



An Overview of the Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (LI 2431)

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*Local content and local participation requirements are not new to the Ghanaian mining sector, they have existed in various instruments governing the sector. However, with the introduction of the Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (LI 2431) (**Local Content Regulations**) in December 2020, we have seen a consolidation of the existing requirements and the introduction of additional requirements.*

The Local Content Regulations repeals regulations 1 and 2 of the Minerals and Mining (General) Regulations, 2012 (LI 2173) and operators in the mining sector must now turn to the Local Content Regulations for guidance on employing expatriates, training Ghanaians and procuring local goods and services.

This article provides an overview of the Local Content Regulations and highlights some key requirements.

Purpose

The Local Content Regulations seeks to promote job creation through the employment of Ghanaians and use of local goods and services, while developing and enhancing the international competitiveness of domestic businesses in the mining sector. Ultimately, the goal is to achieve full localisation, thereby, eliminating reliance on expatriates and foreign service providers for the requisite expertise in the mining sector.

Application

The Local Content Regulations applies to

- (i) holders of mineral rights (ie, holders of reconnaissance and prospecting licences and mining leases);
- (ii) holders of licences to export or deal in minerals; and
- (iii) registered mine support service providers (**MSSP**) (together, **Covered Entities**).

The Minerals Commission (**Commission**), the sector regulator, is responsible for monitoring the implementation of the Local Content Regulations.

Within one year of the coming into force of the Local Content Regulations, existing Covered Entities were required to make and submit to the Commission, arrangements and plans for complying with its requirements.

Employment of Expatriates and Training of Ghanaians

An applicant for a mineral right, a licence to export or deal in minerals or for registration as a MSSP must submit a localisation programme detailing its proposals for the employment or recruitment of expatriates and employment and training of citizens. The approved proposals will form part of the conditions to the relevant mineral right, licence or authorisation granted by the Commission. The proposals must indicate particulars such as:

- the curriculum vitae of the expatriates to be employed;
- the job descriptions and conditions of service for the positions to be filled by the expatriates;
- the duration of the employment contracts of the expatriates; and
- a statement indicating how the applicant intends to train Ghanaians to replace the expatriates, taking into consideration gender inclusion.

One notable development in the area of employment is the expansion of the scope of positions reserved for Ghanaians. Subject to the approval of the localisation programme of a holder of a mineral right, the general manager position must be localised within three years from the commencement of mining operations.

Additionally, the following positions are reserved for Ghanaians: the mine manager position; all non-technical service and non-engineering service roles (eg. human resources, legal, compliance, finance and accounting roles); and all roles below the level of supervisor. Subject to the expatriate levels prescribed under the Local Content Regulations, unskilled, skilled and clerical positions are still required to be held by Ghanaians.

Procurement of Goods and Services

To the maximum extent possible and consistent with safety, economy and efficiency, Covered Entities must procure goods and services with Ghanaian content. In furtherance of this requirement, Covered Entities must submit a procurement plan to the Commission for approval. The procurement plan must be submitted within one year after the commencement of operations, covering a five-year period, and thereafter, must be submitted for every five-year period. It must include targets for local procurement covering the items on the procurement list and prospects for local procurement. The procurement list is a list developed and published by the Commission which states the goods and services with Ghanaian content that must be procured in-country. The 4th edition of the procurement list was published on 31st March 2022 and is available on the website of the Commission. In assessing tenders for goods and services on the procurement list, Covered Entities must select the bid with the highest level of Ghanaian participation (in terms of ownership, management and employment of Ghanaians).

The Local Content Regulations specifically reserves the provision of certain services for Ghanaians. These include camp management services; supply of stationery and toiletries; collection of rubbish; and other sanitary services. Contract mining services for small scale mining operations, haulage, fuel supply, security and catering services are still required to be provided by Ghanaians.

Additional requirements have been introduced for the procurement of certain services by Covered Entities. For example, technical and engineering services must be provided by Ghanaian-owned companies duly registered to provide those services. Notwithstanding this, a foreign-owned service company incorporated in Ghana and duly registered with the Commission may provide technical and engineering services in collaboration with a duly registered Ghanaian-owned company. In the absence of a Ghanaian-owned company with the requisite capacity to provide the relevant services, an exception may be made to employ an expatriate or engage a foreign service company. In practice, the regulations relating to the provision of services by foreign-owned companies are subject to the procurement list and the availability of the relevant expertise, locally.

Regarding financial services, Covered Entities must only retain the services of financial institutions incorporated in Ghana for transactions concerning their operations. Additionally, at least 20% of their financial transactions must be undertaken with financial institutions owned by Ghanaian citizens.

To promote research and skills development, a holder of a mining lease must submit to the Commission, within one year of the commencement of mining operations, a plan for research and skills development (based on guidelines to be issued by the Commission), and a budget for among other things, promoting education, training, research and development skills.

Concerning insurance services, Covered Entities must insure all insurable risks related to their mining business or operations with a company licensed by the National Insurance Commission (**NIC**), but may, with the prior approval of the NIC, procure offshore insurance or reinsurance services. Legal and accounting services must be procured from persons duly licensed or certified to practice in Ghana, however, an exception is made for the engagement of foreign firms or companies, if the service will be rendered in collaboration with individuals, firms or companies licensed or certified to practice in Ghana.

Listing on the Ghana Stock Exchange (GSE)

The Local Content Regulations also introduces provisions to create an opportunity for Ghanaians to acquire interests in companies that hold mineral rights. A holder of a mineral right will be required to list at least 20% of its equity on the GSE within five years from the commencement of mining operations. This requirement will apply where the planned capital expenditure exceeds a threshold to be determined by the Minister for Lands and Natural Resources in consultation with the Securities and Exchange Commission. Where the market conditions will not allow for a successful offer on the GSE, the applicable timeline may be extended in accordance with the Local Content Regulations. We are, however, yet to see this implemented.

Monitoring and Enforcement

Covered Entities must submit annual reports to the Commission, showing compliance with the approved localisation programme and procurement plan in the previous year. Covered Entities must also submit semi-annual reports on their implementation of the approved procurement plan and an annual report providing details on the insurance and reinsurance services procured.

Notably, fronting, which is defined as *“deceiving or behaving in a particular manner to conceal the fact that a company is not a citizen”*, is not a criminal offence in the mining sector, and therefore, does not carry the possibility of imprisonment. It is punishable by the imposition of an administrative penalty and the withholding of permits and approvals by the Commission where the offence continues beyond the time specified for remedy. With a relatively low pecuniary penalty, and the absence of a possibility of imprisonment, it will be interesting to see the impact of the risk of withholding approvals and operating permits on fronting in the mining sector.

Overall, the coming into force of the Local Content Regulations is a great development. We look to the Commission to consistently and effectively monitor its enforcement to ensure that we see a real impact on the development of local capacity and use of local goods and services.



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