

LOCAL CONTENT



Ghana – Petroleum



**Columbia Center
on Sustainable Investment**

A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

The project¹ - background



Resource-rich countries are increasingly inserting requirements for local content (“local content provisions”) into their legal framework, through legislation, regulations, contracts, and bidding practices. If successful, a policy to increase local content can lead to job creation, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce. However, local content goals are often unfulfilled and the opportunities are not captured. For example, local content provisions typically require investors to meet targets measured as a percentage of investment, hours worked, equipment supplied, or jobs created. If targets are too high, they may either scare away investment or remain unmet as investors accept the fines or find loopholes. If they are too low, the country will not maximize potential linkages. This shows the importance of the framing of local content provisions. Targets, and other local content objectives, need to be carefully quantified, adapted to the local context and collaborative. Because local content provisions can be key to translating resource investments into sustainable benefits for the local population, this project examines the detail of the existing legal frameworks for local content in a number of countries.

CCSI has conducted a survey of the local content frameworks of a number of countries – identifying the key legislation, regulations, contracts and non-binding policies and frameworks dealing with local content issues in the mining and petroleum sectors². A profile was created for each country, summarizing the provisions in the legal instruments dealing with local content and highlighting examples of high impact clauses³ – those containing precise language which might be useful as an example to those looking to draft policies to enhance a country’s local content⁴. The profiles examine provisions dealing with local employment, training, procurement, technology transfer, local content plans as well as local ownership, depending on the country’s approach to and definition of local content. In addition, as key to translating provisions into action, the profiles look at implementation, monitoring and enforcement provisions as well as the government’s role in expanding local involvement. Aside from emphasizing the strong clauses, which may be adaptable across countries, the profiles summarize the provisions but do not provide commentary, because local content is so context specific. The profiles are intended as a tool for policy makers, researchers and citizens seeking to understand and compare how local content is dealt with in other countries, and to provide some examples of language that might be adopted in a framework to achieve local content goals. Hyperlinks are provided to the source legislation, regulations, policies and contracts where available.

¹ The project was managed by Perrine Toledano and Jacky Mandelbaum, with assistance from Sophie Thomashausen. Research was conducted by Elsa Savourey, with input from Shazia Ahmad.

² General legislation with provisions that relate to local content (for example, tax laws with incentives for local procurement or employment in any industry), was not included in the review. The review included dedicated mining or petroleum sector or specific local content legislation, regulations, policy and contracts.

³ Those clauses are framed and singled out by a “thumb up”.

⁴ Our criteria for assessment of the quality of the provisions were language that is less likely to present a loophole, i.e. less likely to be subject to interpretation due to vagueness and more likely to lead to enforcement because of its clarity in terms of rights and obligations of both parties (state and investor), and reasonable in its obligations on the company. In addition, as mentioned above, we looked for clauses that encourage collaboration between the company and the government in defining local content targets and goals, and those where the government has a role, as well as clauses enabling implementation and monitoring of the requirements and those giving the government strong remedies to enforce companies’ compliance.

The project - background



The impact of international law

The World Trade Organization (WTO)'s agreements and investment treaties can present an obstacle to the realization of local content goals by prohibiting some types of local content requirements (a sub-category of “performance requirements”¹). CCSI therefore surveyed the relevant WTO agreements and investment treaties in each country profiled to identify the provisions that may prevent, counsel against and/or shield local content standards. These provisions are quoted in the profile in order to show the potential barriers to implementation of local content so that they can be kept in mind when countries enter into these international investment treaties². Free Trade Agreements other than the WTO agreements, some of which may contain investment chapters, are not included in the scope of the review, but may also be relevant and should be similarly kept in mind.

¹Performance requirements are measures in law, regulation or contract that require investors to meet specified goals when entering, operating or expanding in, or leaving a host country. Some are strictly mandatory; others are imposed as a condition for receiving some sort of added benefit or advantage.

²Countries implementing local content requirements should be aware of the possibility of a challenge to those provisions either through the WTO (state-to-state dispute settlement) or arbitration under the bilateral investment treaties (which is investor-state dispute settlement). While the potential for such actions may be low, they remain a risk depending on the circumstances, and particularly should relations between the state and the investor sour over the course of the investment.



Highlights

- Comprehensive local content framework for the petroleum sector.
- Ghana is one of the few countries to have a dedicated regulation dealing with local content.
- The framework envisions a strong role for government, its visions suggests it “shall seek to provide the enabling environment and opportunities for Ghanaians to benefit from the economic wealth that emanates from the activities in the oil and gas industry...”
- A key objective is to “promote the maximisation of value-addition and job creation through the use of local expertise, goods and services, businesses and financing in the petroleum industry value chain and their retention in the country”.
- Creation of a Local Content Committee to “oversee, coordinate and manage” the implementation of the local content framework.
- A focus on local participation by the Ghanaian private sector - at least 5 percent equity for petroleum license, permits and contract operators and at least 10 percent equity for providers of supplies and services.
- Detailed targets for minimum local employment, services and goods, gradually increasing over the first 10 years of the project.

✓	Employment Requirements
✓	Procurement Requirements
✓	Training Requirements
✓	Technology Transfer Requirements
✓	Monitoring and Enforcement Mechanisms
✓	Government Obligations in Support of the Companies' Program



International law

Legislation

[Petroleum Commission Act 2011](#)
The relevant regulations are made under this Act, but it does not provide any real detail on local content.

Regulation

[Petroleum \(Local content and Local Participation in Petroleum Activities\) Regulations 2013](#)
Provides a comprehensive legal framework for local content*.

Policy

[Local Content and Local Participation in Petroleum Activities Policy Framework 2011](#)
The Policy is reflected in the Regulation.

Contract

[Model Petroleum Agreement 2003](#)
The Regulation provides that within 3 months of its commencement (by Feb 2014), all contractors, subcontractors, licensees and other entities must comply with its requirements.

Key definitions

Indigenous Ghanaian company means a “company incorporated under the Companies Act, 1963...

- (a) that has at least fifty-one percent of its equity owned by a citizen of Ghana; and
- (b) that has Ghanaian citizens holding at least eighty percent of executive and senior management positions and one hundred percent of non- managerial and other positions”.

Local content means “the quantum or percentage of locally produced materials, personnel, financing, goods and services rendered in the petroleum industry value chain and which can be measured in monetary terms”.

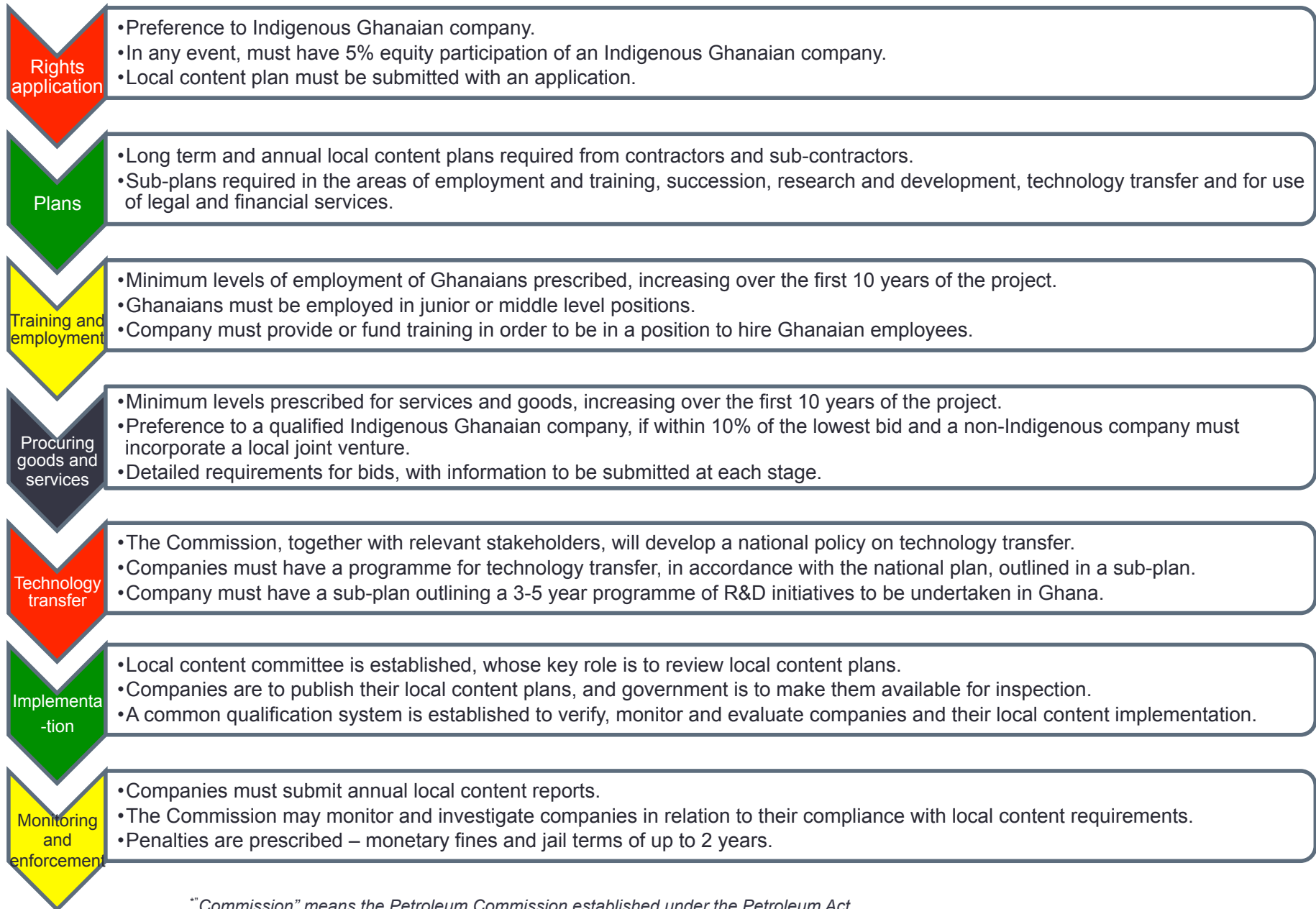
Qualified means “technical competence and financial capability to fulfill all obligations under a petroleum agreement or petroleum licence”.

Value-addition means “the economic improvement of a product or service in the petroleum industry”.

Common qualification system means “a sole centralised system of pre-qualified service providers in Ghana's upstream petroleum industry based on their capacities, capabilities and local content strength to enable ranking and categorisation of the service providers as well as tracking and monitoring their performance”.

* As the Regulations provide a comprehensive framework, all references in this document to Articles, are to Articles of the Regulations unless otherwise stated.

Overview



***Commission** means the Petroleum Commission established under the Petroleum Act.*

Applications for rights



- An “Indigenous Ghanaian company” will be given preference in the award of rights (Art. 4(1)).
- In any event, a company must have 5% equity participation by an Indigenous Ghanaian company to qualify to enter into a petroleum agreement or license, though the Minister may vary this requirement when an indigenous Ghanaian company is “unable to satisfy the requirement of 5% equity participation”. Discretion is given to the Minister to determine “the persons qualified” to enter into an agreement or license. The interest of an indigenous Ghanaian company is not transferable to a non-indigenous company (Art. 4).
- Companies must submit a plan to the Commission, setting out the role of indigenous Ghanaian companies (Art 4(7)):



“A contractor, subcontractor, licensee or other allied entity shall before the commencement of petroleum activities submit a plan to the Commission specifying

- (a) the role and responsibilities of the indigenous Ghanaian company;
- (b) the equity participation of the indigenous Ghanaian company; and
- (c) the strategy for the transfer of technology and know-how to the indigenous Ghanaian company”.

- A contractor must submit a local content plan with an application to undertake petroleum activities (Art. 7(1)).

Training and employment



- The Contractor must comply with minimum employment levels set out in Schedule 1, up to 70-80% for all technical and core staff and 100% for “other” staff (Art. 10).
- Companies are required to submit an employment and training sub-plan (Art. 17(1)):



“The Employment and Training Sub-Plan submitted by a contractor, subcontractor, licensee or other allied entity to the Commission with respect to a petroleum activity shall include

(a) a forecast of the hiring and training needs of the contractor, subcontractor, licensee, or other allied entity which includes

(i) a specification of the skills needed;

(ii) the anticipated skill shortages in the Ghanaian workforce;

(iii) the specific training requirements; and

(iv) the anticipated expenditure that will be incurred by the contractor, subcontractor, licensee or other allied entity in implementing the Employment and Training Sub-Plan as forecasted;

(b) a time frame within which the contractor, subcontractor, licensee or other allied entity will provide employment opportunities for the Ghanaian workforce for each phase of the petroleum activity to enable members of the Ghanaian workforce prepare for such opportunities; and

(c) efforts made and procedures adopted for the accelerated training of Ghanaians”.

- Where Ghanaians are not employed because of a lack of expertise, the contractor must ensure that “every reasonable effort” is made to provide training to Ghanaians, to the satisfaction of the Commission (Art. 17(5)).
- The contractor must create a succession plan, whereby a Ghanaian understudies any employment position held by a non-Ghanaian, with a view to taking over that position within a timeframe agreed with the Commission (Art. 18).
- Secondment of National Petroleum Company staff to the company for all phases of operations, “under a mutually agreed secondment contract”, to “include continuing education and short industry courses” if requested (Model Petroleum Contract, cl. 21.3).
- Ghanaians must be employed in all junior or middle level positions (which includes “foreman, supervisor, or any corresponding position designated as such”) (Art. 19).

Procuring goods and services



- The Contractor and sub-contractors must comply with specified minimum local content levels (Art. 10, and Sch. 1).
 - For goods and services broadly - 10% at start, 50% at 5 years and 60-90% at 10 years (Sch. 1, part 1).
 - Specific levels for particular types of goods and services used in the petroleum industry at start, 5 years and 10 years, e.g., engineering services, fabrication and construction materials, IT and others (Sch.1, parts 2–4, 6-10).
- The Contractor's and sub-contractors' local content plan must each show how:
 - it will ensure that “first consideration” will be given to services provided and goods manufactured in the country, where the goods “meet the specifications of the petroleum industry as established by the Standards Authority by other internationally accepted standards”; and
 - it intends to “guarantee” the use of locally manufactured goods where they meet those standards (Art. 9(a)(i) and (b)).
- If a non-Indigenous company is required to provide goods and services to a contractor, it must:
 - incorporate a joint venture company in Ghana with at least 10% equity participation of an Indigenous Ghanaian company and operate from Ghana; and
 - where practicable, provide the goods or services in association with an Indigenous Ghanaian company (Art. 12(5)).
- Insurance must be obtained from an indigenous brokerage firm or where applicable a re-insurance broker. Approval from the National Insurance Commission is required if insurance is to be obtained offshore, and it must ensure that “Ghanaian local capacity has been exhausted” (Arts. 27 and 28).
- Legal services and financial services must be procured from Ghanaian providers (Arts. 29 and 31), though in the case of financial services the Commission can grant an exemption. Sub-plans for each must be provided, reporting on services used in the previous 6 months and a forecast going forwards (Arts. 30 and 32).
- A bank account must be maintained with an “indigenous Ghanaian bank” – 100% Ghanaian or majority Ghanaian shareholding – and “transact business” through banks in the country (Art. 33).

Procuring goods and services



- An indigenous Ghanaian company should not be disqualified from winning a bid solely on the ground that it is not the lowest financial bidder, if it has the “capacity” to do the job. If the total value of its bid does not exceed the lowest bid by more than 10%, then the contract should be awarded to the “qualified” indigenous Ghanaian company (Art. 12).
- In the case of two bids being considered equal, the one with the highest level of local content should be selected (Art. 12).
- The Commission will establish bid evaluation guidelines for companies, to ensure that year on year progression of local content is achieved (Art. 12).
- All proposed contracts and purchase orders to be sole sourced or above US\$100,000 must be notified to the Commission with copies of all advertisements for expressions of interest, request for proposal (RFP), prequalification criteria, technical bid documents and technical evaluation criteria to ensure local content requirements are met (Art. 13).
- Quarterly forecasts of contracts and purchase orders to be provided to the Commission with descriptions of goods and services, value estimates and dates for RFP and contract award (Art.14, Sch. 2).
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- Detailed bid procedures require certain information to be provided to the Commission during the bidding process (Art. 15):
 - **Before issuing a prequalification notice to potential bidders:**
 - description of scope of work;
 - copy of prequalification notice;
 - list of companies to which questions will be directed; and
 - dates for closure of prequalification (Sch. 3A).
 - **Before issuing a request for proposal (RFP) or request for quotation (RFQ):**
 - list of bidders,
 - copy of RFP or RFQ – on which the Commission will advise its requirements on a case by case basis;
 - a description of the corporate ownership of the bidders including the main shareholders by percentage;
 - location of any Ghana based office, plant or facilities;
 - dates for closure of contracts; and
 - any other information that the Commission may request (Sch. 3B).
 - **Before award of contract:**
 - name of selected contractor;
 - list of sub-contractors or sub-suppliers;
 - for construction or or service contracts, the estimated Ghanaian employment level in person-hours;
 - commencement and completion dates for the contract;
 - “Award Notification Form” signed by the appropriate official of the contractor;
 - a statement of award rationale or bid evaluation report showing the price difference between the selected bidder and other bids, the primary location of work associated with each bidder, estimates of local content “calculated in accordance with the definition of the local content to be provided by the Commission”; and
 - any other relevant information, including where applicable a summary of the technical, commercial and local content aspects of the bid evaluation (Sch. 3C).

Technology transfer and research and development



- The Commission, together with relevant stakeholders, will develop a national policy on technology transfer (Art 23):



“The Commission shall in consultation with the National Development Planning Commission, relevant Ministries, Departments and Agencies identified by the Commission

- (a) develop the national policy on technology transfer with respect to the petroleum industry, and
- (b) publish the national policy in the Gazette and a newspaper of national circulation (Art. 22)

A contractor, subcontractor, licensee, or other allied entity shall support and carry out a programme in accordance with the national plan on technology transfer and priorities for the promotion of technology transfer to Ghana in relation to the petroleum industry”.

- Companies must have a programme for technology transfer, in accordance with the national plan, outlined in a sub-plan (Art. 24):



“A Technology Transfer Sub-Plan submitted by a contractor, subcontractor, licensee or other allied entity shall include a programme of planned initiatives aimed at promoting the effective transfer of technologies from the contractor, subcontractor, licensee or other allied entity to a Ghanaian indigenous company or citizen”.

- Contractors and sub-contractors are to “support and facilitate” technology transfer through joint ventures, partnering or license agreements between Indigenous Ghanaian companies and citizens and foreign companies (Art. 25).
- The Minister, in consultation with relevant Government agencies and the Commission is to implement fiscal incentives to assist foreign companies that aim to “develop the technological capacity of citizens” and indigenous Ghanaian companies that establish factories and production units in Ghana (Art. 25(2) and (3)).

Technology transfer and research and development



- Companies must have a sub-plan outlining a 3-5 year programme of R&D initiatives to be undertaken in Ghana (Art. 21):



“(1) A Research and Development Sub-Plan submitted by a contractor, subcontractor, licensee or other allied entity to the Commission with respect to a petroleum activity shall

(a) outline a revolving three to five year programme for petroleum related research and development initiatives to be undertaken in the country;

(b) provide details of the expected expenditure that will be made in implementing the Research and Development Sub-Plan;

(c) provide for public calls for proposals for research and development initiatives associated with the activities of the contractor, subcontractor, licensee or other allied entity and criteria for selecting proposals which qualify for support.

(2) The contractor, subcontractor, licensee or other allied entity shall

(a) update its Research and Development Sub-Plan annually, and

(b) submit the updated plan to the Commission for review and approval”.

Implementation



- A local content committee is established, responsible for the implementation of local content initiatives prescribed in the regulations (Art. 5):



“The Local Content Committee...shall oversee the implementation of these Regulations.

(2) The Committee shall in implementing the provisions of these Regulations, ensure measurable and continuous growth in local content in all petroleum activities.

(3) Without limiting subregulations (1) and (2), the Committee shall

(a) oversee, coordinate, and manage the development of local content;

(b) prepare guidelines, to include targets and formats for local content plans and reporting;

(c) make appropriate recommendations to the Commission for the smooth implementation of these Regulations;

(d) set minimum standard requirements for local content in local content plans where applicable;

(e) undertake public education;

(f) undertake local content monitoring and audit; and

(g) Perform any other functions conferred on the Committee by the Commission in accordance with the provisions of applicable laws.

(4) The Committee shall submit quarterly reports of its activities to the Commission”.

- The Policy framework specifies that the Committee will be comprised of public and private sector stakeholders, including government ministries, authorities and agencies, NGOs and industry representatives (Art. 5.8 of the Policy, but not included in the Regulations).

Implementation



- The Local Content Committee's main role under the Regulations is in reviewing local content plans and making recommendations to the Commission. The Local Content Committee does not itself accept or reject the local content plans (Art. 8):
 - The Local Content Committee makes recommendations to the Commission, in writing, within a specified time frame (25 working days), as to whether to accept or reject a plan.
 - The Committee *may* provide a reasonable opportunity to be heard to industry and others likely to be affected, and take into account any representations made, before issuing a recommendation.
 - A rejection must be accompanied by written reasons.
 - If rejected, the company has a further 14 working days to review and resubmit the plan.
 - If the Commission does not notify the company within 50 working days of re-submission of a plan, it is deemed accepted.
- The Commission and industry stakeholders are required to established a Common Qualification System to manage the procurement process (Art. 37 and 38):



“The Commission shall, in consultation with industry stakeholders, establish a Common Qualification System... [it] shall be used for

- (a) the verification of contractors' capacities and capabilities;
- (b) the evaluation of application of local content submitted by a contractor, subcontractor, licensee or other allied entity;
- (c) the tracking and monitoring of performance and provision of feed back; and
- (d) ranking and categorisation of petroleum service companies based on capabilities and local content”.

Implementation



- Any person may access or request copies of records that relate to local content, “designated as public records”, kept by the Commission, during working hours (Art. 39).
- There are requirements on the Commission and the companies to make public information about local content and local participation, as well as to educate the public in relation to these issues (Arts. 39(4), 40, 41):



“(4) The Commission shall publish on its website, information relating to these Regulations and local content and local participation requirements generally”.



“The Commission shall ensure that public education activities are undertaken to educate contractors, subcontractors, licensees and other allied entities, the public and industry stakeholders to educate them about the local content policy and philosophy and to ensure the implementation of these Regulations”.



“(1) A contractor, subcontractor, licensee or other allied entity shall

(a) communicate local content policies, procedures and obligations to any person engaged by that contractor, subcontractor, licensee or other allied entity to perform an aspect of a petroleum activity, and

(b) monitor and ensure compliance with local content policies, procedures and obligations.

(2) Despite subregulation (1), a contractor, subcontractor licensee or other allied entity shall make available the local content policies, procedures and obligations of that contractor, subcontractor, licensee or other allied entity available on their respective websites”.

Implementation



- The company must establish a project office in the district where the project is located, “where practicable”, before activities commence (Art. 6).
- The Policy Framework provided a role for Government in supporting local training and technical institutions to provide skills to Ghanaians to enable them to participate in the industry. This provision is not repeated in the Regulations (Art 5.6 Policy Framework):



“The local training and technical institutions will be supported by the Government of Ghana, its Development Partners and Petroleum Operators to develop the requisite capacity to international standards to be able to train Ghanaians to comparable high levels as required by the industry...Government is committed to supporting academic and technical institutions to build the requisite human and material resources to provide effective training for Ghanaians”.

- The Policy Framework envisaged the creation of a Business Development and Local Content Fund to support local capacity development. This provision is not repeated in the Regulations (Art. 5.9 Policy Framework):



“An Oil and Gas Business Development and Local Content Fund will be established to support local capability development aspects of the local content framework. The fund will be used primarily for education, training and research and development in oil and gas. Sources of the fund will include contribution from Licensed Operators (at amounts specified in the applicable Petroleum Agreements), Oil and Gas Revenue, levies, grants and other support from Ghana’s Development Partners”.

Monitoring and enforcement



- An annual report is required, detailing the activities that the company has undertaken in the past year (Arts. 34-36):



“34. (1) A contractor, subcontractor, licensee or other allied entity shall within forty- five days of the beginning of each year after commencement of petroleum activities submit to the Commission an annual Local Content Performance Report covering all its projects and activities for the year under review.

(2) The report shall be in a format prescribed by the Commission and shall

- (a) specify by category of expenditure the local content on both current and cumulative cost basis; and
- (b) show the employment achievement in terms of hours worked by Ghanaians and foreigners as well as their job positions and remuneration.

35. (1) The Commission shall, within fifty working days after receipt of the Local Content Performance Report, assess and review the Local Content Performance Report to ensure compliance with these Regulations.

(2) For the purposes of assessment and verification of the report, a contractor, subcontractor, licensee or an allied entity shall allow an employee or a designated agent of the Commission access to their facilities, documents and information as the Commission may require.

36. (1) A contractor, subcontractor, licensee or other allied entity shall ensure that its partners, contractors, subcontractors and allied entity are contractually bound to report local content information to the contractor, subcontractor, licensee or other allied entity and, if requested, to the Commission.

(2) A contractor, subcontractor, licensee or other allied entity shall allow an agent or official designated by the Commission access to the records of the contractor, subcontractor, licensee or an allied entity for purposes of assessment and verification of the local content information reported to the contractor, subcontractor, licensee or other allied entity or the Commission”.

- Quarterly reports are required in respect of employment and training activities (Art. 17(2) and (3)):



“(2) The contractor, subcontractor, licensee or other allied entity shall provide to the Commission a quarterly report on

- (a) employment and training activities for the reporting period; and
- (b) a comparative analysis of the Employment and Training Sub-Plan and the employment and training activities to monitor compliance.

(3) The quarterly report shall state the number of new Ghanaian employees employed during the respective quarter and their job descriptions”.

Monitoring and enforcement



- The Commission is required to “monitor and investigate” each company’s activities to ensure the achievement of the purpose of the Regulations (Art. 44).
- The Commission may carry out investigations into the activities of companies in order to enforce the Regulations (Art. 45):



“(1) The Commission may for the purposes of enforcing these Regulations initiate an investigation into an activity of a contractor, subcontractor, licensee or other allied entity.

(2) Without limiting subregulation (1), the Commission may launch investigations to ensure that

(a) the Ghanaian company principle is not diluted by the operation of a front; or

(b) bid rigging and cartelisation are avoided in the procurement process”.

- An annual technology transfer report is required, setting out the activities undertaken and the results in relation to the sub-plan (Art. 26).
- Detailed and strict penalties are imposed (Art. 46 – reproduced in full on the following two pages):
 - Knowingly making false statement on any plan or document submitted, or acting as a front or conniving with a foreign company to deceptively represent as a indigenous Ghanaian company are offences liable to summary conviction with a fine or a jail term.
 - Failure to comply with other aspects of the Regulations incurs an administrative penalty, which increases with each day that the failure is to be remedied. In respect of a number of failures to comply, if the failure is not remedied, in the case of the contractor, the Commission will withhold permits and approvals for petroleum activities until the contravention stops and in the case of a sub-contractor, if the contravention continues after one notice, will expunge that sub-contractor from the register of parties permitted to conduct petroleum activities.
 - Failure to provide requested information or documents results in an administrative penalty, with a further 10% of the penalty incurred each day that the request remains unfulfilled.
 - Failure to provide a local content plan, to comply with the local content requirement set out in the Regulation, to satisfy the content requirement of a local content plan or to inform the Commission of each proposed contract or purchase order, incurs a penalty of 5% of the proceeds of the petroleum activity (up to US\$5 million), or to cancellation of the contract.

Monitoring and enforcement



“46. (1) A person who submits a plan, returns, report or other document and knowingly makes a false statement, commits an offence ...

(2) A citizen who acts as a front or connives with a foreign citizen or company to deceive the Commission as representing an indigenous Ghanaian company to achieve the local content requirement under these Regulations, commits an offence ...

(3) A person who connives with a citizen or an indigenous Ghanaian company to deceive the Commission as representing an indigenous Ghanaian company to achieve the local content requirement under these Regulations commits an offence ...

(4) A person who fails to

(a) support and carry out a programme in accordance with the National Plan on technology transfer in contravention of regulation 23;

(b) support and facilitate technology transfer as regards the formation of joint ventures, partnering of licensing agreements between indigenous Ghanaian companies or citizens and foreign contractors and service companies or supply companies in contravention of regulation 25;

(c) ensure that its partners, contractors, subcontractors and allied entities report local content information to the contractor in contravention of regulation 36; or

(d) communicate local content policies, procedures and obligations to any person engaged by that contractor, subcontractor, licensee or other allied entity to perform an aspect of petroleum activity in contravention of regulation 41;

is liable ...”.

Monitoring and enforcement



“(5) A person who fails to

- (a) establish a project office in contravention of regulation 6;
 - (b) comply with the minimum local content levels for any petroleum activity in contravention of regulation 10;
 - (c) establish and implement a bidding process in contravention of regulation 11;
 - (d) comply with regulations 12(1) and 12(5);
 - (e) employ only Ghanaians in junior or middle level positions in contravention of regulation 19;
 - (f) insure the insurable risks relating to petroleum activities in the country through an indigenous brokerage firm or reinsurance broker in contravention of reg. 27(2);
 - (g) obtain the written approval of the National Insurance Commission when seeking to obtain an insurance offshore service relating to a petroleum activity in contravention of regulation 28;
 - (h) retain only the services of a Ghanaian legal practitioner or a firm of Ghanaian legal practitioners in contravention of regulation 29; or
 - (i) operate a bank account in Ghana with an indigenous Ghanaian Bank in contravention of regulation 33; is liable...
 - (k) in the case of a contractor, where the contravention continues after the time specified for remedying the contravention, the Commission shall withhold the approvals and permits required by the contractor for the conduct of petroleum activities until the time that the contravention is remedied; and
 - (l) in the case of a subcontractor, licensee or other allied entity, where the contravention continues after one time specified for remedying the contravention, the Commission shall expunge the name of the subcontractor, licensee or other allied entity from the Register or persons registered to undertake petroleum activities.
- (6) A person who fails to comply with a request to furnish information or a document under these Regulations within the period specified in the request is liable to pay to the Commission an administrative penalty ...in the first instance and a further penalty ... for each day that the document remains undelivered.
- (7) A contractor, subcontractor, licensee or other allied entity that
- (a) carries out petroleum activities without the required local content requirement in contravention of regulation 3;
 - (b) fails to submit a local content plan in contravention of regulation 7;
 - (c) fails to satisfy the content requirement of a local content plan in contravention of regulation 9; or
 - (d) fails to inform the Commission of each proposed contract or purchase order in contravention of regulation 13, is liable to pay to the Commission a penalty ...



Agreement on Trade-Related Investment Measures (TRIMs)¹

- Ghana has been a member of the WTO since January 1, 1995.
- All World Trade Organization (WTO) Members must adopt and abide by the obligations of TRIMs. This can impact a country's ability to impose certain local content requirements (referred to as "investment measures"), to the extent they affect trade in *goods*.
- The following types of local content requirements are covered by TRIMS²:
 - requiring a company to purchase or use products of domestic origin – TRIMs prohibits discrimination between goods of domestic and imported origin;
 - limiting the amount of imported products that an enterprise may purchase or use depending on the volume or value of local products that the enterprise exports;
 - restricting foreign exchange necessary to import (e.g., restricting the importation by an enterprise of products used in local production by restricting its access to foreign exchange); and
 - restricting exports.

¹ The TRIMs Agreement clarifies existing rules contained in Articles III (National Treatment Obligation (NTO)) and XI (Prohibition on Quantitative Restrictions) of the General Agreement on Tariffs and Trade (GATT), 1994.

² It is important to be aware of the types of measures prohibited under the TRIMs Agreement, in order to avoid the potential for dispute settlement under the WTO - a state can bring an action against another state for an alleged violation of the TRIMs Agreement (i.e. "state-to-state action").



General Agreement on Trade in Services (GATS)

- A separate WTO agreement, the General Agreement on Trade in Services (“GATS”), covers investment measures related to services (in Article XVI), including the following which are relevant to local content:
 - Requirements to use domestic service suppliers
 - Limits on the number of service suppliers
 - Limits on the total value of service transactions or assets
 - Limits on the total number of service operations or quantity of service output
 - Limits on the total number of natural persons permitted
 - Restrictions on or requirements for certain types of legal entities (e.g., joint venture requirements)
 - Imposition of domestic equity
- GATS only applies to those service sectors that the country chooses to include in its Schedule of Commitments. Ghana’s [commitments](#)¹ relating to construction and related engineering services, financial services and telecommunication services may affect the implementation of Articles 10-12, 27-28, and 31-32 of Ghana’s local content framework for the petroleum sector.

¹ See also [Supplement 1](#) and [Supplement 2](#)

International law – bilateral investment treaties



- As at 1 June 2013, Ghana had entered into 26 bilateral investment treaties (BITs) but only 8 were in force¹.
- Investment treaties are international agreements between two or more countries which establish the terms and conditions of foreign investment within each country and provide rights directly to the investors of each country which is party to the treaty. The treaties can contain restrictions on local content requirements.²
- Investment treaties can contain the following types of provisions, each of which affects a country's ability to impose local content requirements:
 - non-discrimination provisions (“national treatment” and “most-favored nation” obligations), which are relevant in the context of local content when:
 1. host countries require some foreign investors to source from certain goods and service providers but don't impose similar requirements on other investors; and
 2. host countries give an advantage to some domestic or foreign goods and services providers, but not to a foreign provider whose state has a relevant treaty with the host country. (Note that this is relevant only where the foreign provider of goods or services has or, intends to have³, a presence in the host country);
 - restrictions on capital transfers;
 - “pre-establishment” protections, which prevent a state from imposing conditions on foreign investors that are not imposed on domestic investors, such as requirements to transfer technology to local firms, to establish the firm through a joint venture, or to reinvest a certain amount of capital in the host country;
 - incorporation of the TRIMs agreement; and
 - explicit prohibition of performance requirements that go beyond what is restricted by the TRIMs Agreement.

¹ According to UNCTAD's [country specific list of bilateral investment treaties](#)

² It is important to be aware of the BITs a country has signed and the types of requirements prohibited under it, in order to avoid the potential for arbitration against the country - the majority of investment treaties allow investors to bring arbitration claims directly against the country in which they have invested (“investor-state arbitration”).

³ I.e., the conditions under which an investor may enter into the territory of a party, not only the conditions once the investment is made.

International law – bilateral investment treaties



- Of the 26 BITS signed by Ghana, 17 were reviewed (and are available on [UNCTAD's database](#)).
- Aside from the inclusion of National Treatment Obligations and Most Favored Nation clauses, which are included in most BITS, none contained specific restrictions on performance requirements.