



# DOING BUSINESS IN THE UPSTREAM OIL & GAS SECTOR IN GHANA

Edition 14



INTEGRATED LEGAL CONSULTANTS

No. 12, Nii Amaah Ollenu Street  
Airport West, Accra  
P.M.B. 52 Kanda  
Accra  
Ghana

[www.integratedlegalconsultants.com](http://www.integratedlegalconsultants.com)

## Newsletter

### ***Editor's Note***

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, the firm has introduced the publication of newsletters on legal and economic issues that would be of interest to clients and equally affect their transactions. This is our 14<sup>th</sup> edition.

The discovery of oil and gas in commercial quantities in 2007, caused the Government of Ghana to put a structure in place for the proper regulation of oil and gas activities in the country. This resulted in the setting up the Petroleum Commission (PC) which was established in the year 2011.

In this issue, we take a look at some of the requirements for entities to register with the PC and operate within the oil and gas sector in Ghana.

We hope you find it informative and educative. Your feedback is welcome.

We trust that you are staying safe.

*Esohe Olajide*

**Editor**

*Olusola Ogundimu*

**Editor-In-Chief**



## **DOING BUSINESS IN THE UPSTREAM OIL & GAS SECTOR IN GHANA**

### **Introduction**

In the advent of the discovery of oil and gas in commercial quantities in 2007, the Government of Ghana saw the need to have a structure in place for the proper regulation of oil and gas activities, thereby setting up the Petroleum Commission (PC) which was established in the year 2011, after commercial production of oil begun in the Jubilee Field, in 2010.

The PC was established by the Petroleum Commission Act, 2011 (Act 821), being the legislative framework regulating upstream oil and gas activities in Ghana, as well as the management of activities in the industry.

The industry is also heavily regulated by the Registrar General's Department empowered by the Companies Act 2019 (Act 992), and the Ghana Revenue Authority for tax purposes, empowered by the Ghana Revenue Authority Act 2009, (Act 791), the Income Tax Act 2015, Act 896) as well as subsequent Amendments made to the said legislations.

There has been a tremendous increase in the output of Ghana's production of oil over the years and this has attracted many multinational companies to establish their presence in Ghana.

### **Local Content**

Local Content is an integral part of the Oil and Gas Sector in Ghana, which is being regulated by the PC, as it aims at promoting and maximizing the use and patronage of local expertise, products and services in the industry. Thus, in 2013 the Local Content and Local Participation Regulations (LI 2204) was promulgated.

In fact, the PC through the Local Content Regulations insists on the building of local capacity through effective training, which is referred to as

technology transfer knowledge. One of the goals of the PC is creating an enabling environment for indigenous companies to effectively participate and thrive in the industry and eventually gain independence with respect to bidding for and executing contracts in the sector.



### **Foreign Participation**

As a foreign entity, to engage in any business activity within the oil and gas sector in Ghana, the foreign entity must incorporate a Joint Venture Company (JVC) with an indigenous Ghanaian company and the indigenous Ghanaian company must hold a minimum of 10% in the equity of the JVC. The JVC will be the Special Purpose Vehicle (SPV) through which the foreign entity can operate. The foreign entity is usually registered as an external company having a local liaison office in country. The liaison office is run/ managed by a local manager and a processing agent.

Based on documentation submitted before the PC, and at its discretion upon assessment of the compliance status of the parties to the JVC, the PC will determine whether the parties to the JVC have met the requirements as provided in L.I 2204 and the guidelines issued by the PC before issuing the requisite permit.

### **Documents required to be filed at the PC to obtain a permit**

- ❖ Application Form
  - ❖ Cover Letter
  - ❖ Copy of Certificate of Incorporation
  - ❖ Copy of the Constitution of the Company
  - ❖ Executed HSSE Policy and Objectives
  - ❖ Current Audited Financial Reports/ Projected Revenue for Upstream Petroleum Activities
  - ❖ Valid Tax Clearance Certificate
  - ❖ Copy of VAT Certificate
  - ❖ Valid SSNIT Clearance Certificate
  - ❖ Company Profile and Business Plan
  - ❖ Copy of Application Pack Receipt
- The shareholders to the JVC undertake a one-off registration with the PC while the JVC as the operator renews its registration annually.

### **Operational Requirements**

In the formation of the JVC, the shareholders are expected to have joint control and rights to the net assets of the company.

They are expected to share in the profit and losses of the company.

All shareholders are expected to contribute skills and manpower to drive the success of the business being operated through the JVC.

Also, the PC insists on having an understanding of what role the fully indigenous shareholder company is playing, as well as its equity participation and the strategy for the transfer of knowledge and technology from the foreign shareholder company to the indigenous company. Thus, documentation evidencing same, such as the Joint Venture Agreement, and various plans and programmes of the parties must be filed at the PC.

For the JVC to be deemed an indigenous company as per LI 2204, a fully Ghanaian owned entity must hold at least 51% equity of the shareholding structure of the JVC in the company. Also, its executive and senior management positions must be undertaken by Ghanaian citizens while all other roles must be fully handled by citizens of Ghana. However, it is important to note that an individual cannot be a party to a JVC. The individual will need to set up an SPV with other persons.

While putting a management structure in place, the equity participation of the parties to the JVC must be taken into consideration. The PC expects that the indigenous company is actively involved in the management and operations of the JVC.

The nature of business of the JVC must be in line with the nature of business of its shareholder companies.

The PC in accordance with regulations 44 & 45 of LI 2204, monitors closely the activities of the shareholder companies of the JVC to ensure that they give full consideration to, and are in compliance with the laws and regulations set out to regulate the activities within the industry.



## Conclusion

It is pertinent to note that the PC does not hesitate to mete out punishments to companies who fall foul of the law with particular attention paid to “fronting”

Finally, there is the requirement by the PC that all entities registered with the PC are to submit local content and procurement plans, forecasts, and programmes, periodically.

**By Salewa Fritz  
(Legal Consultant)**

If you require any assistance with respect to the oil and gas sector in Ghana or dealing with the PC, kindly send an email to [ilc@integratedlegalconsultants.com](mailto:ilc@integratedlegalconsultants.com)

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