

ANNEXURE
PARTICULARS OF PLAINTIFF'S CLAIM

1. The Plaintiff is Utima Recursos LDA, a private company with limited liability duly incorporated and registered as such in accordance with the company laws of Angola, having its principal place of business at Rua Amilcar Cabral, No 27 S.L., Luanda, Angola.

2. The Defendant is Oakbay Investments (Pty) Ltd, a private company with limited liability duly incorporated and registered as such with the company laws of the Republic of South Africa, having its principal place of business within the area of jurisdiction of the above Honourable Court at 89 Gazelle Avenue, Corporate Park South, Old Pretoria Main Road, Midrand, Gauteng Province.

3. At all material times hereto:-

3.1 the Plaintiff's principal business was the procurement of oil and gas exploration concessions in Angola;

3.2 the Defendant's principal business was that of an investment vehicle in the field of mining and property explorations.

4. In and during December 2006, Sonangol, the Angolan Government's petroleum concessionaire, published its intention to allocate several oil exploration concessions in their country, and invited interested parties to submit prequalification documents for eligibility in a prequalification stage which formed an essential prerequisite to the subsequent tender process. The

meeting with
Vicente refers.

submissions for the prequalification stage closed on 12 November 2007 ("the business opportunity").

5. The Plaintiff was desirous of procuring the award of at least one of the concessions on offer by the Government of Angola and since January 2007 was actively engaged towards achieving the business opportunity.

6. In order to enable the Plaintiff to make successful submissions for prequalification, it was necessary for the Plaintiff to secure a strategic alliance which would include, *inter alia*, a participant who possessed the appropriate expertise and financial wherewithal to carry the business opportunity through to completion.

7. In and during September 2007, the Defendant, duly represented by one Jagdish Parekh, represented to the Plaintiff, duly represented by Stanley Muntanga

inshore
Cwanza
lower investment
local prioritization

tip to Angola
with Chairman
of Gupta.
let D/minister of
Industries / Sonangol.
supervised participation
of Reliance.

7.1 the Defendant was, at all material times, the agent of an entity, Reliance Ltd ("Reliance") which entity possessed the necessary expertise and financial wherewithal to carry the business opportunity through to completion;

(state was involved in assessing refinery opportunities in R.S.A.)

7.2 the Defendant secured the participation of Reliance in the business opportunity;

Reliance interest in ultra deep concessions and concessions in areas that presented steep technical challenges. High investment.

7.3 Reliance had agreed to participate in the prequalification submission to Sonangol;

7.4 the Defendant would liaise with Reliance to the extent pertinent and to provide the Plaintiff with all such information as was necessary for the purposes of facilitating the Plaintiff's successful submission for pre-qualification to Sonagol;

("the first representations")

8. The first representations were material and were made with the object of inducing the Plaintiff to enter into a contract with the Defendant and ✓ furthermore to induce the Plaintiff to make a prequalification submission to Sonangol.

9. Relying on the truth of the first representations the Plaintiff was induced to enter into a joint venture agreement with the Defendant, both duly represented, ✓ at Midrand on 12 October 2007, which agreement is annexed hereto marked "A".

10. The following were the material express, alternatively implied, alternatively tacit terms of the agreement:-

10.1 The main purpose of the joint venture was to procure the oil exploration concessions as published by the Angolan Government and

to that end, form joint venture companies for certain projects which included the exploitation and development of natural resources in Angola, and more particularly, oil, gas and diamond concessions.

- ✓ 10.2 The parties would pursue selected projects to a "prequalification stage" and, during this period, to perform whatever was necessary to ensure that the business opportunity was capable of implementation;
- ✓ 10.3 The parties agreed to co-operate in good faith towards the achievement of the objects of the agreement.
- ✓ 10.4 The Defendant represented that it was in the position to secure the involvement of a participant who possessed the appropriate technological expertise and financial wherewithal to carry the business opportunity through to completion.
- 10.5 The parties agreed that:-
- 10.5.1 the Plaintiff and the Defendant will share in all profits in equal shares;
- 10.5.2 all expenses incurred by the Plaintiff since January 2007, and to be incurred, in respect of the preparation of the submissions shall be paid from the proceeds of the joint venture;
- ✓ 10.5.3 the Plaintiff shall be paid commission at an agreed rate, being

US\$5 million from the proceeds of the joint venture;

11. Pursuant to the conclusion of the agreement and during October and November 2007 the Defendant represented to the Plaintiff that it complied with its obligations towards the facilitation of the successful implementation of the prequalification submission by supplying the Plaintiff with certain documents to be submitted to Sonangol as part of the prequalification submission, namely:-

11.1 the financial books and records that Reliance purportedly furnished to the Defendant comprising Reliance's annual reports, its financial statements, its technical capacity reports and its business plans and projections ("the Reliance documents");

11.2 a letter addressed by the Defendant dated 5 November 2007 to the President of the Republic of Angola wherein the Defendant represented that the joint venture between the Plaintiff and the Defendant obtained the support of Reliance.

("the second representations")

12. The second representations were material and were made with the intention of inducing the Plaintiff to make the prequalification submission to Sonangol.

13. In the *bona fide* and mistaken belief that the aforesaid representations were true, the Plaintiff was induced in preparing the relevant submission documents, employed personnel in Angola to conduct the appropriate investigations to ensure that the prequalification submission was made properly and timeously,

and submitted the prequalification documents to Sonangol within the requisite time constraint.

14. When making the first and second representations, the Defendant knew that same were false, in that, at all relevant times:-

14.1 ✓ the Defendant was not the agent of Reliance in the carrying of the business opportunity through to completion, or at all;

14.2 ✓ the Defendant had not secured agreement from Reliance to participate in the prequalification submission;

14.3 ✓ Reliance had no knowledge of, nor did they agree to the prequalification submission in its name nor its involvement in the venture as a whole;

14.4 the Reliance documents that were provided by the Defendant to the Plaintiff, were not obtained from Reliance but were merely documents to which any member of the public had access to.

Sent electronically.

14.5 the information that was conveyed to the President of the Republic of Angola, namely, that the Plaintiff had the support of Reliance, was false;

also solicited the support of the President fraudulently.

15. As a result of the falsity of the Defendant's first and second representations, Sonangol was unable to approve the Plaintiff's submission for eligibility as a prequalified tenderer.

16. As a result of the Defendant's conduct as aforesaid, the Plaintiff has

cancelled, alternatively hereby cancels the agreement between the parties.

17. Furthermore, as a result of the Defendant's wrongful conduct as set out above, and as a result of the false information supplied to the Government of Angola, the Plaintiff has suffered harm to its good name and reputation.

18. As a consequence of the Defendant's conduct, the Plaintiff has suffered the following damages:-

18.1 expenses incurred by it from January 2007 to November 2007 in the sum of US\$1 156 200,00, as set out in Annexure "B" hereto. In this regard:-

18.1.1 on 22 December 2007 and at Johannesburg, the Plaintiff represented by Stanley Muntanga and the Defendant represented by Jagdish Parekh entered into an oral agreement;

18.1.2 in terms of the oral agreement the Defendant agreed:-

(a) that the Plaintiff suffered damages in respect of all expenses incurred;

(b) to pay all of the expenses incurred by the Plaintiff by no later than 3 January 2008;

18.1.3 in breach of the terms of the said agreement the Defendant failed to pay to the Plaintiff the expenses incurred by it.

18.2 loss of the entry fee which would have been paid to it in the sum of US\$5 million;

18.3 reputational damages in the sum of US\$500 000,00.

19. Notwithstanding demand, the Defendant has failed, refused and/or neglected to pay to the Plaintiff the sums claimed, or any amount at all.

WHEREFORE the Plaintiff prays for judgment against the Defendant in the following terms, namely:-

1. Payment of the sum of US\$1 156 200,00.
2. Payment of the sum of US\$5 million.
3. Payment of the sum of US\$500 000,00.
4. Interest on the aforesaid amounts at the rate of 15,5% per annum *a tempore morae* calculated from dated of service of summons to date of final payment.
5. Costs of suit.
6. Further and/or alternative relief.

DATED at Johannesburg on this the 28th day of March 2008.