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OIL & GAS ALERT



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PART 1

Draft Upstream Petroleum Resources Development Bill, 2019: the petroleum agency of South Africa

The draft Upstream Petroleum Resources Development Bill, 2019 (the Petroleum Bill) was published on Christmas Eve, calling for written submissions from the public and interested and affected persons. This article is the first in our series of articles on the Petroleum Bill and focuses specifically on the proposed formal recognition of the role of the Petroleum Agency of South Africa (the Petroleum Agency) as the national regulatory authority for the upstream petroleum sector.

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CLIFFE DEKKER HOFMEYR

PART 1

Draft Upstream Petroleum Resources Development Bill, 2019: the petroleum agency of South Africa

It is important to understand that the Petroleum Agency is not a new state-owned entity, as it currently performs the functions referred to in Chapter 6 of the Mineral and Petroleum Resources Development Act 28 of 2002 as the “designated agency” under section 70 of the MPRDA.

The draft Upstream Petroleum Resources Development Bill, 2019 (the Petroleum Bill) was published on Christmas Eve, calling for written submissions from the public and interested and affected persons. This article is the first in our series of articles on the Petroleum Bill and focuses specifically on the proposed formal recognition of the role of the Petroleum Agency of South Africa (the Petroleum Agency) as the national regulatory authority for the upstream petroleum sector.

The Petroleum Agency is a subsidiary of the Central Energy Fund (CEF), a Schedule 2 state-owned diversified energy company. It is important to understand that the Petroleum Agency is not a new state-owned entity, as it currently performs the functions referred to in Chapter 6 of the Mineral and Petroleum Resources Development Act 28 of 2002 (the MPRDA) as the “designated agency” under section 70 of the MPRDA. The Petroleum Bill formally recognises the Petroleum

Agency as a juristic person and provides that every person in the service of the Petroleum Agency, prior to the enactment of the Petroleum Bill, is transferred to the service of the “new” Petroleum Agency. The Petroleum Agency shall be responsible for the promotion and evaluation of petroleum resources, the regulation of exploration and production of petroleum resources, and the custodianship of petroleum geotechnical data.

Much like the functions referred to in Chapter 6 of the MPRDA, the Petroleum Bill empowers the Petroleum Agency to, *inter alia*, provide technical support to the Minister of Mineral Resources and Energy (the Minister), receive and evaluate applications for permits and rights, monitor and enforce compliance with permits and rights, store, interpret and evaluate all geotechnical data, collect the prescribed fees in respect of those permits and rights and perform any other function in respect of petroleum resources, which the Minister may determine from time to time.

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Operation Phakisa, launched by the government some six years ago, found that the primary obstacle to unlocking the economic potential of South Africa's waters was a lack of legislative certainty.

Significantly, the Petroleum Bill does not appear to address the recent challenges on the Petroleum Agency's decision-making ability and whether or not, for example, the acceptance of an application for an exploration rights amount to administrative decisions subject to review under the Promotion of Administrative Justice Act 3 of 2000. In *Rhino Oil and Gas Exploration SA (Pty) Limited v Normandien Farms (Pty) Limited and Another* (100/2018) [2019] ZASCA 88; 2019 (6) SA 400 (SCA), the Supreme Court of Appeal stated that certain provisions of the MPRDA, which are mirrored in the Petroleum Bill, are prescriptive in nature and do not involve any decision-making on the part of the Petroleum Agency and therefore do not constitute administrative decisions by the Petroleum Agency, but are subject to a common law review. This matter is currently before the Constitutional Court.

Newly introduced by the Petroleum Bill are the provisions which state that the Petroleum Agency will be funded by moneys appropriated by Parliament, moneys received by way of State grants or investment, fees payable in terms of the Petroleum Bill and revenue received from the sale of petroleum geotechnical data. The Petroleum Bill also allows the Petroleum Agency, with the approval of the Minister, to provide technical and consulting services and assistance to equivalent agencies of other countries.

Similar to the way the internal workings of the South African Revenue Service and CEF are provided for in the Tax Administration Act, 2011, and the Central Energy Fund Act, 1977, respectively, the Petroleum Bill also proposes to govern the internal workings of the Petroleum Agency, including, *inter alia*, the composition and functions of the board and chief executive officer of the Petroleum Agency, the meetings of the board and committees which may be established by the board, as well as the remuneration of the chief executive officer and the members of the board and committees.

Operation Phakisa, launched by the government some six years ago, found that the primary obstacle to unlocking the economic potential of South Africa's waters was a lack of legislative certainty. The proposed recognition of the Petroleum Agency is thus a long-overdue and positive step towards providing regulatory certainty and a greater degree of transparency, at a time when South Africa desperately needs to attract foreign investment.

In our next article in the series, we will be unpacking chapter 4 of the Petroleum Bill which deals with the new application processes introduced the Petroleum Bill, which includes bidding invitations by the Minister and consultation with interested and affected parties.

Megan Rodgers and Shameegh Allen

OUR TEAM

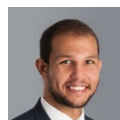
For more information about our Oil & Gas sector and services, please contact:



Megan Rodgers
Sector Head
Director
Oil & Gas
T +27 (0)21 481 6429
E megan.rodgers@cdhlegal.com



Gasant Orrie
Cape Managing Partner
Director
Corporate & Commercial
T +27 (0)21 405 6044
E gasant.orrie@cdhlegal.com



Shameegh Allen
Associate
Corporate & Commercial
T +27 (0)21 481 6399
E shameegh.allen@cdhlegal.com



Sthembile Shamase
Associate
Corporate & Commercial
T +27 (0)21 481 6431
E sthemobile.shamase@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

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