

Tanzania Petroleum [Local Content Regulation]

Requirements: How Effective Is this Regulatory Tool?

A. Introduction

Local Content (LC) is defined as the quantum of composite value added to, or created in, the economy of Tanzania through deliberate utilization of Tanzanian human and material resources and services in petroleum operations in order to stimulate the development of capabilities indigenous of Tanzania and to encourage local investment and participation¹.

It can also be referred to as the policy directives imposed by the host Government on investors to procure and support the growth of petroleum industry through effective expansion of local participation in petroleum operations by creating local jobs, and the use of locally manufactured goods, works and services to enhance building of local industries. The rationale for this regulatory intervention is mainly to secure socio-economic benefits that ameliorate the lives of citizens, which in turn upgrades the economy of the country in varying perspectives.

Achieving the LC objective regulation through the use of local content is often accomplished when thorough assessment and identification of gaps is carried-out. The gaps may encompass skills shortage, financial deficiency, shortage in sectoral technical knowledge, infrastructure or even legal skills, and, in turn, dealing with the said identified gaps through incorporating joint ventures for international oil companies to work with local personnel and companies². If this positive output is successfully implemented, and its effectiveness is regularly checked, it can play an important role in

¹ The Petroleum (Local Content) Regulations, 2017 The Petroleum Act (CAP. 392)

² Nikièma, S.H. Performance Requirements in Investment Treaties Best Practices Series; International Institute for Sustainable Development (IISD): Winnipeg, MB, Canada, 2014.

accelerating the process of economic growth and sustainable development in oil-producing countries, as was the case in Norway³.

B. New Era of Petroleum Development in Tanzania

From 2010 forward, Tanzania has experienced a completely new phase of natural gas resource discoveries. The growth projections of gas reserves discoveries in Tanzania were boosted significantly during the years 2010 to 2015 following the discoveries reported in diverse blocks offshore. These include Chaza-1, Jodari-1, Jodari- North and Mzia-1 in Block 1, Papa-1 in Block 3, Chewa-1, Pweza-1 in Block 4 and Block 2.

In view of the said discoveries, the Government of Tanzania has taken the challenges posed by such discoveries seriously and positively by enhancing its infrastructures in different aspects and by enacting major sectoral legislations which lay out foundations for strong governance of the sub sector. These include the Petroleum Act, Petroleum Local Content Regulation, Tanzania Extractive Industry (Transparency and Accountability) Act, and the Oil and Gas Revenues Management Act. This article aims to explore and analyze the Petroleum Local Content Regulation published in May 2017.

In view of the keenly anticipated commission of East African Crude Oil Pipeline Project (EACOP), the major energy project to be implemented under the harmonized framework between the United Republic of Tanzania and the Republic of Uganda, it is the objective of this article to explore the Petroleum Local Content Regulation frameworks, deliberating its implementation requirement, and the outcomes of the breach thereof, in order to gauge its efficiency in supporting sector operations to influence growth.

C. Local Content General Principles

There are significant national economic expectations around the extractive sectors, with assumptions that the local content regulation should increase economic activity within the geographic area affected by oil and gas projects. In that spirit the Tanzania Petroleum local content principles require main actors to conform to the below mandatory requirements:

³ Asiago C.B; Rules of Engagement: A Review of Regulatory Instruments Designed to Promote and Secure Local Content Requirements in the Oil and Gas Sector Centre of Climate Change, Environmental and Energy, University of Eastern Finland (UEF) FI-80100 Joensuu, Finland; September 2017.

- In acquisition of services by licensee, contractor, subcontractor, the local service provider or locally manufactured goods are prioritized, provided that such goods or services are of competitive terms and meet standards which are locally and internationally acceptable.
- That qualified Tanzanians are afforded first opportunity for employment.
- The prioritization of on-the-job training for Tanzanians.

The eventual goal herein is to enhance the performance/capacity of local companies and Tanzanian citizens in petroleum activities so as to encourage local investment and participation without compromising international quality standards on Health Safety and Environment (HSE).

D. Fundamental Obligations for Licensees, Contractors and Subcontractors under Regulation

In view of the Petroleum Act and petroleum regulation, the licensee, contractor and subcontractors are portrayed as the main actors in the sector and entrusted with numerous duties, responsibilities and obligations to fulfil. It is very important to note that before entering into any other business arrangement with contractor/sub/licensee or a non-local company, an approval should be secured from Energy and Water Utilities Regulatory Authority ("EWURA") for downstream and midstream; and also from the Petroleum Upstream Regulatory Authority ("PURA") for upstream activities.

What are the fundamental obligations of licensees, contractors and subcontractors under the Regulation.

- **Communication Obligations**

The Regulations make it compulsory for contractor, subcontractor, and licensee to communicate the local content policies, procedures and obligations requirements to any person engaged by them to perform any aspect of a petroleum activity within their umbrella. In addition, they should publish/avail the local content procedures and obligations on their respective websites. Finally, they must monitor and ensure third party compliance with local content procedures and obligations respectively.

- **Preparation and Submission of Local Content Plan**

It is the responsibility of the licensee and contractor to prepare and submit a comprehensive local content plan which shall include or reflect local content plans of its subcontractor or any persons engaged to undertake petroleum activity within their parameters. The local content plan should correspond to the work programmer and the local content plan in respect of each year. In view of submission of LC plans, it is the duty of the authority responsible to review to its satisfaction and respond to applicant within twenty-eight (28) working days. If the Authority fails to notify the applicant of its decision regarding the submitted plan after a lapse of sixty (60) working days of the submission, the plan is deemed approved.

- **Preparation and Submission of Local Content Performance Report**

Regulation requires that the licensee and contractor prepare and submit to the Authority an annual local content performance report. The submission requirement is within sixty (60) days of the beginning of each calendar year, and the report should cover all its projects and activities for the year. The LC performance report to be submitted should indicate among other things: the employment achievement in terms of hours worked by Tanzanians and foreigners, indicate the actual procurement of goods, works and services, specify by category of expenditure the local content on both a current and cumulative cost basis. It should also indicate the training, research, innovation, industrial and technology transfer availed to Tanzanians.

- **Procurement of Works, Goods and Services from Tanzanian Entrepreneurs**

In the course of procurement, contractor, subcontractor and the licensee are required to ensure that preference is given to works, services provided, goods manufactured, or locally available in Tanzania. This is the first and most preferred option in the acquisition of goods, works, or services.

The second option would be that in the event that goods and services required by contractor, subcontractor, or licensee are not available in Tanzania, such works, goods and services shall be provided by a company that has entered into a joint venture with a local company. The qualification of a company to be local as referred herein is that

a local person or persons should own at least twenty-five percent (25%) of shares in the joint venture.

A third available option would require a non-local company intending to provide goods, works or services to a licensee and contractor within the country to subject to the Authority's approval and to enter into any business arrangement guaranteeing local participation of at least ten percent (10%) of shares, interest or equity of the contract value for the provisions of the works, goods and services.

The fourth and final option **is that**, in the event that formation of a joint venture or other business arrangements as prescribed in preceding options fail, and upon application by the licensee or contractor, the Authority shall grant approval for the said applicant to source such works, goods and services through any other arrangement which will provide the local company with a transfer of competence and technology.

It is worth noting that the provision of goods, works, or services by the non-local company is subject to approval from either EWURA or PURA, depending on the nature of activities.

- **Submission of Proposed Procurement Plan**

It is the responsibility of a licensee and contractor to inform the Authority in writing within ninety (90) days prior to the commencement of the petroleum activity the procurement procedures for approval of each proposed contract or purchase order. This requirement entails petroleum activities which are to be sole-sourced, or where it is to be sourced by a competitive bidding procedure that is estimated to be over the Tanzanian shilling's equivalent of one hundred thousand United States Dollars for upstream operations, and fifty thousand United State dollars for midstream operations.

- **Bidding Process and Evaluation**

It is a statutory requirement for the contractor, subcontractor, and licensee to establish and implement a bidding process for the acquisition of goods, works, and services that will give preference to a local company. It is mandated that the award of the contract should not be based solely on the principle of the lowest bidder. Other criteria, such as the capacity of a local company to execute and the highest levels of local content, should be considered. Distinctively, regulations require that in awarding a contract after a bid in which the total value of the bid by a qualified local company does not exceed

the lowest bid by more than five percent (5%), the contract shall be awarded to that local company.

E. Breach of Obligation & Consequences under Regulation

S/N	Responsible	Offence	Offence/Penalty/Fine
1.	Any person	Submit plans, returns, reports or other documents with false misleading information.	Tanzanian shillings twenty million or imprisonment for not less than five years or both.
2.	Citizen	Colludes with a non-local company or non-citizen to deceive the Authority by appearing to represent a local company or citizen to achieve the local content requirement.	A fine of not less than one hundred million shillings or imprisonment for a term of not less than five years, or both.
3.	Any person	Colludes with a citizen or a local company to deceive the Authority by appearing to represent a local company to achieve the local content requirement.	A fine of not less than one hundred million shillings or imprisonment for a term of not less than five years, or both.
4	Any person	Fail to comply with a request to furnish information or a document under regulations within the period specified in the request.	Penalty of not less than one hundred million shillings in the first instance and a further penalty of two percent of the penalty for each day that the document remains undelivered to a maximum of forty percent (40%) of the original penalty.
5	Any person	Does any act of fronting, bid-rigging or cartelization during the tendering process.	Fine not exceeding one hundred million shillings or imprisonment for a term of not less than five years, or both.

6.	Contractor, Subcontractor, Licensee	Carries out petroleum activities without the required local content requirement in contravention of regulation 7; (b) fails to submit a Local Content Plan in contravention of regulation 9(1); (c) fails to satisfy the content requirement of a Local Content Plan, or (d) fails to inform the Authority of each proposed contract or purchase order in contravention of regulation 31.	Penalty of five percent (5%) of the value of the proceeds obtained from the petroleum activity in respect of which the breach is committed, but not exceeding one hundred million shilling
7.	Contractor, Subcontractor, Licensee, Any person.	Any person who fails to (a) comply with the minimum local content levels for any petroleum activity in contravention of regulation 29; (b) establish and implement a bidding process in contravention of regulation 30; (c) employ Tanzanians in semi-skilled and unskilled labour in contravention of regulation 14; (d) insure the insurable risks relating to petroleum activities in the country through a Tanzanian brokerage firm or reinsurance broker in contravention of subregulation 21(2); (e) retain only the services of a Tanzanian legal practitioner or a firm of Tanzanian legal practitioners in contravention of regulation 22; or (f) operate a bank account contrary to sub regulation 28	For a contractor , after the time expiry for remedying terms, Authority shall withhold the approvals and permits required by the contractor for the conduct of petroleum activities until the time that the contravention is remedied. In the case of a subcontractor, licensee or any other person , where the contravention continues after the time specified for remedying the contravention, the Authority shall expunge from the Register the name of the subcontractor, licensee or any other person or persons registered to undertake petroleum activities.

Conclusion

In light of the perceived gaps in goods, material, and service provision in this jurisdiction, it is highly commendable that regulations have come into effect with rational flexibility in terms of goods, works and service provision in the petroleum subsector. Moreover, in view of numerous obligations to the executive actors associated with huge financial consequences, it is crucial to safeguard that bureaucracy is eradicated, capacity is built by the agency administering or implementing policy objectives, and that regular sensitization practices are carried-out to educate the actors to ensure that regulations actually aim at boosting and not to stifle sector performance.

It is an undebatable fact that for optimum performance in the petroleum subsector, each actor must have access to the necessary means in terms of authority, financial resources, information, human capacity (skills, knowledge, experience) and supporting processes.

Published by

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Art05_Issue 05_1802021
