinea, Morocco, Namibia, Mozambique, Cameroon, Algeria, Libya and Angola.

Soekor was previously the owner of semi submersible drilling units. I formed part of the team responsible for the marketing of these drilling units and drafting and negotiation of the drilling contracts with international operators.

5. PRIVATE LEGAL PRACTICE (2002 to 2008)

In 2002, I set up South Africa's first private legal practice specialising in the oil and gas industry. The primary focus of the practice was to provide legal support services to foreign companies wishing to get involved in the African upstream oil and gas industry. Details of specific activities will be provided on a confidential basis. Set out below are some of the significant projects that the practice has been involved in:

5.1 Drafting and negotiating farm-out/in agreements, and joint venture/operating agreements and/or due diligence reports for clients relating to the acquisition of oil and gas assets in United states of America; Australia; United Kingdom; Bangladesh; Falklands and various African countries including: Gabon, Congo, Yemen, Nigeria, Somalia, Angola, South Africa; Namibia; Tanzania; Mauritania and Chad;

5.2 Legal services provider to oil and gas exploration companies listed on the Johannesburg Stock Exchange, London Stock Exchange and Alternative Investment Market;

5.3 Legal services provider to the South African oil and gas licensing authority;

5.4 Legal services provider to the Namibian national oil company;

5.5 Providing comments on the South African Minerals and Petroleum Resources Development Act and Regulations of 2002;

5.6 Providing comments on the Namibian gas legislation; and

5.7 Drafting and negotiating all relevant agreements for an AIM listed client's offshore oil development and production project in Gabon.

6. BOWMAN GILFILLAN ATTORNEYS (Partner and Head of Oil and Gas) (2008 to 2011)

In 2008, I was invited to join Bowman Gilfillan as a Director and head up their oil and gas division. This was never meant to be a long term career change. During this period the oil and gas division was taken from a non-profit making department to one of the most profitable divisions within the law firm with a respected reputation and a sustainable client base. In 2010 the oil and gas was given the prestigious African Investor "African Oil and gas deal of the Year" award. Specific details on transactional work will be provided on a one on one basis. I left Bowmans in October 2011 having achieved my goals and to recommence my private legal practice which has always been my passion.

7. PRIVATE LEGAL PRACTICE (2011 to present)

Attached hereto is the brochure of BBP Law for your information.

ANNEXURE 2

BBP LAW BROCHURE

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OIL & GAS

LAW

INCORPORATED

Our Commitment

We believe that our dedication and experience in meeting our clients' needs attracts people and businesses to BBP Law.

We are dedicated to the delivery of legal services with an unwavering commitment to the principles of integrity, excellence and professionalism.

We are committed to providing practical solutions to legal issues having due regard to the commercial realities that exist.

We are devoted to understanding our clients' needs and their legal services requirements. We believe that by forming an integral part of our clients' projects at all levels, we are able to provide legal services of the highest caliber promptly and diligently.

About BBP Law

BBP Law is a niche oil and gas practice with a foundation of over 20 years experience in the oil and gas industry.

We have unique expertise covering the full range of energy and related matters for both emerging and established clients.

Our specialist knowledge in the oil and gas industry is supplemented by our capacity to draw on a vast network of multi disciplinary experts so as to meet the varied requirements of our clients.

We are strategically located in Cape Town South Africa, the gateway into Africa. This has allowed us the opportunity to develop key relationships essential for doing business within the African oil and gas sector.

Our comprehensive experience combined with the relationships we have developed in the energy sector and our focus on commercial business realities, makes our practice a clear choice for your legal service requirements.

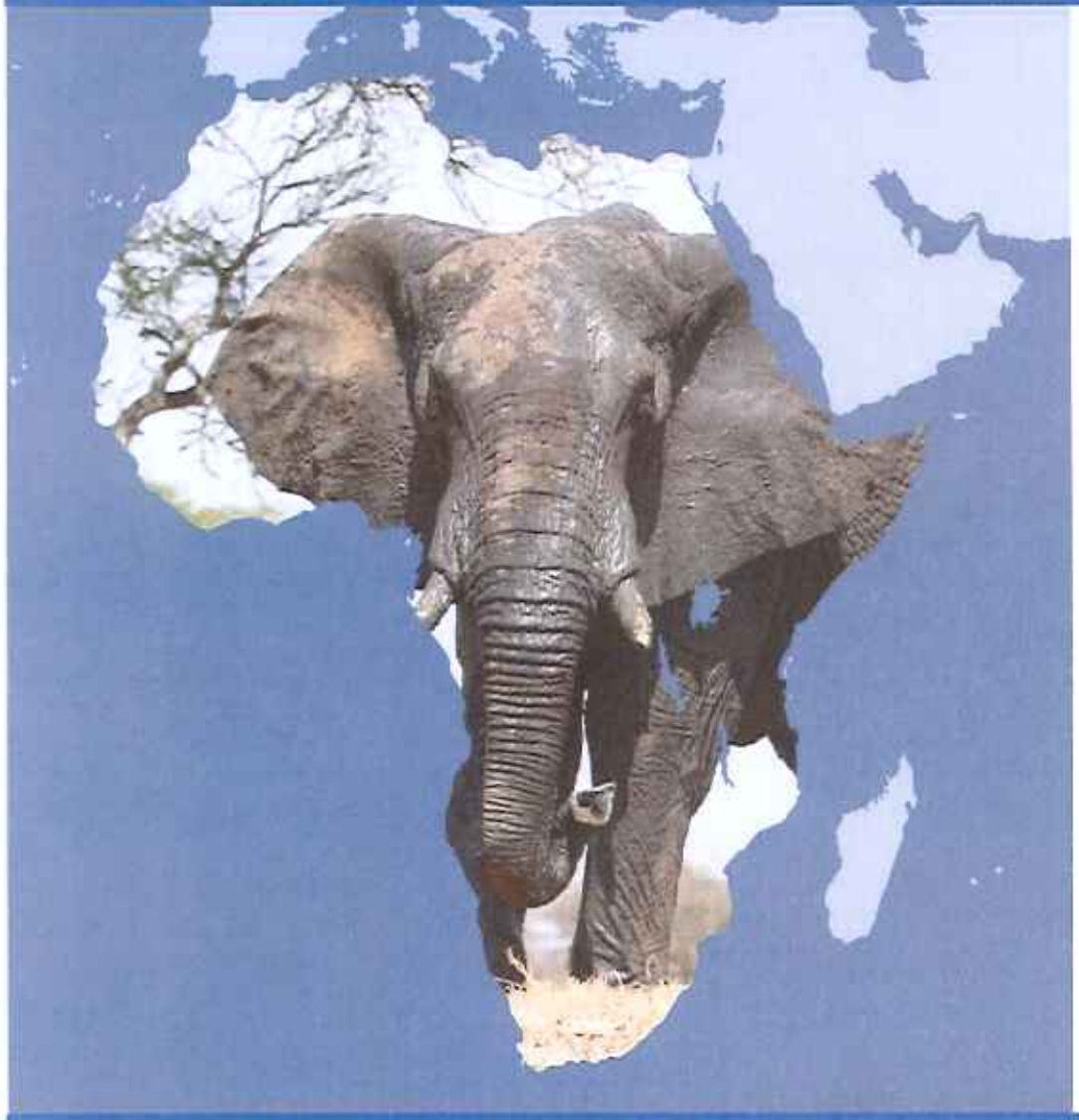
Services

At BBP Law we recognize that the oil and gas industry is an exciting, high risk and challenging industry. Based on our experience and understanding of the industry we aim to assist our clients in identifying and mitigating risk and guiding them through any challenges which may arise. We have the depth and drive to service our client's legal requirements successfully in any jurisdiction.

We have considerable experience in the drafting of industry related agreements and providing legal advice to industry related transactions, including preparation for bid rounds and regulatory assistance.

Transactions we have assisted on include, but are not limited to:

- Due Diligence Investigations and Reports
- Areas of Mutual Interest Agreements
- Applications for petroleum permits, permissions and concessions
- Host Government Contracts
- Acquisitions and disposals - Participating/ Farm-Out Agreements
- Joint Venture and Joint Operating Agreements
- Seismic Acquisition, Processing and Re-Processing Agreements
- Onshore and Offshore Drilling and Drilling Support Services Contracts
- Engineering, Procurement Installation and Commissioning of Oil and Gas Productions Facilities
- Business Establishment and Business Structuring
- Risk Management through Contracts and Insurance
- Establishment of internal Policies and Procedures relating to Contract Management
- Pipeline construction, transportation
- Statutory and Regulatory Compliance
- Empowerment Defining and Initiatives
- Government Procurement and Commercial Tendering Processes



Africa

We have developed a network of key relationships essential for doing business in Africa.

Our aim is to assist our clients in achieving their objectives while minimizing legal and regulatory risks.

We have assisted our clients with oil and gas projects in the following African countries:

- South Africa
- Botswana
- Namibia
- Mozambique
- Angola
- Tanzania
- Kenya
- Democratic Republic of the Congo
- Gabon
- Congo
- Chad
- Egypt
- Libya
- Nigeria
- Ghana
- Algeria
- Sierra Leone
- Guinea
- Mauritania

Barrisford Petersen

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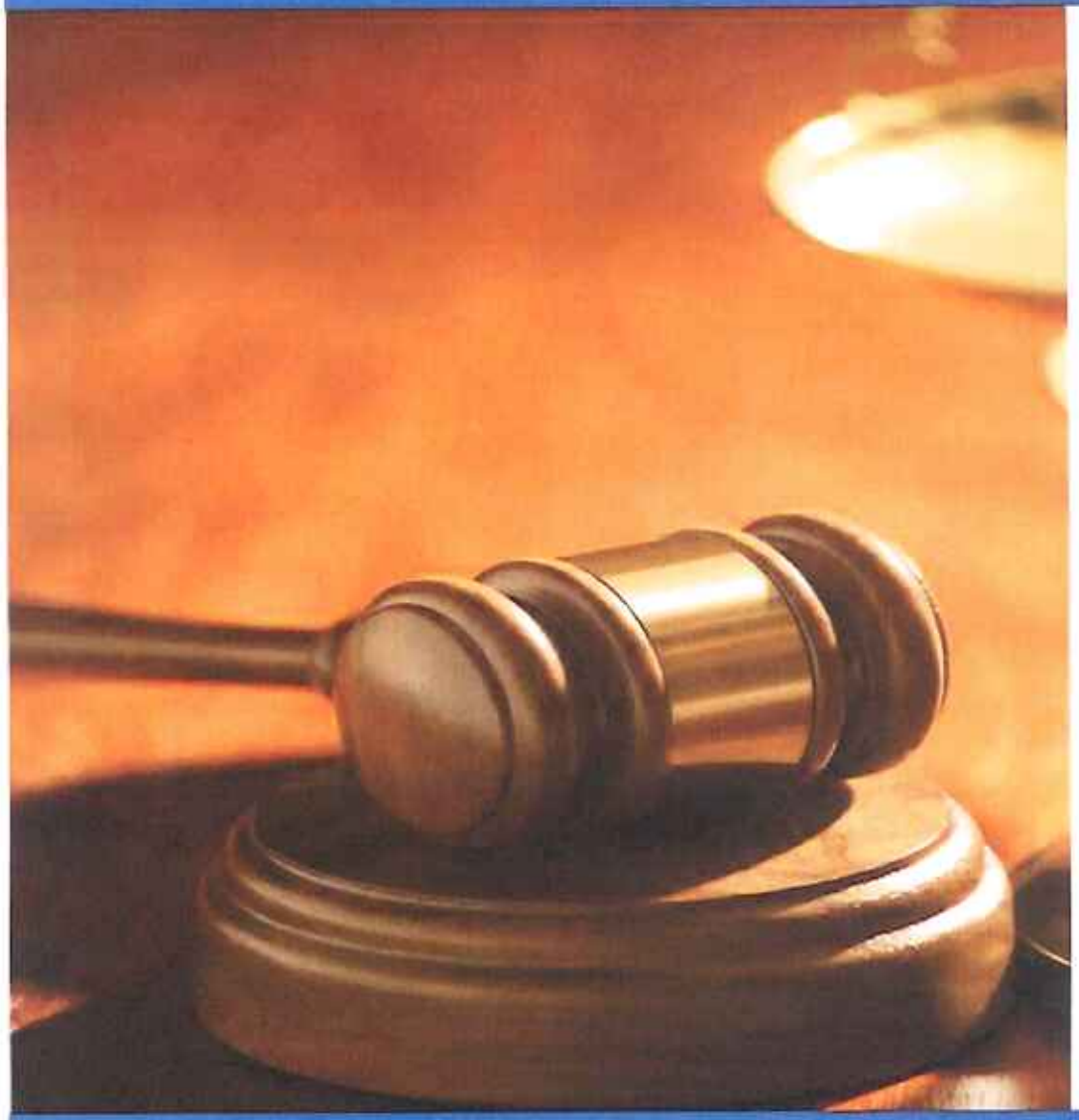
Barrisford Petersen is the director of BBP Law and holds a BA and LLB degree from the University of the Western Cape and has studied extensively in the United Kingdom and USA.

Barrisford established the first Cape Town based legal practice specializing in the energy sector and is an international oil and gas law specialist with more than 18 years experience in the industry and is the founder of BBP Law.

Barrisford previously worked as manager of legal services for a well known South African based oil and gas exploration and production company with international operations. He then entered the private sector and practiced as an advocate of the High Court of South Africa and managed his own private legal practice which focused exclusively on African oil and gas activities. In 2009 he joined a leading corporate and commercial law firm in South Africa where he was appointed as the head of the oil and gas division.

Barrisford has extensive experience in the international oil and gas industry, having worked closely with a number of local and international oil and gas companies doing business in many African countries including: Egypt, Libya, Algeria, Equatorial Guinea, Mozambique, Botswana, Tanzania, Gabon, Congo, Yemen, Nigeria, Somalia, Angola, Namibia, Mauritania and Chad. He has advised clients on bidding rounds, host government contracts and has been involved in drafting and negotiating of oil and gas related agreements for some of the most complex oil and gas projects.

Barrisford recently presented a Master Class course on Africa's Oil and Gas Contracts to industry specialists in South Africa and Ghana and he is the co-author of UK publication "Getting the Deal Through-Oil Regulation 2011" www.GettingTheDealThrough.com. He brings to BBP Law not only his accumulated experience but also a network of relationships essential for doing business in Africa.



Megan Rodgers

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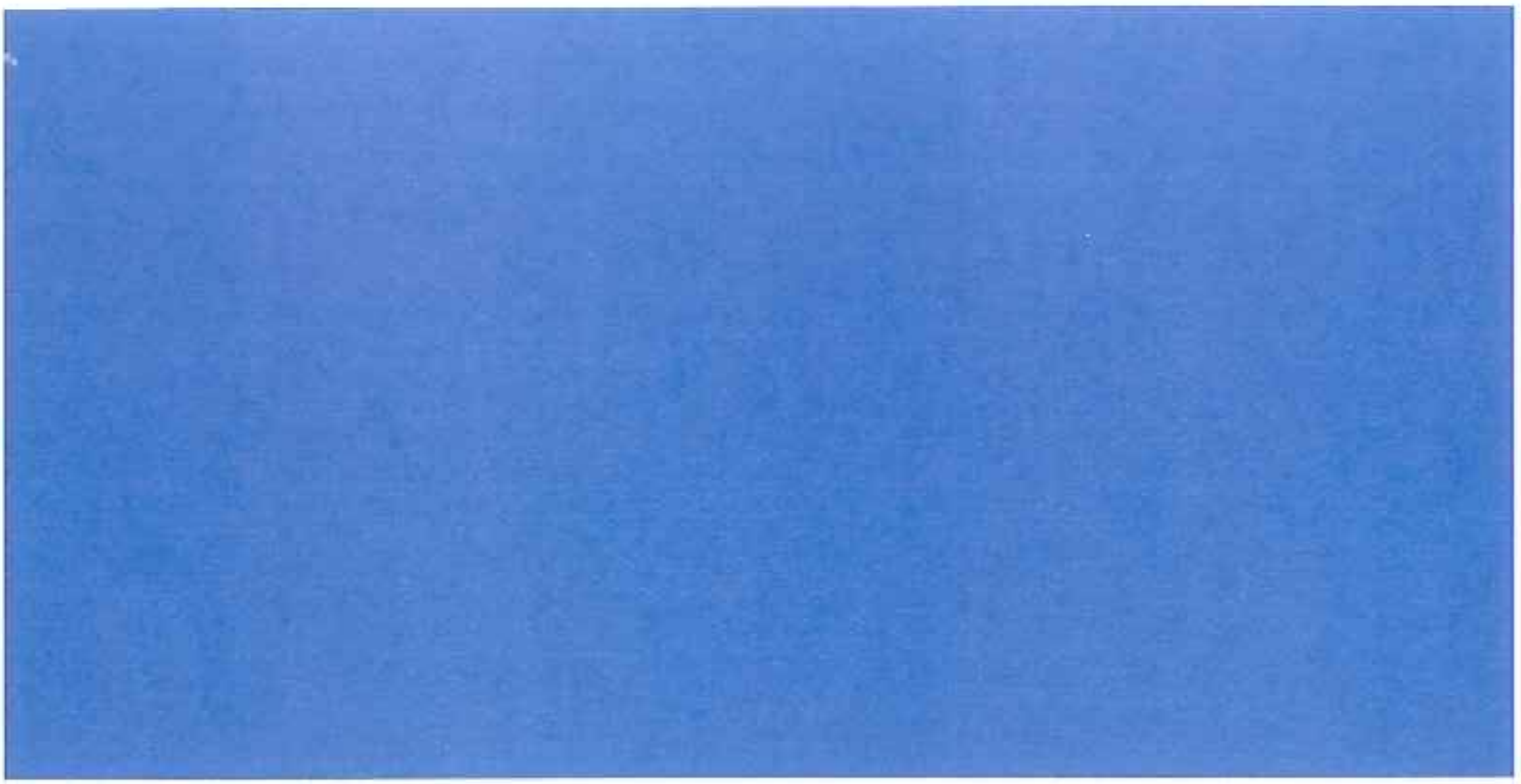
Megan is a senior associate at BBP Law and holds a LLB degree and LLM degree (cum laude) from the University of the Western Cape and is an MBA candidate in International Oil and Gas Management at the University of Dundee (United Kingdom). She is a member of the Association of International Petroleum Negotiators and the Young Negotiators Group and is a Founding Member of the Onshore Petroleum Association of South Africa.

Megan has assisted with applications for petroleum permits and rights as well as the renewal and transfer thereof in terms of South Africa law. She was involved in the submission of the first onshore application for a production right in the Republic of South Africa. She has also advised clients on the regulatory aspects of coal-bed methane and shale gas projects in South Africa. She has worked closely with leading international companies in preparing bid submissions to the national oil company of South Africa and has advised on broad based black empowerment deals, national industrial participation (NIPP obligations) and HDSA participation.

Megan's international experience extends to projects in countries such as Namibia, Tanzania, Kenya, Falkland Islands, Western Australia and Dubai. She has advised on host government contracts and has prepared submissions to host governments. She has advised on international licensing rounds and has assisted clients with due diligence investigations specific to the petroleum resources industry. She has prepared and advised on Participation and Joint Operating Agreements, work programme and budget obligations as well as MODU services contracts.

Megan is the co-author of UK publication "Getting the Deal Through- Oil Regulation 2011" www.GettingTheDealThrough.com and the author of "The Namibian Scramble: A New Petroleum Exploration Destination" published in "Dealmakers Africa" October 2011. She is also part of the team awarded the 2010 Oil and Gas Deal of the Year Award by African Investor.



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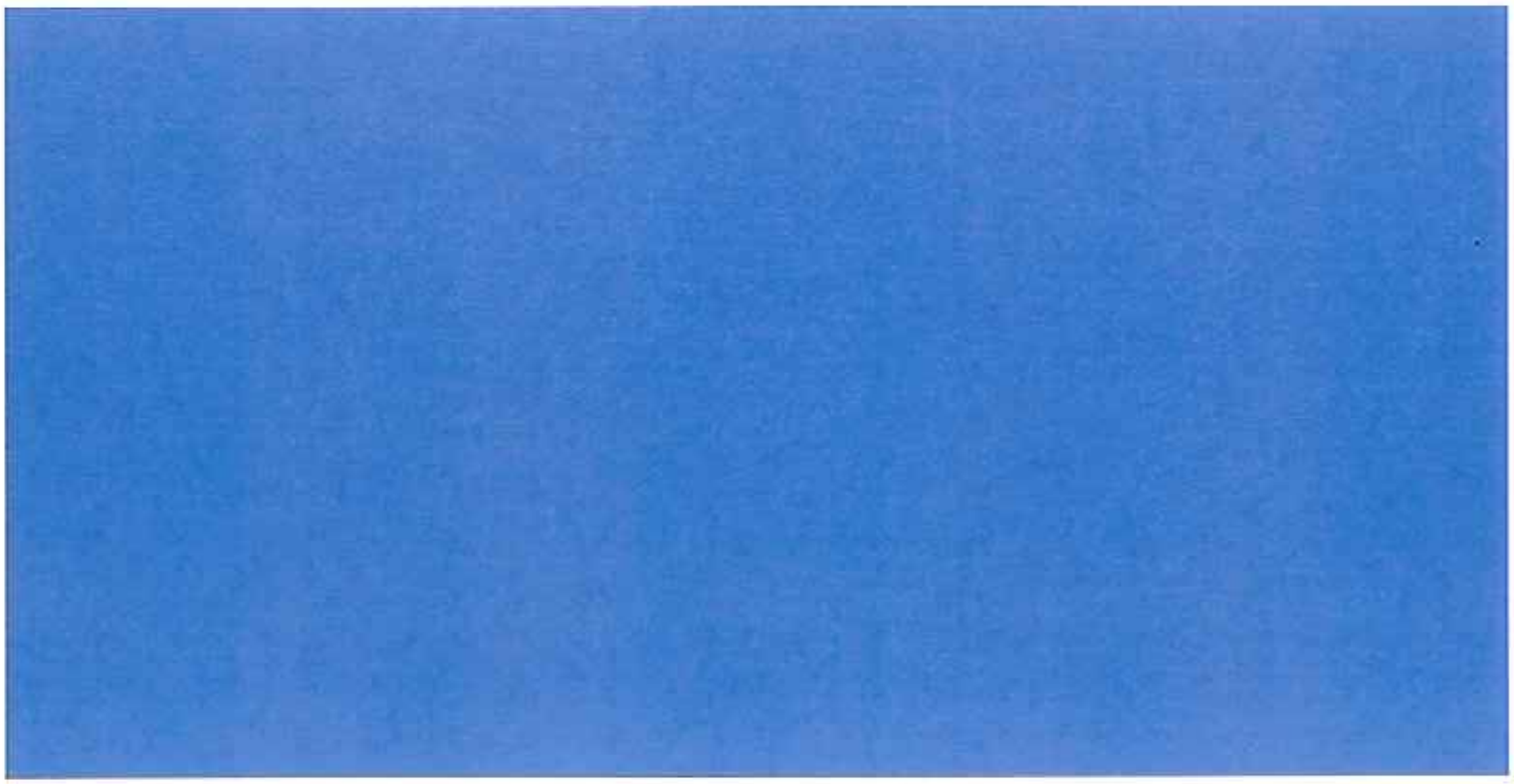

ANNEXURE 3

COMMENTS TO THE MINERAL AND PETROLEUM RESOURCES DRAFT AMENDMENT BILL

1. Definitions

1.1 The two new definitions of "appraisal operations" and "appraisal work programme" are vague, uncertain and ambiguous. While the need for these two new definitions is understood within the context of the new amendments made to Section 32 of the Act dealing with the issuing and duration of retention permits and the addition of Subsection 5 of Section 81 dealing with discoveries made during the third renewal period of an exploration right, we are of the opinion that the new definitions are vague, uncertain and ambiguous for the following reasons:

1.1.1 The definition of "production operations" in the Act clearly contemplates a situation where both exploration and appraisal operations can be conducted within a production area in respect of which a production right has been granted. The new definitions of "appraisal operations" and "appraisal work programme" are used exclusively within the context of an exploration right and exploration area. "Appraisal Operations" should not only be limited to exploration rights and exploration areas but should also include production areas and production rights.

1.1.2 In the new definition of "appraisal work programme" reference is made to the term "appraisal area" which is undefined. Is it the intention of the legislature to create a new term in addition to "exploration area" and "production area" within which the holder has some form of limited rights? It is our opinion that the definitions of "appraisal operations" and "appraisal work programme" should be amended such that they apply to both exploration areas and production areas without the need for a new term "appraisal area" to be created.

1.2 The new definition of "associated mineral" would appear to apply exclusively to the minerals industry. It is our opinion that similar situations could arise within the petroleum industry and therefore the definition should be amended to be equally applicable to the petroleum industry.

1.3 In the new definition of "beneficiation" remove the reference to "resource" as minerals and petroleum are defined terms and the addition of "resource" leads to confusion.

1.4 We are concerned that the definition of "concentration of rights" is vague, uncertain and ambiguous and requires more precision in its drafting. The definition refers only to mineral rights whereas in its application it deals also with petroleum. We are of the opinion that this definition requires detailed objective criteria in line with our existing competition legislation for such a determination to be made.

1.5 In deleting the definition of the "designated agency" it would appear that it is the Legislature's intention to disband the Petroleum Agency. It is our opinion that the disbanding of the Petroleum Agency and the work that it has done over the past 14 years would severely impact the upstream oil and gas industry in that the consequences and implications of oil companies now having to deal with regional managers has clearly not been well thought through. Oil and gas blocks usually extend over areas that cover more than one region. Set out below are some of the concerns we have:

1.5.1 to whom will applications extending over more than one region be addressed;

1.5.2 how will an applicant's proposed work program extending over more than one region be assessed.

1.5.3 to whom will the rights holder report if more than one region is involved;

1.5.4 from which region will appointments be made to the technical advisory committee;

1.5.5 if more than one region is involved, how will relinquishment be addressed;

15.6 South Arica has a shortage of qualified technical oil and gas expertise, where will these skills come from if each region requires these skill sets. The Petroleum Agency itself is already struggling to resource itself properly;

1.5.7 will each region be responsible for marketing its own oil and gas blocks;

1.5.8 regions will start competing with one another for oil and gas investment; and

1.5.9 by decentralising relationships between the IOC's and Government, we believe that effective decision making will be protracted.

As a lawyer within the South African and international oil and gas industry for the last 18 years, and being involved in establishing the Petroleum Agency, I have seen the damage that has been done to the industry within various oil and gas jurisdictions where changes in legislation take place that affect IOC investor confidence. The Petroleum Agency has an excellent international reputation and it is as a consequence of this reputation that many oil and gas companies have been attracted to South Africa. IOCs take comfort in dealing with one agency with internationally recognised and experienced personnel in respect of all oil and gas activities within South Africa. The consequence of the removal of the Petroleum Agency means that all oil and gas activities will now be dealt with on a regional basis with a multitude of persons that, in our opinion, lack the necessary skills and experience. Our concern is not that the Petroleum Agency as an institution is removed, our concern is the principle of no longer having one central body dealing with oil and gas matters for the entire country.

1.6 The new definition of "discovery" is vague, uncertain and ambiguous and should be amended. Clearly, the Legislature in this instance failed to appreciate that discoveries could be made in production areas covered by production rights. An attractive feature of the South African oil and gas

industry is that international oil companies make their own determination as to whether a discovery has indeed been made. I would recommend that the definition be expanded to include a standard of measurement, not related to flow rates, that will be used to determine whether petroleum has indeed been discovered. This definition needs to take into account commercial investment realities such as infrastructure and markets. We would recommend that the definition of discovery as contained in the draft exploration right be used.

1.7 The new definition of "free carried interest" is vague, uncertain and ambiguous. It is our opinion that the application of this definition would severely impact the growth and development of the South African oil and gas industry in that IOCs will not be able to model their transactions due to the uncertainty as to the extent of the States free carried interest. We are of the opinion that clause 31 and the sub-clauses thereunder of the draft exploration right, adequately deals with this subject.

1.8 The new definition of "historically disadvantaged persons" should be extended to include women and disabled persons.

1.9 The new definition of "labour sending areas" is vague, uncertain and confusing as it refers exclusively to "mineworkers" which is not the case for petroleum exploration and production.

1.10 Sub-clause (b) in the new definition of "Act" should be removed as it has no place being included in statutory legislation. Currently the petroleum industry has been following the principles set out in the Liquid Fuels Charter which are considered more relevant to petroleum industry. We are of the opinion that the application Amended Broad Based Socio-Economic Empowerment Charter within the petroleum industry would impose too great a financial burden on international oil companies conducting exploration operations within South Africa which would affect the way in which international oil companies model risk in making a decision to enter a particular country. We are of the opinion that many IOC's currently involved in the South African oil and gas sector would struggle to raise the necessary funding for oil and gas

operations if they were required to give effect to the Amended Broad Base Socio-Economic Empowerment Charter.

1.11 We would recommend having due regard to the amendments that have been made that two new definitions are inserted, namely, a definition for "right" and a definition for "permit" so as to capture all of the rights and permits granted in terms of the Act.

2. Section 2

2.1 In sub-section (i), it is our opinion that the wording of this section needs to be expanded as there are no communities or labour sending areas in the vicinity where offshore petroleum operations are conducted.

3. Section 9

3.1 The proposed deletion of Section 9(1) and Section 9(2) together with the insertion of the new Section 9(1) is confusing as each of the aforesaid provisions deals with completely separate issues. Whereas Section 9(1) and Section 9(2) deal with the order for processing applications, the new Section 9(1) deals formal applications pursuant to an invitation. Kindly clarify the intention of the Legislature?

3.2 Section 73 of the Act already empowers the Minister to invite applications for exploration and production rights. For this reason the new Section 9(1) should deal exclusively with mineral rights.

4. Section 10

4.1 The inclusion of "and the applicant" in the amendment to Section 10(1) should be removed as it could never have been your intention of Legislature to make the applicant responsible for the issue of the notices set out in Sub-Sections (a) and (b).

4.2 To the extent that the Regional Mining Development and Environmental Committee have no jurisdiction when dealing with petroleum related matters, we have no comments in respect of Sections 10A to 10G. Since we are of the opinion that the Petroleum Agency should continue to function as it has in the past, we recommend that a provision be inserted specifically stating that in respect of petroleum all matters are referred to the designated authority alternatively exclude petroleum matters from the authority of the Regional Mining Development and Environmental Committee.

5. Section 11

5.1 The insertion of "and subject to such conditions as the Minister may determine" in Section 11(a) is not acceptable and should be removed as it will impede the ability of an international oil company to freely transfer all or part of its interests in an exploration or production right without the imposition of further conditions. We require clarification as to what the intention of the Legislature is with this insertion and what conditions are likely to be imposed by the Minister?

5.2 This comment is of general application in respect of all timeframes that have been removed and amended to "the prescribed period". It is critical for IOC's to have a clear understanding as to the time periods within which they operate. Please advise as to what the intention of the Legislature is with these amendments as IOC's are already experiencing protracted delays when awaiting responses from Government? Is it intended that this matter will be dealt with by the issue of regulations?

6. Section 20

6.1 In Section 15(b) remove the reference to the National Environmental Management Act as an "environmental authorisation" has already been defined.

7. Section 22

7.1 In Section 17(e) reference is made to the "community and relevant structures". This amendment is vague, uncertain and confusing. Please clarify what is meant by the "relevant structures"?

8. Section 23

8.1 Section 18(e) grants the right to refuse a mining right if "the granting of such right will result in the concentration of right in question under the control of the applicant and its associated companies". This insertion should be deleted as it is vague, uncertain and confusing. Companies require certainty that if they spend exploration money, they will be able to obtain the relevant right in the next stage of development which is not subject to discretion. It is unreasonable to expect a company to spend exploration money and not be able to recover their costs and a profit if successful by reason of the fact that they have a "concentration of rights". Please advise what criteria will be used by the Minister to determine whether there has been a "concentration of rights".

9. Section 25

9.1 In Section 20(a) the words "and be granted" have been deleted. Please advise as to the reasons for the aforesaid deletion. If an applicant has complied with the requirements and lodged its application, there should be no reason why it should not be granted the renewal of a mining right.

10. Section 26

10.1 In Section 21(b) the words "economically" has been deleted. Please advise as to the reasons for the aforesaid deletion?

10.2 Section 21(c) empowers the Minister to set prices for minerals and petroleum or local beneficiation and compels companies to sell a certain percentage of their production locally. Sub-section 2B and 2C represents an open ended risk to any IOC or mining company where commercial decisions are based on prevailing commodity prices and their anticipated escalation and/or reduction.

The Section as drafted should be deleted as it will most definitely discourage investment in South Africa's resources industry. It is our opinion that proper guidelines are needed that would minimise and quantify the risk exposure for foreign companies doing business in South Africa if a watered down version of Section 21(c) is to be made palatable.

10.3 Section 21(d) in effect precludes a company from selling its mineral or petroleum internationally without the written consent of the Minister and permits the Minister to set conditions on the export thereof. This Section is not acceptable and should be deleted. Within the context of petroleum exploration and production the ability of a rights holder to freely sell their entitlement in any market where it can obtain the best price is vital and considered as an imperative in any investment decision. Maintaining this provision will discourage investment in South Africa's oil and gas industry.

11. Section 31, Section 32 and Section 35

11.1 It would appear from the amendments made to Section 31, Section 32 and Section 35 that the Legislature intends to provide for the granting of retention permits in respect of petroleum exploration but only in respect of gas. Kindly advise why the Legislature believes this is necessary as the grant of retention permits is not common within the international oil and gas industry and the draft exploration and production right already makes provision for a gas marketing period of five years after the grant of a production right. The proposed amendments to Section 32 are vague, uncertain and confusing as they do not specify the circumstances under which a retention permit will be granted, specify the underlying reason why a retention permit will be granted during exploration and specify why such retention permit is limited to five years in the case of petroleum but three years in the case of minerals. The proposed amendments to Section 35 are vague, uncertain and confusing. It is recommended that the content of the reports for minerals and petroleum are specified separately.

12. Section 37

12.1 The amendments to Section 37 are vague, uncertain and confusing. The amendment should merely state that the holder of a right granted in terms of the Act shall comply with the provisions of the National Environmental Management Act.

13. Section 43

13.1 The amendments made to Section 29(a) indicate that the Legislature wishes to increase responsibility and accountability of the holder of a right beyond the issue of a closure certificate which was not the case previously. It cannot be expected that IOC's will have open ended exposure after the issue of a closure certificate as this will materially affect the economics of projects.

13.2 The amendments made in terms of Section 29(e) are considered punitive and should be withdrawn as the financial provision for environmental impact are usually estimates that have been made on the high side and at the time that the closure certificate is issued, potential future impacts are readily known.

13.3 The amendments made in terms of Section 29(f) are vague, uncertain and confusing and should be deleted. "Permit" and "right" are undefined terms.

14. Section 45

14.1 Section 31(a) should be amended by the removal of "exploration or production" in line 1 and replaced with "exploration operations and production operations". Kindly note that "holder" is a defined term and therefore the last four lines of the amended subsection should be removed as it is not necessary.

15. Section 46

15.1 In the amendment proposed by Section 32 kindly note that "holder" is a defined term. For this reason remove "..... of a reconnaissance ..... or her successor in title .... ". Kindly note that there is no definition for a "reconnaissance permission". Consistently in the proposed Amendment

Bill the term "reconnaissance permission" is used. Kindly ensure that it is amended to "reconnaissance permit".

16. Section 47

16.1 The amendments to Section 47(c) are vague, uncertain and confusing. Is it not the intention of the legislature to grant the holder within 30 days from receipt of a notice the opportunity to show why the right permit or permission should not be suspended?

17. Section 49

17.1 The deletion of "after inviting representations from relevant stakeholders" proposed by Section 35 is not acceptable and should be deleted as this lends itself more readily to the exercise of authority indiscriminately and without consultation with parties that are likely to be affected by the exercise of such authority.

17.2 In the amendment proposed by Section 35(c) kindly note that "reconnaissance permission" must be deleted as it is not a defined term.

18. Section 50

18.1 The amendment proposed in Section 36(b) is vague, uncertain and confusing as it fails to specify who bears the responsibility for consulting with the owner, occupier or person in control of such land.

19. Section 51 and Section 52

19.1 Since we have recommended that the Petroleum Agency not be disbanded, we recommend that in all respects where the Regional Manager has replaced the Board, similarly the designated agency should be identified as the party dealing with petroleum related matters.

20. Section 53

20.1 The amendment proposed by Section 59(a) should be amended as follows: "Notwithstanding subsection (1) .....".

21. Section 69

21.1 The amendments to Section 69 applicable to petroleum exploration and production should be carefully considered as there are provisions in the Act that are equally applicable to both minerals and petroleum. We would also recommend that in all respects any reference made to the "Regional Manager" shall for the purposes of chapter 6 mean the "designated agency".

22. Section 70, Section 71 and Section 72

22.1 The proposed amendments to the aforesaid sections are not acceptable. It is our considered opinion (see comments in paragraph 1.5 above) and in the letter to which these comments are attached) that the oil and gas industry will suffer irreparable harm should the designated agency (the Petroleum Agency) be disband and replaced with Regional Managers.

23. Section 73

23.1 The proposed amendment (2A) in terms of Section 48 is rejected as it will impede the ability of the designated agency to function properly. Our experience in dealing with the Ministry has demonstrated that the Ministry is slow to respond to requests, applications and approvals required. Subjecting the entire oil and gas industry to this process we believe is unnecessary and will frustrate a vibrant and growing industry in South Africa.

24. Section 74

24.1 See our comments in paragraph 22.1 above.

24.2 The amendments proposed by Section 49(e) are vague, uncertain and confusing. Kindly clarify what the Legislature's intention was in respect of these proposed amendments?

25. Section 75 and Section 76

25.1 See our comments in paragraph 22.1 above.

26. Section 78

26.1 The amendments proposed by Section 53(a) by inserting "and subsection 2(c)" is not acceptable and is rejected. By inserting subsection 2(c) it would appear that the legislature is ameliorating the exclusivity of the holder of a technical co-operation permits in that despite spending significant resources on the technical studies the holder may not be granted exclusivity and it empowers the Minister to grant the exploration right to a third party.

26.2 In respect of the amendment proposed by Section 53(b) see our comments in paragraph 22.1 above.

26.3 The amendment proposed by Section 53(d) is vague, uncertain and confusing as it fails to specify the percentage of the area to be relinquished and detail what is being "prescribed".

27. Section 79

27.1 See our comments in paragraph 22.1 above.

28. Section 80

28.1 The amendments proposed to "subsection 2" by Section 55(b) are in our considered opinion wholly inappropriate for the growing oil and gas industry in South Africa. At present provision is made in both the exploration right and the production right for black economic empowerment in line with the Liquid Fuels Charter considered to be more appropriate for the oil and gas industry. It is understandable that Legislature would seek implementation of the black economic empowerment based on the Amended Broad Base Socio Economic Empowerment Charter as it has been drafted specific to an established mining industry in South Africa. The impact of imposing the objectives of the

Amended Broad Base Socio Economic Empowerment Charter on foreign investment in the oil and gas industry at this crucial stage of its growth could be in our opinion prohibitive.

28.2 The amendments proposed to "subsection 3(d)" by Section 55(c) are not acceptable. IOC's require certainty that if they spend money, particularly if they held a technical cooperation permit, they will be able to move into the next phase (exploration or production) and not be subject to subjective discretion. Please advise what criteria will be used by the Minister to determine whether there has been a "concentration of rights. It is our considered opinion that IOC's will perceive this as one of the significant negative impacts of the proposed Amendment. Bill.

28.3 The addition of "subsection 7" by Section 55(f) is likely to be viewed by IOC's as being punitive and commercially impossible to implement in view of the significant risks involved in oil and gas exploration in a frontier country such as South Africa. The current wording is considered vague, uncertain and confusing and in all likelihood would discourage any further investment in the South African oil and gas industry as no investor will be able to quantify and commercially model an investment in South Africa's oil and gas industry without knowing the extent of the carry and then still having to bear the full brunt of exploration failure. Companies mitigate risk by partnering with other oil companies. By increasing the BEE equity and the State Carry makes it extremely difficult for IOC's to mitigate their own risk let alone have sufficient available equity to bring in new partners to share in the risk. At present the current drafts of the exploration right and production right make adequate provision for the State's free carry of 10% through exploration and BEE participation of 10%. We consider the current provisions as contained in the draft exploration and production right as being more than satisfactory to give effect to State participation.

29. <u>Section 82</u>

29.1 The proposed addition in Section 57(c) of subsection 2(g) should be limited to renewals of an exploration right only and not production rights.

29.2 See our comments in paragraph 22.1 above.

30. Section 83

30.1 See our comments in paragraph 22.1 above.

31. Section 84

31.1 In respect of the proposed addition of subsections (6) and (7) see our comments in paragraph 30.3 above. The addition of subsection (7) is unacceptable and should be deleted. This insertion is of particular concern as most IOC's structure their relationships with partners through unincorporated joint ventures regulated by a joint operating agreement.

32. Section 85, Section 87, Section 88 and Section 89

32.1 See our comments in paragraph 22.1 above.

33. Section 99

33.1 We consider the amended punitive provisions of Section 99 based on turnover as being excessive and extremely difficult to implement having due regard to the fact that most international oil companies establish South African subsidiaries that have no income or turnover and are funded through loans from its parent company.