



PETROLEUM COMMISSION, GHANA
Regulating, Managing & Coordinating Upstream Petroleum Activities



GUIDELINES FOR THE FORMATION OF STRATEGIC ALLIANCE IN THE UPSTREAM PETROLEUM INDUSTRY

PETROLEUM COMMISSION

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1.0 Introduction

The Petroleum Commission ("Commission") was established by the Petroleum Commission, Act 2011 (Act 821) to regulate and manage the utilisation of Ghana's petroleum resources and to co-ordinate the related policies. Per Section 3 of Act 821 the functions of the Commission include but are not limited to the promotion of planned, well executed, sustainable and cost-efficient petroleum activities to achieve optimal levels of resource exploitation for the overall benefit and welfare of citizens.

Pursuant to Section 3(f) of Act 821, the Commission also has the mandate to promote local content and local participation(job role localisation and Small Medium Enterprise (SME) involvement) in petroleum activities as prescribed in the Petroleum (Exploration and Production) Act, 2016 (Act 919), the Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204), the Petroleum (Local Content and Local Participation) (Amendment) Regulations, 2021 (L.I.2435) as well as the National Local Content Policy.

Significantly, the Commission has given a major impetus to the local content drive through various mechanisms including the enforcement of Regulation 4(6) of L.I. 2204 which requires Non-Indigenous Ghanaian Companies (foreign service companies) to incorporate Joint Venture Companies (JVCs) with Indigenous Ghanaian Companies as a pre-requisite for participating in the upstream petroleum industry.

Notwithstanding the above, challenges faced in the implementation of the Joint Venture requirement as the only avenue for participation for foreign companies are stifling the growth of local content development.

For the purposes of enhancing local content development, particularly considering emerging trends in oil and gas investments and the energy transition, L.I. 2204 as amended by L.I. 2435 has introduced 'Channel Partnership' and 'Strategic Alliance' as options alongside the incorporation of JVCs to further deepen local content and local participation in Ghana's upstream petroleum industry.

Pursuant to its mandate under Regulation 43 of L.I. 2204, the Commission issues these **'Guidelines for the Formation of Strategic Alliances in the Upstream Petroleum Industry'**.

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1.1 Objectives

The objectives of these Guidelines are among others to;

1. Provide avenues other than Joint Venture arrangement for participation by both foreign and Indigenous Ghanaian companies in the oil and gas industry; and
2. Open up business opportunities that are currently inaccessible to indigenous Ghanaian companies.

1.2 Purpose

The purpose of these Guidelines are to:

- Increase local capacities and capabilities and enhance value retention in-country;
- Increase the degree of control for Ghanaian businesses in the execution of contracts;
- Provide a flexible regulatory regime in the implementation of local content regulations and encourage investments in the industry;
- Promote flexibility in business and sharing of operational risks ;
- Enhance access and accelerate the development of technology, skills, and know-how to promote a mutually beneficial partnership; and
- Promote and enhance community development through in-country investments.

1.3 Legal Basis

These Guidelines have been issued pursuant to Regulation 43 subregulation (1) and Regulation 43 subregulation (2) of L.I. 2204.

Regulation 43 (1) of L.I.2204:

“The Commission shall establish and constantly review guidelines and procedures for the effective implementation of these Regulations.”

Regulation 43 (2) of L.I.2204:

“... the Commission shall, in consultation with relevant institutions, issue guidelines for compliance by a contractor, subcontractor, licensee and other allied entity.”

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1.4 Applicability

This Guidelines applies to Contractors, Subcontractors, Licensees, Ghana National Petroleum Corporation (herein after referred to as "the Corporation" in this document) or other allied entities operating in the upstream petroleum industry for the establishment of Strategic Alliance (s) in the industry.

1.5 Definition of Strategic Alliance

Regulation 49 of L.I. 2204 as amended by Regulation 2(d) of L.I. 2435 defines Strategic Alliance as

"an arrangement between a Non-Indigenous Ghanaian Company and an Indigenous Ghanaian Company by which the responsibilities of each partner are clearly defined and partners agree to share resources to undertake a specific mutually beneficial project while each retains independence"¹

2.0 Guiding Principles

1. A Joint Venture arrangement shall be the primary vehicle for a Non-Indigenous Ghanaian Company that intends to conduct petroleum activities in the upstream petroleum industry.
2. An Indigenous Ghanaian Company and a non-Indigenous Ghanaian Company already in a JV shall execute all contracts within the same service category ONLY through the JV company and shall not be permitted to form a Strategic Alliance within the same service category.
3. Unless otherwise determined by the Commission, a Strategic Alliance shall be project specific and shall be terminated after the execution of the contract/project.
4. An Indigenous Ghanaian Company or a Non-indigenous Ghanaian Company that intends to form a Strategic Alliance shall apply to the Commission for approval.
5. The application for approval shall contain the following;
 - a. Details of the contract/project the parties intend to execute;
 - b. Objectives of the proposed Strategic Alliance and the intended benefits including but not limited to local content development;

¹ For the avoidance of doubt Company may mean Companies

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- c. Proposed roles and responsibilities of the parties;
 - d. Technical and financial capabilities of the parties (including technical certifications).
 - e. A draft Agreement
6. Unless otherwise determined by the Commission, the requirement to enter into a Strategic Alliance arrangement shall be limited to the following:
- a. Short-term contracts where the duration of the contract is less than six (6) months and not to be re-awarded to the same Strategic Alliance parties within two (2) years;
 - b. One-off contracts with a duration not exceeding one year which may not be re-awarded within the life span of the project;
 - c. Specialised projects/contracts² with contract value not exceeding two hundred thousand United States dollars (USD \$200,000.00) and where in the opinion of the Commission, may lead to technological advancement in the industry;
 - d. Contracts executed under emergencies³;
 - e. Contracts classified as 'works⁴' for a specific duration not exceeding one (1) year, with Administrative Contract Value not exceeding Two Million United States Dollars (USD 2,000,000) and not to be re-awarded to the same Strategic Alliance parties within two (2) years; and
 - f. Portions of Global Framework agreements as relate to assets in Ghana. The Commission shall on a case-by-case basis determine whether the Global Framework Agreement meets the requirements for Strategic Alliance Arrangement taking into consideration the prevailing market conditions and local content optimization.
7. Upon obtaining the Commission's approval for a Strategic Alliance under paragraph 4, the parties shall apply to the Commission for a Strategic Alliance Permit.
8. The relevant permit fees shall be charged by the Commission in the issuance of the permit for Strategic Alliance.

² Specialised projects/contracts are technical contracts with values not exceeding USD200,000, which cannot be executed by indigenous Ghanaian companies.

³ Emergency contracts include contract scopes for urgent repairs relating to production facilities, integrity of oilfield operations, subsea facilities, safety and environmental remediation and medical evacuation.

⁴ Works include civil construction, electrical installations, instrumentation and calibration of facilities.

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9. The Commission shall within ten (10) working days⁵ of receipt of an application, issue a Strategic Alliance permit after payment of applicable fees by the applicant.
10. Unless otherwise determined by the Commission, a Strategic Alliance permit shall not exceed the duration of the project.
11. Where Strategic Alliance arrangement is recommended by the contractor, subcontractor, licensee, the Corporation, or other allied entity during the course of a tender, the Commission shall determine the approval or otherwise of same.
12. During tender evaluation, the contractor, subcontractor, licensee, the Corporation, or other allied entity shall assess the competencies of all the parties in the Strategic Alliance arrangement.
13. All contracts awarded under a Strategic Alliance arrangement shall be signed by both the Indigenous Ghanaian Company and the Non-Indigenous Ghanaian Company.
14. A Non-Indigenous Ghanaian Company that enters into a Strategic Alliance arrangement with an Indigenous Ghanaian Company shall ensure that the Indigenous Ghanaian Company has similar or complementary lines of business, to achieve an effective transfer of skills, know-how or technology at the end of the project.
15. The Indigenous Ghanaian Company and Non-Indigenous Ghanaian Company shall demonstrate technical and financial capacities for the scope to be carried out under the Strategic Alliance arrangement and comply with the relevant industry standards and requirements.
16. Entities authorised by the Commission to undertake works, provide goods or services through a Strategic Alliance are bound by the provisions of Act 919, L.I. 2204 as amended by L.I. 2435 and other applicable laws in the upstream petroleum industry.

Documents Required for Strategic Alliance Permit

17. The following documents shall be submitted to the Commission for the purposes of obtaining a Strategic Alliance permit;

⁵ For emergency situations the Commission will expedite the permit approval process

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- a. A Strategic Alliance Agreement⁶ by the parties for the application of the permit. The Agreement shall include provisions in respect of but not limited to;
 - i. Parties to the Strategic Alliance Agreement
 - ii. Scope of the Agreement
 - iii. Duration of the Agreement
 - iv. Roles and responsibilities of each party
 - v. Rights and obligations of the parties
 - vi. Governance Structure
 - vii. Dispute Resolution provisions
 - viii. Costs and revenue sharing arrangement between the parties
 - ix. Termination provisions
 - x. Governing law
- b. Certificate of Registration (external company registration documents) of the Non-indigenous Ghanaian Company from the Office of Registrar of Companies.
- c. A valid Petroleum Commission permit of the Indigenous Ghanaian Company.
- d. Proposed management and personnel for the project;
- e. Respective contributions and resources of the parties delineated for the execution of the project;
- f. Competencies of each party in the proposed Strategic Alliance arrangement;
- g. Technology, skills and know how transfer plan;
- h. Respective Board resolutions of the companies approving the proposed Strategic Alliance arrangement;
- i. Proof of existence of an operational office; and
- j. Any other information as may be required by the Commission.

Operational Office

18. For the purposes of implementing these Guidelines, an application for approval to execute a contract or project through the Strategic Alliance arrangement should be supported by proof of the existence of an operational office.
19. The operational office may be owned or possessed by one or all of the parties in the intended Strategic Alliance arrangement and the said office shall remain so for the duration of the contract or project unless the parties notify the Commission of any change in the office location during the pendency of the contract or project.

⁶ Template may be obtained from the Commission at no cost.

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20. All documents and information (extracts of minutes, meetings, accounting records, reports among others of the Strategic Alliance) shall be kept at the operational office of the Strategic Alliance.
21. The Parties shall submit a Performance Report within one(1)month after the completion of the project/ contract.

Invoicing and Payments

22. The parties in a Strategic Alliance shall jointly or severally invoice and receive payments for the scope(s) of work executed within the Strategic Alliance arrangement.
23. The respective parties in a Strategic Alliance shall maintain and operate an account with a Ghanaian bank for the payment of petroleum activities undertaken and shall comply with the relevant tax laws and foreign exchange requirements of the Republic of Ghana.
24. The contractor, subcontractor, licensee, the Corporation, or other allied entity shall ensure that all payments for executed contract under the Strategic Alliance are made into a Ghanaian bank account of the parties in the Strategic Alliance.
25. For the purposes of these Guidelines, a Ghanaian bank means any bank incorporated and operating in Ghana.
26. Each party in a Strategic Alliance arrangement shall be responsible for their respective tax obligations.
27. The contractor, subcontractor, licensee, the Corporation, or other allied entity shall ensure that one percent (1%) of the amount invoiced is deducted and paid into the Local Content Fund.

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3.0 Compliance: Inspection, Investigations, and Monitoring Activities

The Commission has a statutory right to *monitor and investigate the activities of each contractor, subcontractor, licensee and other allied entity to ensure compliance with applicable laws.*

This shall entail, among others, validation of information in annual reports of parties in Strategic Alliance.

For the purposes of assessment and verification of the performance of the Strategic Alliance, the Commission shall have access to the facilities/operational office, documents and information as the Commission may require.

ISSUED BY: THE PETROLEUM COMMISSION:

DATE: 18TH FEBRUARY 2025