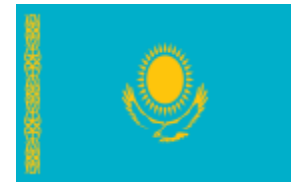




# LOCAL CONTENT



Kazakhstan - Mining & Petroleum  
January, 2020



Columbia Center  
on Sustainable Investment

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

# The project<sup>1</sup> - 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 sectors<sup>2</sup>. A profile was created for each country, summarizing the provisions in the legal instruments dealing with local content and highlighting examples of high impact clauses<sup>3</sup> – those containing precise language which might be useful as an example to those looking to draft policies to enhance a country’s local content<sup>4</sup>. 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.
- <sup>1</sup> The project was managed by Perrine Toledano. Research was conducted by Mateusz Kasprowicz
- <sup>2</sup> 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.
- <sup>3</sup> Those clauses are framed and singled out by a "thumb up".
- <sup>4</sup> 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 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”<sup>1</sup>). 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 treaties<sup>2</sup>. FTAs 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.

<sup>1</sup>Performance 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.

<sup>2</sup>Countries 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

- The Code on Subsoil and Subsoil Use of 2018 stands as the primary mechanism for regulating local content in Kazakhstan's both oil and mining sectors.
- The Code on Subsoil and Subsoil Use includes comprehensive local content requirements to be included in bidding and licensing and related to employment, procurement of goods and services, and technology transfer.
- The Code on Subsoil and Subsoil Use is supported by a series of decrees regulating local content, including Decrees 367/2009 and 964/2010, and Decree 133/2013.
- As of June 15, 2015, Kazakhstan is a member of the World Trade Organization (WTO).

*CCSI analysis is based on non-official translations of laws and regulations as well as secondary sources on the decrees that were not publicly accessible. CCSI does not guarantee the accuracy of the texts or the analysis based on these sources.*

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



## International law

### Legislation

#### [Code on Subsoil and Subsoil Use of 2018](#)

*Hereinafter referred to as the SSU Code or by Article number*

\*Replaced The Law on Subsoil and Subsoil Use 2010.

### Regulation

Decrees 367/2009 and 964/2010 on the Measurement of Local Content and Unified Calculation Method

Decree 133/2013 Amendments on the Rules for the Procurement of Goods, Works, and Services for Subsoil Users

### Contract

[Model Contract for Production](#) 2015 by the Republic of Kazakhstan Subsoil Use Department

## Key definitions

**Local content related definition under the 2010 Law haven't been replaced by the 2018 Code.**



Rights and Applications

Employment

Procurement

Implementation

Technology Transfer

Monitoring and Enforcement

- The Code on Subsoil and Subsoil Use requires specific local content commitments in all subsoil bid contracts and licenses, at risk of bid rejection.

- The Code on Subsoil and Subsoil Use requires giving preference to Kazakh personnel. The number of foreign employees may not exceed 50%.
- It is required that one percent of production expenses incurred by the subsoil user in the previous year goes to the training of Kazakh personnel.

- The Code includes provisions mandating minimum share of local content in goods, works and services of 50% of the total volume purchased during the calendar year.
- Preference is given to Kazakhstanian producers if within 20% of foreign bid price.

- The Code governs all subsoil contracts entered into prior to its implementation.
- The Code mandates that a government authority create and maintain a register of goods, works and services that are procured locally for subsoil projects.

- The Code on Subsoil and Subsoil Use mandates one percent of production costs go to research, scientific and technical development.

- The Code on Subsoil and Subsoil Use mandates annual reporting of procurement plans and long-term schedules for purchasing goods.
- Decrees 364/2009 and 964/2010 create the Uniform Method of Calculation for the uniform reporting and monitoring of local content in goods, works, and services.
- A penalty is imposed for breach of local content obligations under a solid mineral license.



- Local content information is included in the bidding procedure. Auctions must be publicized by the relevant authority on that authority's webpage and in printed periodicals.(Art. 95)
- The notifications of an auction must contain the following information about local content (Art. 95):



(...)

8. “amount of expenses for training of the Kazakhstan staff in the period of production;
9. amount of expenses for research, scientific-technical and development works in the territory of the Republic of Kazakhstan during production period;
10. amount of expenses for the social and economic development of the region and the development of its infrastructure during production period;
11. minimal obligations on local content in works, services and staff;”



- The Code on Subsoil and Subsoil Use specifies that hydrocarbon and uranium production is regulated by contracts. These contracts must contain the following local content provisions (Art. 36):



(...)

5. obligations of the subsoil user to finance the Kazakhstan personnel training during production period
6. obligations of the subsoil user on the minimum share of local content in the personnel;
7. obligations of the subsoil user on the share of local content in works and services that meet the requirements of this Code, including with regard to types of works and services included in the list of priority works and services approved by the authorized body
8. obligations of the subsoil user on expenses for research, scientific and technical and development works in the territory of the Republic of Kazakhstan during production period;
9. obligations of the subsoil user on expenses for the social and economic development of the region and the development of its infrastructure during a production period;
10. obligations of the subsoil users on compliance by them and their contractors with the procedure for procurement of goods, works and services used by authorized bodies.”

- Solid minerals are regulated by licenses. Licenses for production of solid minerals are required to contain (Art. 208):



(...)

3. “the amount of the minimum share of local content in works and services used in production operations;
4. the amount of the subsoil user's obligation to finance Kazakhstan personnel training;
5. the amount of the subsoil user's obligation to finance research, scientific technical and development works”





- The Code on Subsoil and Subsoil Use requires all subsoil users to contribute to research, scientific, technical and socio-economic development work in Kazakhstan.
- In hydrocarbons/uranium, funds can be transferred to the state budget to fulfill these purposes (Art. 129/178). The subsoil user is obliged (Art. 129/178) :



- “to finance research, scientific and technical and (or) development work in the amount of one percent of the production costs [or mining costs] incurred by the subsoil user during the period of hydrocarbon production [or uranium mining] in the previous year, in a manner approved by the authorized body in the field of hydrocarbons [or uranium mining] together with the authorized body in the field of science;”
- ”to finance the socio-economic development of the region and the development of its infrastructure in the amount of one percent of the investment under the subsoil use contract during the period of hydrocarbon production in the previous year [under the contract for the extraction of uranium during the period of uranium mining in the previous year].

- In solid minerals, the subsoil user is obliged (Art. 212):



“to finance research, scientific technical and (or) development works in the amount of one percent of production expenses incurred by the subsoil user in the previous year under the procedure determined by the competent authority jointly with the authorized body in the field of science.”

# Training and Employment

- All subsoil users are required to give preference to Kazakhstan personnel. All hiring of foreign labor is regulated by legislation of Republic of Kazakhstan on population employment and migration (Art. 28).
- The Code on Subsoil and Subsoil Use requires subsoil users in hydrocarbons, solid minerals and uranium to finance training of Kazakh personnel (Art. 129/178/212):



- “to finance the training of Kazakhstan personnel in the amount of one percent of the mining costs incurred by the subsoil user during the period of uranium mining following the results of the previous year, in a manner approved by the authorized body in the field of uranium mining together with the authorized body in education;” (Art.178)
- to finance the Kazakhstan personnel training in the amount of one percent of production expenses incurred by the subsoil user in the previous year, under the procedure determined by the competent authority jointly with the authorized body in the field of education (Arts. 129, 212)

- The local content proportion of the labor force is calculated by a methodology approved by the authorized body on employment (Art. 28).
- The limit for foreign “executives, managers and specialists” is 50%.
  - The number of employees working in Kazakhstan through intra-company transfer should not be more than 50% in each category (Art. 28).
  - Until Jan 1, 2022, Article 277 says that the amount of foreign personnel *in hydrocarbons* may not exceed 25% “of the total number of managers, managers and specialists in each relevant category” (Art. 277).



- The share of local content in works and services must be at least 50% of total works and services purchased in a year (Art. 28).
- The local content share in goods is calculated according to the unified methodology (Art. 28).
- The procedure of procurement is determined by the authorized body in the field of either hydrocarbons, solid minerals or uranium (Art. 179/131/213).
- Procurement of goods requires the use of the register of goods, works and services or other e-procurement systems synchronized with operation of such a registry (Art. 179/131/213).
  - The register of goods means a state information system which controls and monitors purchasing of goods, works and services used in subsurface operations and their producers.
  - The electronic procurement system is an electronic information system used by “organizers of procurement.” The authorized body in hydrocarbons/solid minerals/uranium is responsible for synchronizing it with the register of goods. See slide 13
  - “The purchase of goods via commodity exchanges shall be carried out in accordance with the legislation of the Republic of Kazakhstan on commodity exchanges according to the list of exchange goods” (Art. 179/131/213).
- The Code on Subsoil and Subsoil Use provides preferential treatment to “Kazakhstani Producers” in competitive bids. Kazakh bids are to be favored over foreign producers if they are within 20% of the foreign bid price (Art. 179/131/213).



- The enactment of the SSU Code is regulated by Article 277. Transitional provisions are outlined in Article 278.
- All permits, licenses and contracts established prior to the SSU Code are still valid (Art. 278).
  - Those who won tender for hydrocarbon exploration or production under the previous legislation for can apply for contract, provided the contract meets conditions for local content under the present legislation (Art. 278 par. 36).
- The SSU Code applies to those contracts entered before its implementation. There are several exceptions:
  - Par. 1 of Article 28, which mandates that subsoil users give preference to Kazakh personnel, is exempted (Art. 277).
  - Until January 1, 2022, hydrocarbon production caps foreign employment at 25%, instead of 50%.
  - For subsoil users with contracts predating the SSU Code, costs of goods works and services acquired through competition outside of Kazakhstan or in violation of procedure, will not be counted by the relevant authority (Art. 278 par. 31).

# Implementation (2)

- In 2013, amendments to the Rules for the Procurement of Goods, Works, and Services for Subsoil Users included a new, detailed plan for the practical implementation of procurement procedures (Decree 133/2013) .
- Kazakhstan utilizes an electronic procurement system to regulate procurement. All goods, works and services for subsoil use operations must be procured through the mandatory use of an online procurement system (Decree 133/2013, Art. 6.4).
  - The electronic procurement system screens companies that wish to participate in the procurement process. In order to participate companies must be legally capable, solvent and not subject to “liquidation or bankruptcy proceedings” (Art. 8).
  - Additionally, there is a prohibition on procurement between suppliers and consumers where there is a conflict of interest (Art. 11.1) :



A potential supplier is not allowed to participate if:

- 1) close relatives, spouse (s) or cousins of the potential supplier and (or) the authorized representative of the potential supplier have the right to decide on the choice of the supplier or are an employee of the customer;
- 2) potential supplier and (or) its worker provided to the customer consulting and (or) other services or acted as a general designer or as subcontractor for the preparation (..) of the feasibility study and/or project documentation or acted as the general designer or subcontractor [for those works];
- 3) the financial and economic activity of the potential supplier (...) is suspended in accordance with the legislation of the Republic of Kazakhstan (...).

- The 2013 amendment includes a new harmonized procurement system designed to streamline the procurement process.\*
  - For example, Decree 133/2013 includes a unification of the procurement procedures for most mining companies (excludes those engaged in “operations for the exploration or production of common minerals”) and companies engaged in oil and gas operations (Arts. 1 and 2.1).
  - Additionally, the amendments eliminated previous discrepancies that existed in procurement regulation with the goal of ensuring better transparency and competition of the procurement process (See Arts. 19, 26, 27, 33, 34).

\* Dina Berkaliyeva. ["New Rules on Procurement of Goods, Works, and Services Dedicated for Subsoil Use Operations."](#) Dentons - Kazakhstan Business Updates 2014.



- Decrees 367/2009 and 964/2010 established a Unified Method of Calculation.
- The SSU Code specifies reporting practices for hydrocarbons in Article 132, for uranium in Article 180, and for solid minerals in Article 215.
- Subsoil users are required to submit the following reports to the respective authorized body for hydrocarbons or uranium (Art. 132, Art. 180):
  1. report on the purchased goods, works and services, as well as the amount of local content in them
  2. report on local content in personnel
  3. report on the expenses spent for financing of the Kazakhstan personnel training
  4. report on the expenses for research, scientific, technical and development work;
- Solid mineral mining requires a separate report to be produced for local content in goods works and services for annual and medium-range time (5 years) frames (Art. 213). The report needs to be submitted to the authorized body in the field of solid minerals. Reports for the previous year in solid mineral mining must be submitted by April 30<sup>th</sup> (Art. 215).

# Monitoring and Enforcement (2)

- The SSU Code allows the government of Kazakhstan open access to information regarding subsoil use (Art. 77). This information includes:



- “share of local content in the goods, works and services purchased by a subsoil user for subsoil use operations for the previous reporting period.”
  - “total amount of expenses for Kazakhstan specialists training, research, scientific technical and development works in the Republic of Kazakhstan, social economic development of the region and development of its infrastructure, social economic support rendered by the subsoil user to local population, by years, if these expenses are in the scope of the subsoil user obligations.”
- 
- It is the responsibility of the operator in the field of support of Kazakh personnel to monitor local content in hydrocarbons and uranium. The operator is a body chosen by the respective authorized body of which fifty or more percent of shares are owned by the authorized body (Art. 131/179):
    - The operator monitors procurement of goods, works and services, employment, training of Kazakh personnel and financing of development/research.
    - The operator also forms and maintains the register of goods, works and services in accordance with the procedure of the authority.
    - Subsoil users submit reports on local content to the authorized body on hydrocarbons. They are required to submit annual reports and medium-term reports (every five years), documenting programs of purchase of goods, works and services, including their “nomenclature and volumes” for that time frame.
    - Subsoil users with 50% or more share owned by the nation of Kazakhstan are exempted from this rule.



- For solid mineral license holder, a penalty for breach of obligations regarding the implementation of minimum local content in works and services (30% “of the cost of works and services related to the unfulfilled volume of obligations”) as well as regarding the financing of Kazakhstani personnel training and research (total sum of the unfulfilled obligation) (Art. 221.2)





## Agreement on Trade-Related Investment Measures (TRIMs)<sup>1</sup>

- Kazakhstan has been a member of the WTO since June 22, 2015.
- Due to its recent accession to the WTO, Kazakhstan is currently in a transitional period of establishing compliance with WTO requirements. Accordingly, newly concluded subsoil contracts should not contain any requirements related to local content in goods and services, and existing contractual provisions relating to local content in goods and services will only remain in effect until January 1, 2021.<sup>2</sup>
- 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 TRIMs<sup>2</sup>:
  - 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.

<sup>1</sup> 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.

<sup>2</sup> Zhambekov, Nurzhan. The Central Asia Caucasus Analyst, “Kazakhstan Completes WTO Negotiations” June 24, 2015

<sup>3</sup> 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. [Kazakhstan’s commitments](#) in relation to services procured by subsurface users may affect the implementation of the Code on Subsoil and Subsoil Use.



- Kazakhstan has entered into 47 bilateral investment treaties (BITs), but only 43 are in force as of December 2019.<sup>1</sup>
- 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.<sup>2</sup>
- 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 have<sup>3</sup>, 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.

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

<sup>2</sup> 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”).

<sup>3</sup> 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.



- Of the 47 BITs signed by Kazakhstan, 21 were located and reviewed.
- Aside from the inclusion of National Treatment Obligations and Most Favored Nation clauses, performance requirements are otherwise limited or prohibited in several BITs and in one multilateral agreement. The most significant clauses are quoted below.

## Kazakhstan – Japan

Article 7: “Neither Contracting Party shall impose or enforce, in connection with investment activities in its Area of an investor of the other Contracting Party, any of the requirements listed (a) to (l) of this Article except for requirements existing at the date of admission of investments by that investor. No requirements imposed or enforced by a Contracting Party in connection with investment activities in its Area of an investor of the other Contracting Party shall be more restrictive than those existing at the date of admission of investments by that investor.

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;

(e) to restrict sales of goods or services in its Area that investments of that investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to restrict the exportation or sale for export;

(g) to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;

(h) to transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its Area, except when the requirement:

(i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or

(ii) concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with any applicable multilateral agreement in respect of protection of intellectual property rights to which it is a party;

(i) to locate the headquarters of that investor for a specific region or the world market in its Area;

(j) to hire a given number or percentage of its nationals;

(k) to achieve a given level or value of research and development in its Area; or 7

(l) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the Area of the former Contracting Party.”



## **Kazakhstan – Sweden**

Article 2.3: “Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.”

## **Kazakhstan – Switzerland**

Article 2.3: “When a Contracting Party shall have admitted an investment on its territory, it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.”

## **Kazakhstan – United States**

Article 3: “Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.”

Article 4: “Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.”

Article 5: “Neither Party shall impose performance requirements as condition of, establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must purchased locally, or which impose any other similar requirements.”



## Eurasian Economic Union: Vietnam Free Trade Agreement

Article 8.24 Performance Requirements:

- “1. Subject to the reservations set out in its individual national List provided for in Annex 3 to Protocol No. 1 neither Party to this Chapter shall in connection with establishment and/or activities impose or enforce in respect of commercial presences of persons of the other Party to this Chapter set up within the territory of the former Party, respectively, any requirement:
- a) to export a given level or percentage of goods or services;
  - b) to purchase, use or accord a preference to goods produced in its territory;
  - c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such establishment and/or activities;
  - d) to restrict sales of goods or services in its territory that such commercial presences produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
  - e) to transfer a particular technology, a production process, or other proprietary information to persons in the territory of the former Party; or
  - f) to supply exclusively from the territory of the former Party the goods that it produces or the services that it supplies to a specific regional market or to the world market.
2. Neither Party to this Chapter shall condition the receipt or continued receipt of an advantage in connection with establishment and/or activities of commercial presences of persons of the other Party to this Chapter set up within the territory of the former Party on compliance with any of the following requirements:
- a) to purchase, use or accord a preference to goods produced in the territory of the former Party;
  - b) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such establishment and/or activities; or
  - c) to restrict sales of goods or services in its territory that such commercial presences produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.”