



Local Content Requirements in Ghana's Power Sector

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Ghana's power sector has experienced rapid growth in the last decade. According to the Energy Commission, total electricity generation almost doubled from 11.2 GWh in 2011 to 22.1 GWh in 2021, representing an annual average growth rate of 7%. In order to sustain the growth rate and extend the derived benefits to other sectors of the Ghanaian economy, a robust legal framework has been established to promote local content and local participation in the power sector.

The local content and participation requirements in Ghana's power sector are governed by the Energy Commission Act, 1997 (Act 541) as amended by the Energy Commission (Amendment) Act, 2016 (Act 933) (the **Energy Commission Act**), the Renewable Energy Act, 2011 (Act 832) as amended by the Renewable Energy (Amendment) Act, 2020 (Act 1045) (the **Renewable Energy Act**) and the Energy Commission (Local Content and Local Participation) (Electricity Supply Industry) Regulations, 2017 (LI 2354) (the **Regulations**). The local content and participation requirements cover the following areas: local content and local participation plan; procurement of goods and services; thresholds for development projects; use of local professional and other services; employment and training; establishment of local offices; use of local equipment and restrictions on operations of foreign entities.

Local Participation

The Regulations seek to achieve a minimum of 51% local equity ownership in the electricity supply industry. The electricity supply industry is defined to include i) activities that require a licence under the Energy Commission Act or the Renewable Energy Act and ii) activities relating to the manufacture of electrical appliances, electrical equipment and renewable energy equipment. Activities in the power sector that require licences are production, transportation, storage, distribution, sale and marketing, importation, exportation and re-exportation, and installation and maintenance (the **Licensed Activities**).

For the renewable energy sector, an initial minimum level of 15% local equity ownership is required for entities undertaking Licensed Activities. This level is expected to be increased to 51% within 10 years of operations. For the non-renewable energy sector, the required initial level varies depending on the activity involved. Initial minimum local equity ownership levels of 15% and 30% are required for entities undertaking wholesale electricity supply and electricity distribution activities respectively. This is expected to be increased to 51% within 10 years of operations.

For entities undertaking electricity sales and brokerage activities, an initial minimum level of 80% local equity ownership is required and this is expected to be increased to 100% within 5 years of operations. For entities undertaking investments in electricity transmission infrastructure, an initial minimum level of 15% local equity ownership is required and this is expected to be increased to 49% within 10 years of operations.

In addition, the rights of a Ghanaian under a contract relating to the electricity supply industry are not transferable to a non-Ghanaian. The Regulations also provide that an equity shareholding cannot be transferred to a non-Ghanaian. This suggests that the shares of a non-Ghanaian cannot be transferred to another non-Ghanaian, even if the prescribed minimum local equity ownership levels have been complied with. Although the aim of this provision is to improve the retention of economic benefits of the electricity supply industry in the country for Ghanaians, it may have an unintended consequence of preventing non-Ghanaians from being able to freely transfer their interest where they cannot find a Ghanaian with sufficient capital to purchase the interest due to the capital intensive nature of the industry. It is noted that the Energy Commission has proposed amendments to provisions of the Regulations relating to restrictions on the transferability of interests and/or shares to non-Ghanaians. Upon the enactment of these amendments, the interests and/or shares of participants in the electricity supply industry may be transferred to non-Ghanaians. Such transfers may however be subject to the approval of the Electricity Supply Industry Local Content and Local Participation Committee (the **Committee**) and compliance with the thresholds for local participation.

For entities established to manufacture electrical appliances, electrical equipment or renewable energy equipment (**Manufacturers**), a minimum of 40% equity ownership by an indigenous Ghanaian company (**IGC**) is required. An IGC is defined as a state-owned company or a company incorporated under the Companies Act, 2019 (Act 992) that has at least 51% of its equity owned by a Ghanaian and Ghanaians holding at least 80% of executive and senior management positions. Furthermore, with the exception of entities listed on the Ghana Stock Exchange and other public companies, a Ghanaian cannot transfer more than 60% of his equity shareholding in a Manufacturer, to a foreigner.

Local Content

The Regulations seek to achieve a minimum of 60% local content in the electricity supply industry. Local content refers to the utilisation of Ghanaian human resources, goods, services and businesses in the value chain. The local content requirements can be classified under the following subheadings: local content and local participation plan; procurement of goods and services; thresholds for development projects; use of local professional and other services; employment

and training; establishment of local office; use of local equipment; restrictions on operations of foreign entities and reporting requirements.

Local Content and Local Participation Plan

A service provider is required to submit a local content and local participation plan (the **Plan**) to the Committee for approval, before carrying out any activity in the electricity supply industry. A service provider includes a licensee, an operator, contractor, subcontractor or any other person performing paid services for a licensee, and a registered Manufacturer. The Plan must contain detailed provisions to ensure that first consideration is given to qualified Ghanaians for training and employment and to goods and services manufactured in the country. Further, the Plan must contain subplans on employment and training, research and development, technology transfer, legal services, financial services, allied services, ancillary services and fuel, lubricant and water supply services. The Committee is required to issue the service provider with a certificate of authorisation upon being satisfied that a submitted Plan complies with the Regulations.

Procurement of Goods and Services

A service provider is required to consider local content in the evaluation of bids and implement a bidding process that gives full and fair opportunity to indigenous Ghanaian service providers. An indigenous service provider is defined as a service provider who is a Ghanaian citizen or a company in which a Ghanaian owns a minimum of 51% equity. Contracts are not to be awarded solely on the principle of the lowest evaluated bid. The bid of an IGC with capacity to execute a job, must not be rejected exclusively on the basis that it is not the lowest evaluated bid. Also, where the total value of the bid of an IGC exceeds the lowest evaluated bid by not more than 10%, the service provider must award the contract to the IGC. In addition, where bids are adjudged equal, the bid containing the highest level of local content with reference to management, employment, value creation, tax contribution, and use of local materials must be selected.

Thresholds for Development Projects

The Regulations specify minimum local content levels that must be achieved at the various stages of projects for the development and utilisation of renewable energy resources. The initial and target minimum local content levels are shown in the table below:

Activities	Engineering and procurement	Construction works and installations	Post construction works supplies	Operation and maintenance contracts
Initial level of local content	Minimum of 70% of the value of the project must be given to Ghanaian companies.	Minimum of 60% of the cost of construction works must be given to Ghanaian companies.	Minimum of 70% of the value of all supplies must be given to Ghanaian-owned companies.	Minimum of 50% of the value of all operation and maintenance contracts must be awarded to IGCs.
Target level of local content	The initial level must be increased to 100% within 10 years.	The initial level must be increased to 80% within 3 years and to 90% within 6 years.	The initial level must be increased to 100% within 10 years.	The initial level must be increased to 80% within 5 years.

In relation to the non-renewable energy sector, the minimum local content levels for development projects vary depending on the activity, as shown in the table below:

Activities	Engineering and procurement	Construction works and installations	Post construction works supplies	Operation and maintenance contracts
Wholesale power supply	Minimum of 30% of the value of the project, other than machinery, must be given to Ghanaian companies. To be increased to 50% within 10 years.	Minimum of 60% of the cost of construction works must be given to Ghanaian companies. To be increased to 80% within 10 years.	Minimum of 70% of the value of all supplies must be given to Ghanaian-owned companies. To be increased to 80% within 5 years.	N/A
Electricity distribution	Minimum of 70% of the value of the project must be given to Ghanaian companies. To be increased to 80% within 10 years	Minimum of 70% of the cost of construction works must be given to Ghanaian companies. To be increased to 80% within 10 years.	Minimum of 80% of the value of all supplies must be given to Ghanaian-owned companies. To be increased to 100% within 10 years.	Minimum of 90% of the value of all operation and maintenance contracts must be awarded to IGCs. To be increased to 100% within 5 years.

Electricity sales	100% of the value of the project must be given to Ghanaian-owned companies.	100% of the cost of construction works must be given to Ghanaian-owned companies.	Minimum of 80% of the value of all supplies must be given to Ghanaian-owned companies. To be increased to 100% within 5 years.	Minimum of 95% of the value of all operation and maintenance contracts must be awarded to Ghanaian-owned companies. To be increased to 100% within 5 years.
Electricity brokerage services	Minimum of 90% of the value of the project must be given to IGCs. To be increased to 100% within 5 years.	100% of the cost of construction works must be given to IGCs.	Minimum of 80% of the value of all supplies must be given to Ghanaian-owned companies. To be increased to 100% within 5 years.	N/A
Investment in electricity transmission infrastructure	Minimum of 30% of the value of the project must be given to Ghanaian companies. To be increased to 50% within 10 years.	Minimum of 60% of the cost of construction works must be given to Ghanaian companies. To be increased to 80% within 10 years.	Minimum of 60% of the value of all supplies must be given to Ghanaian-owned companies. To be increased to 80% within 10 years.	100% of the value of all operation and maintenance contracts must be awarded to IGCs.

Use of Local Professional Services

A service provider that requires legal services must retain the services of a Ghanaian legal practitioner or a firm of Ghanaian legal practitioners whose registered place of business is located in Ghana.

Further, for the purpose of financial services, a service provider is required to retain only the services of a Ghanaian financial institution. However, the services of a non-

Ghanaian financial institution may be engaged where there is limited local capacity, subject to the approval of the Committee. The service provider must maintain a bank account with an indigenous Ghanaian bank and transact a minimum of 10% of its total financial transactions through the bank account held with the indigenous Ghanaian bank. An indigenous Ghanaian bank is defined as a bank that has majority Ghanaian shareholding.

A service provider must insure an insurable risk relating to the electricity supply industry, through an indigenous Ghanaian insurance brokerage firm or a reinsurance brokerage firm, where applicable.

In addition, contracts for the provision of engineering, technical consultancy and maintenance services must be awarded to an indigenous Ghanaian engineering and technical consultancy company. This requirement does not apply where the use of proprietary equipment or technology is envisaged or where it can be demonstrated that the expertise required does not exist locally.

An indigenous Ghanaian legal firm, financial institution or engineering or technical service company may partner with a foreign service provider, who shall deliver not more than 49% of the value of the service required.

Use of Other Local Services

Under the Regulations, contracts for the provision of transport, vehicle hire, vehicle maintenance and repairs, catering and janitorial services must be awarded to an IGC, except where this is considered impracticable by the Committee. Also, contracts for ancillary services are to be awarded to organisations in which Ghanaians hold at least 70% equity, except where this is considered impracticable by the Committee. An ancillary service is defined as a service which is necessary to support the transmission of energy from the supply source to loads while maintaining reliable operation of the transmission system.

In addition, contracts for fuel supply, water supply, lubricant supply and other supply services must be awarded to organisations in which Ghanaians hold at least 70% equity, except where this is considered impracticable by the Committee.

An IGC that provides ancillary services or fuel, lubricant, water supply and other supply services may partner with foreign service providers, who shall deliver not more than 49% of the value of the contracted service.

Employment and Training

A service provider is required to employ only Ghanaians in its junior, intermediate and other corresponding grades. With the exception of management staff and operations and maintenance staff, 100% of all other staff must be Ghanaians. The prescribed initial minimum local content levels for management and operations and maintenance staff vary depending on the activity, and are shown in the table below:

Activities	Management	Operations and Maintenance staff
Renewable energy sector	Minimum of 60% must be Ghanaians.	Minimum of 70% must be Ghanaians.
	To be increased to 90% within 5 years.	To be increased to 80% within 5 years.
Wholesale power supply	Minimum of 60% must be Ghanaians.	Minimum of 60% must be Ghanaians.
	To be increased to 90% within 5 years.	To be increased to 80% within 5 years.
Electricity distribution	Minimum of 90% must be Ghanaians.	Minimum of 90% must be Ghanaians.
	To be increased to 95%.	To be increased to 100% within 5 years.
Electricity sales	Minimum of 90% must be Ghanaians.	Minimum of 95% must be Ghanaians.
	To be increased to 95% within 5 years.	To be increased to 100% within 5 years.
Electricity brokerage services	Minimum of 90% must be Ghanaians.	Minimum of 95% must be Ghanaians.
	To be increased to 95% within 5 years.	To be increased to 100%.
Investment in electricity transmission infrastructure	Minimum of 80% must be Ghanaians.	Minimum of 80% must be Ghanaians.
	To be increased to 100% within 10 years.	To be increased to 100% within 10 years.

For each employment position not occupied by Ghanaians, the service provider must submit a succession plan to the Committee. The succession plan must make provision for Ghanaians to understudy each incumbent expatriate for a maximum period of five years after which the respective position shall be assumed by a Ghanaian. Also, where Ghanaians are not employed because of their lack of expertise or skills, the service provider must ensure that reasonable efforts are made to provide such training locally or elsewhere.

Establishment of Local Office

A service provider is required to establish and maintain a place of business in Ghana. It is also required to maintain personnel with the requisite capacity to operate the place of business.

Use of Local Equipment

The Regulations provide a list of electrical appliances, electrical equipment and renewable energy equipment that must be purchased from manufacturers within Ghana. A service provider that requires the use of such equipment must purchase them from Manufacturers, to the extent specified. A person who contravenes this requirement is liable to the forfeiture of the equipment imported in addition to the full import duty and levies on the equipment.

Restrictions on Operations of Foreign Entities

A foreign entity that intends to provide goods and services to a licensee, must provide the goods and services in partnership with an IGC.

Transitional Provisions

Persons engaged in the electricity supply industry are required to satisfy the minimum local content and local participation requirements within five years of the coming into force of the Regulations. The Regulations came into force on 22 December 2017, thus all participants in the sector were required to achieve compliance by 22 December 2022.

Monitoring and Enforcement

Service providers must submit annual reports to the Committee, showing compliance with the approved local content and local participation plan in the previous year. Manufacturers must also submit biannual reports on their activities to the Committee.

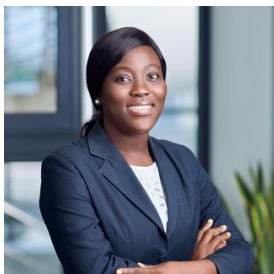
Generally, a person who contravenes a provision of the Regulations commits an offence and is liable to a fine and/or a term of imprisonment. Where the offence is committed by a body corporate, its directors and officers may also be deemed to have committed the offence and will be liable to a fine and/or a term of imprisonment. Additionally, the Regulations criminalises fronting and makes it punishable by a fine of between GHS6,000 and GHS12,000, and/or a term of imprisonment of between six and twelve months. Fronting is defined as deceiving or behaving in a particular manner to conceal the fact that a company is not an indigenous Ghanaian company.

Conclusion

Guidelines were issued by the Energy Commission in June 2020 for the effective implementation of the Regulations. The Guidelines outline, among others, procedures for the procurement of goods and services in the electricity supply industry and procedures for the certification/registration of service providers and manufacturers.

The Regulations has been in operation for a little over five years, and its implementation has contributed to the promotion of businesses in the electricity supply industry value chain and the retention of benefits in the country. The continued monitoring and enforcement of the Regulations by the Energy Commission would be necessary to ensure that this positive impact is sustained and maximised in the long term.

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