

A large offshore oil rig is illuminated at night, with its lights reflecting on the water. The rig's structure is complex, with a tall central tower and various platforms. The sky is dark, and a full moon is visible in the upper left corner. The overall scene is a dramatic, high-contrast image of industrial activity in a maritime setting.

**Oral presentation to Parliament
Ocean Economy Task Team
18 November 2022**

Pre-ambule Ocean Economy Task Team

The Oceans Economy Task Team is comprised of representatives from the industry (including OPASA, SAOGA and CTC Global) for consideration as part of the Parliamentary public consultation process on the Upstream Petroleum Resources Development Bill [13-2021]. This is a Task Team that has been set up following a resolution of the one of the Workstreams of the Oceans Economy Master Plan development process for drafting a response with proposals for consideration in and support that process with respect to the HDSA participation until the UPRD Bill is finalised.

The Chairperson of the Oceans Economy Task Team is Dr Alison Futter in her capacity as a representative of OPASA.



Section	Provision		Comment	Proposed wording
1	<p>Definitions</p> <p><i>Carried interest</i> means State participation through an interest in a petroleum right as contemplated in section 34, which interest vests exclusively for the benefit of the State and the costs of which are borne by the carrying holder of a petroleum right.</p>	<ol style="list-style-type: none"> 1. Only the State benefits from State Participation. 2. The carrying holder bears the cost of State Participation. 	<p>The current definition does not make provision for a carried interest allocated to black persons. It is proposed that furthermore that allocation is for a minimum state participation in the legislation that can be revised by way of the regulation.</p>	<p><i>Carried interest</i> means <u>up to 15 per cent</u> State participation and <u>up to 5 per cent to black persons</u> through an interest in a petroleum right as contemplated in section 3 <u>and section 31 respectively</u>. The carried interest vests exclusively for the benefit of <u>these carried participants</u> and the costs of which are borne by the carrying holder of petroleum right.</p>
1	<p>Definitions</p> <p>'carrying holder' means any other interest in a petroleum right, except black persons as defined in this Act;</p>	<p>The petroleum rights holders, excluding black persons (the HDSA participants) bear the cost of the carried interest.</p>	<p>The current definition specifically excludes HDSA participants (black persons) from bearing the cost of the Carried interest in respect of State Participation</p>	<p>No change required</p>

Section	Provision			
31	<p>Participation of black persons in petroleum rights</p> <p>(1) Every petroleum right must have a minimum of 10 per cent undivided participating interest by black persons.</p> <p>(2) The black persons' undivided participation interest in a petroleum right contemplated in subsection (1) may be diluted to no less than five per cent to any funder or company, regardless of the ownership structure of such a funder or company, for purposes of raising capital subject to section 29.</p> <p>(3) The dilution of black persons' participation contemplated in subsection (2) will not trigger a requirement for the holder of the petroleum right to augment black persons' participation interest to 10 per cent.</p> <p>(4) The holder or an applicant for a petroleum right who is not able to comply with the required black persons' participation interest requirement contemplated in subsection (1) must lodge a request for extension to comply within a period to be determined by the Petroleum Agency.</p>	<p>1) Black persons have a minimum 10% participation in a petroleum right.</p> <p>2) Black persons can dilute their participation by 49%.</p> <p>3) There is no obligation upon the other petroleum rights holders to restore the participation by black persons back to 10%.</p> <p>4) An extension up to 4 years can be granted by PASA for applications in respect of petroleum rights where the petroleum rights holders are unable to meet the requirement for participation by black persons.</p>	<p>The current section 31 does not make provision for carried participation in terms of Black persons. It is onerous for black persons to fund their participation in the exploration and development of a petroleum right. Particularly as such activities are costly and carry significant risk. Commercial borrowing is not available to Black persons in the absence of assurance of a cashflow from production or mechanism for repayment. Funding of the participation by black persons is likely to take the form of equity in the ownership of the HDSA participant. It is proposed that section 31 is amended to allow for up to 5% of the 10% participation by black persons to be allocated as a carried interest.</p> <p>It is furthermore proposed that Black persons cannot farmout the carried interest with the up to 49% diluted their participation.</p>	<p>Participation of black persons in petroleum rights</p> <p>(1) Every petroleum right must have a minimum of 10 per cent undivided participating interest by black persons <u>of which up to 5 per cent is a right to carried interest.</u></p> <p>(2) <u>The carrying holder or holder are entitled to recover 10 percent of the black person's proportionate share of exploration and production costs, together with imbedded interest on the outstanding balance at SOFR per annum</u></p> <p>(3) The black persons' undivided participation interest in a petroleum right contemplated in subsection (1) may be diluted to no less than 5 per cent to any funder or company, regardless of the ownership structure of such a funder or company, for purposes of raising capital subject to section 29. <u>Provided that such dilution is not in respect of the 5 per cent carried interest.</u></p>

Section	Provision	Interpretation	Comment	Proposed wording
34	<p>State participation in petroleum rights</p> <p>(1) The State Petroleum Company is designated as a state-owned entity responsible for managing State participation in exploration and production activities through a carried interest in petroleum rights as contemplated in subsections (2) and (3).</p> <p>(2) The State has a right to a 20 per cent carried interest in petroleum rights, including in both the exploration and production phase.</p> <p>(3) The carrying holder or holders are entitled to recover 50 and 100 percent of the State's proportionate share of exploration and production costs, respectively.</p> <p>(4) The State's proportionate share of exploration and production costs must, subject to subsection (3), be recoverable from its proportionate share of production or revenue.</p>	<ol style="list-style-type: none"> 1. The State is allocated a 20% carried participation in petroleum rights. 2. The State is carried interest in respect of the exploration phase and development of the field in terms of the production phase. 3. The State carried interest, is an interest free loan by the carrying holder(s) of which 50% of the exploration costs are paid back out of the State's share of production and 100% of the development costs will be paid out of the State's share of production. 4. The provision is mute as to whether the carried interest in respect of capital expenditure only or extends to all expenditure in the exploration and development of a field under a petroleum right. 	<p>Internationally State participation is on a carried basis in terms of capital expenditure on exploration and development of the field, with repayment out of the State's share of production.</p> <p>In the circumstance black persons are allocated up to 5% carried interest, it is proposed that this allocation is from the 20% carried interest designated for the State. As such 15% of the 20% State Participation will be on a carried basis. The dilution of the State Carried interest to 15%, effectively results in the State required to contribute toward 25% of this participation in a Petroleum Right. These can be significant amounts creating a drain on the fiscus accordingly the State may limit its participation to the 15% carried interest.</p> <p>The designation of black persons that will qualify for the carried interest may be implemented way of regulation to benefit emerging BEE & BBBEE participants vs established BEE participants.</p>	<p>State participation in petroleum rights</p> <p>(1) The State Petroleum Company designated as a state-owned entity responsible for managing State participation in exploration and production activities through carried interest in petroleum rights as contemplated in subsections (2) and (3).</p> <p>(2) <u>Every petroleum right must have up to 20 per cent undivided participating interest by the State which the State has a right to a</u> per cent carried interest in petroleum rights, including in both the exploration and production phase.</p>



THANK YOU

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