

*Defining a Ugandan Company in
the National Content Regulations*

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National Content review



This publication summarises the provisions of the Petroleum (Exploration, Development and Production) Act 2013 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013 and the respective Regulations with respect to the promotion of “national content” and highlights the implications of the definition of a “Ugandan company” for different players in the industry.



Background

The principle of national content and its promotion was initially set out in the National Oil and Gas Policy, 2008 (the Policy) and subsequently in the Petroleum (Exploration, Development and Production) Act, 2013 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013, as one of the guiding factors in the licensing and regulation of the various entities participating in Uganda's Petroleum Industry.

Key Requirements

Section 125 of the Petroleum (Exploration, Development and Production) Act, and section 53 of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act (“the Acts”) require licencees, their contractors and subcontractors to give preference to goods produced or available in Uganda and services rendered by Ugandan citizens and companies. The sections further require that goods and services not available in Uganda should be provided by a company that has entered a joint venture with a Ugandan company with a share capital of not less than 48% in the joint venture.

Compliance with the above requirement is supposed to be monitored by way of a report submitted to the Petroleum Authority of Uganda within sixty days after the end of each calendar year of the licensee, its contractors and subcontractors.

Contravention of the national content provisions is an offence which attracts a fine not exceeding one hundred currency points (approximately USD 590) or imprisonment not exceeding three years or both.

However, these Acts did not define national content and “a Ugandan company”, and this created a lot of uncertainty as to the criteria to be met by the licencees, contractors and subcontractors providing goods and services in the oil and gas sector.

Definition of “a Ugandan company”

The recently published Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations, 2016 (“Regulations”) address the uncertainty brought by the Acts as they define the term “Ugandan company” and set out similar criteria on what amounts to national content.

According to these Regulations, “a Ugandan Company” means a company incorporated under the Companies Act, 2012 and which—

- provides value addition to Uganda;
- uses available local raw materials;
- employs at least 70% Ugandans; and
- is approved by the Authority.

A Ugandan company must be approved by the Petroleum Authority (“the Authority”) before entering a joint venture. To get approval a Uganda company must:

- have technical and financial competence and be able to deliver the goods and services in a timely manner;
- demonstrate capacity to transfer knowledge and technology to Ugandan citizens; and
- have experience in provision of the required goods or services.

The Regulations, define “national content” as

- the level of use of Ugandan local expertise, goods and services, Ugandan citizens, businesses and financing; and
- the substantial combined value added or created in the Ugandan economy through the utilisation of Ugandan human and material resources for the provision of goods and services to the petroleum industry in Uganda.

Registered entity

The Regulations introduced a “registered entity” which is not provided for in the Acts. A registered entity is defined in the Regulations as a business owned by Ugandan citizens registered under the Business Names Registration Act or the Partnership Act, 2010.

List of goods to be provided by Ugandan companies, citizens and registered entities

In addition, the Regulations provide a list of goods and services to be provided by Ugandan companies, citizens and registered entities. These are transportation, security, foods and beverages, hotel accommodation and catering, human resource management, office supplies, fuel supply, land surveying, clearing and forwarding, crane hire, locally available construction materials, civil works, supply of locally available drilling and production materials, environment studies and impact assessment, communication and information technology services, and waste management where possible.

Conditions for priority treatment of Ugandan citizens and registered entities owned by Ugandans

In order to be given priority, Ugandan citizens and registered entities owned by Ugandans must:

- be competitive in terms of quality and be able to deliver goods and services in a timely manner;
- have adequate resources and capacity to add value to the petroleum operations carried out by the licensee; and
- be approved by the Authority in accordance with the criteria prescribed by the Minister in the regulations.

Exceptions

Where a Ugandan company, registered entity or a Ugandan citizen is unable to provide the required quality of goods and services due to lack of technical capacity or financial competence, the licensee may, with the approval of the Authority, procure the goods and services from any other company within a period specified by the Authority.

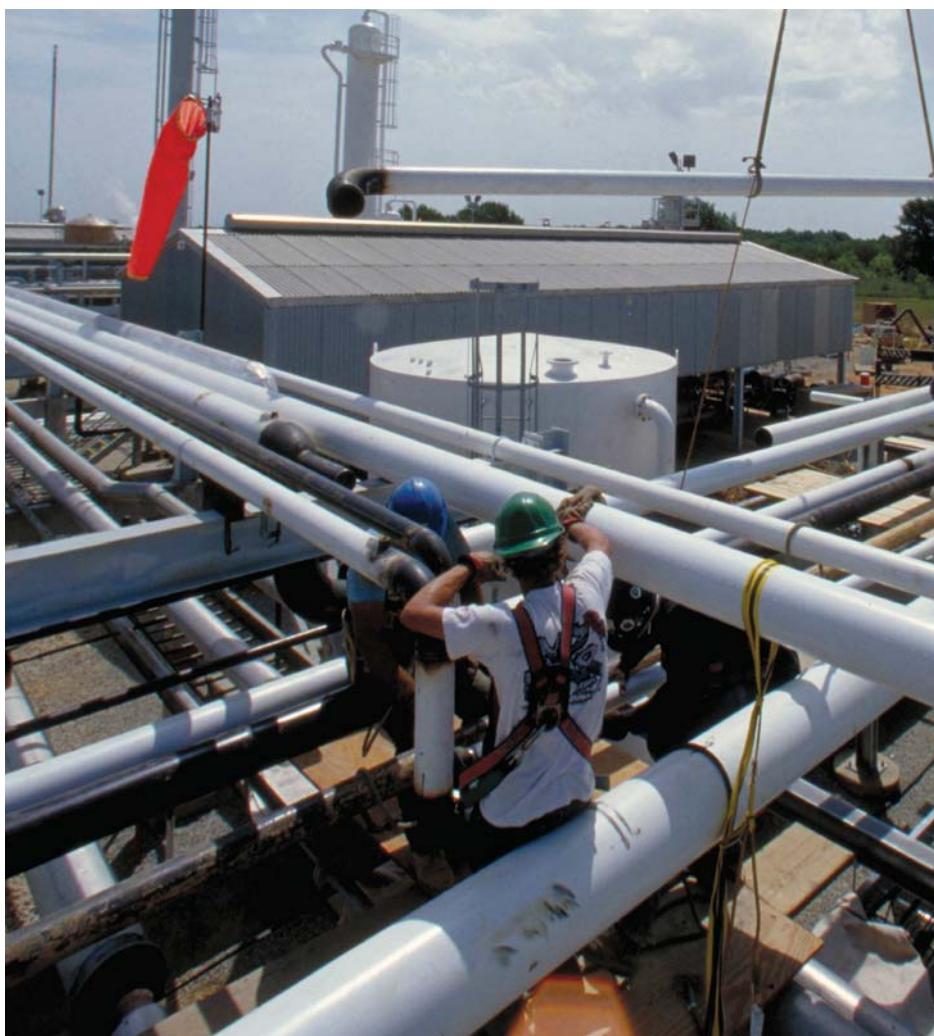
Conclusion

A Ugandan company is not required to have a Ugandan citizen as a shareholder in order to be able to supply goods or services in the oil and gas sector. All that is required is a company incorporated under the Companies Act of Uganda, which provides value addition to Uganda;

uses local raw materials; employs at least 70% Ugandans and has obtained approval from the Authority.

Based on the definition of a Ugandan company in the Regulations, it is therefore possible for a company which is wholly owned by foreigners to provide goods and services in the oil and gas sector.

Other key features of the regulations include the requirement for every licensee, contractor and subcontractor to advertise all upcoming contracts in at least two national newspapers of national circulation at least one month before the procurement process starts; and requirement to provide feedback to unsuccessful bidders indicating reasons as to why they were unsuccessful.



Contacts

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