

Regulatory Alert

Ghana amends the Petroleum (Local Content and Local Participation) Regulations

The new **Petroleum (Local Content and Local Participation) (Amendment) Regulations, 2021. (L.I 2435)** which came into force on February 17, 2022, has amended certain key provisions in the **Petroleum (Local Content and Local Participation) (Amendment) Regulations, 2013. (L.I 2204)**. The changes effected by the new regulations are highlighted as follows.

A. The supply of goods and services by non-indigenous Ghanaian Companies in the Petroleum Sector

According to the existing Regulations, where a non-indigenous Ghanaian company intended to or was desirous of providing goods or services to a contractor, a subcontractor, licensee, the Corporation or other allied entity within the country, that non-indigenous company was simply required to incorporate a joint venture company with an indigenous Ghanaian company and afford that indigenous Ghanaian company an equity participation of at least ten percent (10%) for the purpose of the supply of goods and services within the Petroleum industry in Ghana.

The provision has been amended by the insertion of Regulation 4(6A) which provides that despite the provision contained in Regulation 4(6) of L.I 2204, the Petroleum Commission (the "Commission") may direct that

- a. An indigenous Ghanaian Company enters into a channel partnership agreement or a strategic alliance arrangement with a non-indigenous Ghanaian company or
- b. A non- indigenous Ghanaian company enters a channel partnership or strategic alliance arrangement with an indigenous Ghanaian company;

where in the opinion of the Commission, the channel partnership or strategic alliance arrangement will deepen local content and local participation and maximize technology transfer to the indigenous Ghanaian company.

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B. Definitions

The Definition section of the Regulations has also been amended to provide definitions for some key terms which were hitherto not provided in the principal enactment. The definitions provided are as follows;

- i. Channel Partnership** is defined as an arrangement between an indigenous Ghanaian company and a non-indigenous Ghanaian company including a distributor, a vendor, a retailer, a consultant, a system integrator, an original equipment manufacturer or a value-added reseller to market and sell the products, services or technologies of the non-indigenous Ghanaian company in the country.
- ii. Indigenous Ghanaian** company is defined as a company incorporated under the Companies Act 2019, (Act 992) which is
 - a. fully owned by a Ghanaian citizen and
 - b. has Ghanaian citizens holding
 1. at least eighty per cent (80%) of executive and senior management positions and
 2. one hundred per cent (100%) of the non-managerial and other positions.
- iii. Original equipment manufacturer** is defined as a company which manufactures and sells a product or part of a product to another
 - a. Company to resell under the brand of the manufacturing company or
 - b. Manufacturer to use the product as a component of a finalized product.
- iv. Strategic Alliance** is defined as an arrangement between a non-indigenous Ghanaian company by which the
 - a. Responsibilities of each partner are clearly defined and
 - b. Partners agree to share resources to undertake a specific mutually beneficial project whilst each retains their independence.
- v. System integrator** is defined as a company which specializes in building a system by merging a component subsystem and a product from multiple vendors into a whole to ensure that the subsystem and product function together
- vi. Value added reseller** is defined as a company which makes an input to an existing product by adding a feature or service with the objective of increasing the value of the product and reselling the product as an integrated product

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C. Goods And Services Reserved for Indigenous Ghanaian Companies

The amendment has now included a list of goods and products whose supply in respect of petroleum activities are reserved for indigenous Ghanaian companies only. This is provided for under Part 3 of the first schedule. They include;

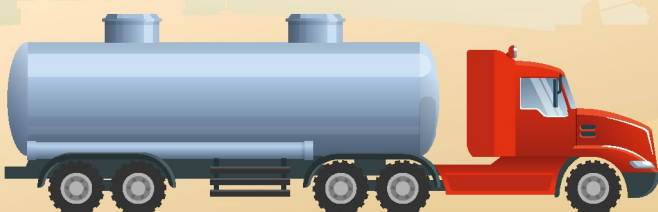
- i. Chase boats
- ii. Communication equipment
- iii. Cooling heating, ventilation
- iv. Computers and accessories
- v. Drinking and industrial water, etc....

(The exhaustive list can be found under Part 3 of the First Schedule of the Regulations as amended)

The supply of a list of commodity chemicals as listed in Part 4 of the First Schedule has also been reserved for indigenous Ghanaian companies only. The list includes:

- i. Acetone
- ii. Acrylic Acid
- iii. Aluminum sulfate
- iv. Ammonia
- v. Ammonium Bifluoride
- vi. Bentonite, etc.....

(The exhaustive list can be found under Part 4 of the First Schedule of the Regulations as amended)



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Key Takeaways

1. Where a non-indigenous Ghanaian company intends to or is desirous of engaging in the supply of goods and services within the petroleum industry, the incorporation of a joint venture company with an indigenous Ghanaian company with at least ten percent (10%) equity alone as required under the regulations prior to the amendment, may not be sufficient to entitle the non-indigenous Ghanaian company to operate.
2. the Petroleum Commission can now direct at its discretion, the formation of a Channel partnership or Strategic Alliance arrangement between an indigenous and non-indigenous Ghanaian company.
3. Where the Commission directs the formation of a Strategic Alliance arrangement, the arrangement will need to clearly define the responsibilities of each partner under the arrangement.
4. A Strategic Alliance arrangement will also include an agreement between the partners to share resources for the completion of mutually beneficial projects, whilst maintaining their individuality.
5. The formation of a Channel Partnership or Strategic Alliance arrangement is meant to ensure a deeper involvement of indigenous Ghanaian companies in the operation of the joint venture and prevent a situation whereby the indigenous Ghanaian company merely acts as a dormant minority shareholder of the joint venture.
6. The supply of specific goods and commodities have been reserved for indigenous Ghanaian companies.
7. With effect from February 2022, any contractor, subcontractor, licensee operating within the petroleum industry, or the Corporation will be prohibited from sourcing any of the specified goods either by direct import or from a company which is not an indigenous Ghanaian company as defined in the regulations.
8. For the purposes of operation in the Ghanaian petroleum industry, the required percentage of equity ownership by Ghanaian citizens in an indigenous Ghanaian company has been increased from fifty one percent (51%) to one hundred percent (100%).

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