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The Portfolio Committee on Energy; and  
The Select Committee on Economic Development

**Attention: Ajabulile Mtiya**

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Your reference	Our reference	Date
Ajabulile Mtiya	BA Baillie/B Migwalla	8 September 2010
Noziphiwo Grace Dinizulu	2092982	

Dear Sirs

**WRITTEN SUBMISSION ON THE LIQUID FUELS CHARTER**

In response to the Invitation for Public Submissions on the Liquid Fuels Charter, issued by the Portfolio Committee on Energy and the Select Committee on Economic Development in anticipation of the public hearings on the Liquid Fuels Charter ("the Charter") to be held at Parliament on 14 – 15 September 2010, we submit the following comments and questions for consideration on behalf of our industry and BBBEE clients, the civil society and the public at large.

**1. Ownership and related issues**

1.1 According to the Interpretation clause of the Charter, "ownership refers to equity participation and the ability to exercise rights and obligations that accrue under such ownership". The concepts of "ownership" and "equity participation" need to be clarified. Presumably they are intended to encompass shareholding, the rights to appoint and remove directors, voting rights and the right to dividends.

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Senior Partner: DM Lancaster Partners: RB Africa NG Alp B Aronoff BA Baillie WR Beech JM Bellaw DHL Booysen AR Bowley PG Bradshaw JL Buckland MS Burger-van der Walt A Christie RS Coelho KM Colman CD Coquella KE Coster K Couzyn Z Dasoo JH Davies BT de Lange JHB de Lange BEC Dickinson DA Dingley HJ du Preez CP du Toit SK Edmundson JC Els MJR Evans GA Fichardt LC Fitton JB Forman CP Gaul CL Giliomee CI Gouws JP Gouws PD Grealis SN Gumede VW Hamson MH Hathorn JS Henning WA Hiepner NA Hlatshwayo XNC Hlatshwayo S Hockey CM Hofeld PM Holloway MGH Honiball SJ Hutton AR James ME Jarvis S Jooste N Joubert M Kennedy A Keyser JE King R Kruger J Lamb PSG Leon DB le Roux L Marais S McCafferty MC McIntosh SI Meltzer CS Meyer AJ Mills JA Milner D Milo A Milovanovic L Morphet NN Moshesh VM Movshovich MM Mshali MB Nzimande N Paige AS Parry GR Penfold SE Phajane MER Phooko NJA Robb DC Rudman DR Schollz JW Scholtz KE Shepherd DH Short GM Sibanda AJ Simpson J Simpson MP Spalding L Stein PS Stein LJ Swaine ER Swanepoel A Toefy D Vallabh PZ Vanda GJ van der Linde JP van der Poel ED van der Vyver JG van der Vyver M van der Wall D Venter B Versfeld MG Versfeld TA Versfeld JWL Westgate P Williams RH Wilson M Yudaken Chief Operating Officer WMH Thompson  
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1.2 When dealing with ownership targets, what kind of ownership does the Charter contemplate?

1.2.1 Does it contemplate unencumbered equity ownership only or is encumbered equity ownership contemplated as well?

1.2.2 What if the equity is owned by a BBBEE company which has other assets and general funding liabilities?

1.2.3 Do forward sales and option arrangements apply?

1.3 What is a company's position where its BBBEE equity is sold shortly after the Charter deadline to a non-BBBEE entity?

## 2. **Thresholds for qualifying as an HDSA company**

In some areas, the Charter refers to "ownership or control" while in others, it refers to "ownership and control". What effect does the different phraseology have on the ownership and control thresholds which have to be met before a company can qualify as an HDSA company? Must a company be 25% owned and 50%+1 controlled in order to qualify as an HDSA company or will 25% ownership suffice?

## 3. **Enforcement of the transformation values**

The Charter seeks to entrench transformation values that are seemingly incapable of enforcement and only amenable to monitoring by the Department of Minerals and Energy.

3.1 How will these transformation values be enforced?

3.2 Are there sanctions for non-compliance?

## 4. **Exemptions and Condonations**

4.1 What, if any, are the consequences for an industry player's failure to meet the Charter's targets?

4.2 What is the regulatory framework for obtaining approval or condonation of departures from the terms of the Charter?

- 4.3 If a departure from the Charter is granted, will it imply a precedent adoptable by all players?

## 5. Time Frames

- 5.1 When did the 10 year period referred to for compliance with the ownership and control elements commence?

- 5.1.1 Did it commence in November 2000, or when the Charter was enacted as a Schedule to the Petroleum Products Act?

- 5.1.2 If we assume that the 10 year period, granted by the Charter for compliance with the Charter's requirements, commenced in November 2000, most BBBEE funding deals are not on target to achieve the ownership deadline. Does the Charter contemplate any form of exemption process? If so, how will this process work?

- 5.2 The BBBEE ownership target deadlines were not conceived within the context of new entrants coming into the industry. Logically, new entrants should be given the same amount of time as was afforded to the existing industry participants when the Charter was launched to achieve BBBEE ownership targets. Will this be the case?

## 6. Funding

If state enterprises such as the IDC and the DBSA support empowerment participation in one industry, a set of criteria needs to be published in order to place all industry players in a position to avail themselves on funding on a level playing field basis.

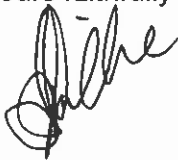
## 7. Preferred Supplier Status

HDSA companies are to be accorded "preferred supplier status". Presumably only those which are on the list of suppliers (which list will be generated and published by Government based on an affidavit regarding ownership status submitted annually to Government by HDSA companies) will be accorded "preferred supplier status". The list seems to focus only on ownership as the main criterion for inclusion as a preferred supplier to the neglect of other methods of transformation contribution.

**8. Score Card**

As the Charter expounds broad transformation principles, it seems that the Charter must co-exist with the Generic Scorecard for measurement purposes. No scorecard is provided in the Charter. Is this the intention?

Yours faithfully.



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