

# Position Paper on Guyana's Petroleum Sector Local Content Policy

By Georgetown Chamber of Commerce & Industry

## Abstract

*This paper aims to capture the position of the Georgetown Chamber of Commerce & Industry on the Third Draft of Guyana's Local Content Policy. The position on the Local Content Policy has been reached through combining a survey of the opinion of the membership of the Chamber, a comparative analysis of best practices which obtain in economies globally , and, a critical analysis through the framework provided for the analysis of local content policies published by the Newfoundland and Labrador Oil and Gas Industries Association (NOIA) .*

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## 1. Introduction

The Georgetown Chamber of Commerce and Industry (GCCCI) continues to advance that local content remains important for the development of the private sector, economic growth, and to ensure that Guyanese benefit from as much of its natural patrimony as is possible. The GCCCI articulates that both policy and legislation are important and necessary as it gives local companies a footing from which to engage with regional and international companies coming to Guyana to operate in the oil and gas sector.

While competition is encouraged, the importance of having the right framework in place to leverage and encourage local initiative must remain at the forefront. Local content policy and legislation both function primarily to protect and promote the development of indigenous companies by facilitating a level playing field. The GCCCI believes that realising the best chance for Guyanese and local businesses to attain the opportunities provided as a result of the oil and gas sector requires attention and that time for us to give attention is now.

The GCCCI continues to view itself as a partner in development, particularly ensuring that Guyana's maximum development potential is realized. It is with this in mind that the Chamber sought to compile this document on its position on Local Content, particularly on the heels of the release of the third draft of the Local Content Policy. This document is to be submitted to the Department of Energy as an official transmittal of the position of the GCCCI.

## 2. Methodology

The Chamber is the oldest and largest business support organization in Guyana. It is established by the Georgetown Chamber of Commerce and Industry Act of 1889<sup>1</sup> and has approximately three (300) members. In the preparation of this position paper, the GCCCI utilized a *triangulation* method, combining a survey of the opinion of the membership of the Chamber, a comparative analysis of best practices which obtain in economies globally<sup>2</sup>, and, a critical analysis through the framework provided for the analysis of local content policies published by the Newfoundland and Labrador Oil and Gas Industries Association (NOIA)<sup>3</sup>.

The Georgetown Chamber of Commerce & Industry wishes to reiterate at this juncture, that it is cognizant of the fact that Local Content Policies and Legislation must be fit for purpose and adapted to the context of the country. It is also important to advance that Local Content and its framework

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<sup>1</sup> Chapter 89:03 of the Laws of Guyana

<sup>2</sup> Particularly the economies which are at a stage of development that is roughly comparable to that of Guyana

<sup>3</sup> [https://www.mun.ca/econ/more/events/Bryron\\_Sparks\\_Nor\\_M2017.pdf](https://www.mun.ca/econ/more/events/Bryron_Sparks_Nor_M2017.pdf)

must be viewed as a means and not an end, in the sense that it must be an instrument that catalyses growth, not one which its enactment serves as an impediment to realization of true growth potential.

### 3. Discussion of Content of Third Draft of the Local Content Policy

#### 3.1 Definitions in the Local Content Policy

Definitions are important as they set the scope of the interpretation of technical terms which are utilized throughout a document. Defining terminologies is an important process, since it removes any ambiguity which can exist. Within the scope of the third draft of the Local Content Policy (LCP), the following terms should be carefully revised:

##### A. Local Content

Local content refers to the level of usage of Guyanese goods, services, people, businesses and financing as a direct result of the operational activities of the operators, their contractors and the subcontractors.<sup>4</sup> Whilst there is no correct definition for local content as it would depend on the policy objectives of the government, the definition should account for, whether tacit or overt, the level of local ownership and partnership.

In the taxonomy of Local Content Policies, there is need for Guyana to implement '*market-creating local content*.' A domestic market for new industry may transform over time with this type of LCP. This can ensure that such industries are moulded into being more competitive and uniquely specialised. Preferential treatment to domestic suppliers through domestic champions (for example, the NOCs), the introduction of legislated first consideration, or the introduction of R&D programmes based on LC policy (such as in Norway or Brazil), are examples of market-creating LC<sup>5</sup>. This policy, in its thrust, is a 'market-creating policy.'

##### B. Local Company

What is considered a Local Company is pivotal in determining benefits which accrue. The definition of a 'local company' should broadly be in accordance with the following:

- i) The company's board meetings are held in Guyana
- ii) The company's head office is located in Guyana
- iii) A percentage<sup>6</sup> of the total workforce is Guyanese

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<sup>4</sup> Page 4, Guyana's Third Draft Local Content Policy

<sup>5</sup> Page 12, Local Content Policies in Resource Rich Countries – Kalyuzhnova et. al (2016)

<sup>6</sup> The percentage which has been suggested has ranged from 50 to 70 percent

- iv) The company is registered in Guyana with a Guyanese owning 51 percent or more

### 3.2 Dimensions of Local Content Policy

This segment of the paper addresses the various dimensions of the third draft of the Local Content Policy which have been identified as having weak points, areas for improvement, amendments to be made, as well as, elements which may be altogether missing, which are necessary given the framework for Local Content in Guyana.

#### **A. Strengthening Competitiveness**

The spirit and intent of a Local Content Policy is to ensure that the host country, in this case Guyana, maximises the benefits of its national patrimony, for the locals. Within the framework of a market-creating local content, it is necessary that the competitiveness of indigenous firms is strengthened. Thus, it is necessary for the Local Content Policy to exist alongside a Competitiveness Plan for the Government to advance the competitiveness of the domestic private sector.

Comments which have arisen from discussion of this section include the following<sup>7</sup>:

*The LCP should be about value creation for the local business sector. The focus should be on developing new areas of business that can provide goods and services to the petroleum sector. Focus must also be placed on how the traditional sectors can support the needs of the hydrocarbons sector as well. The policy should also be expected to increase backward linkages in terms of procurement and utilization of locally produced input materials, creating more employment opportunities for the locals.*

#### **B. Non-intent to address other policy areas related to Petroleum industry**

The Local Content Policy must take into account the full development of the sector, in particular, those areas which are directly related to the development of the domestic private sector and other areas of the petroleum sector development. The Local Content Policy, given

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<sup>7</sup> There have been extensive discussions of businesses under PSA, particularly overseas companies which receive tax waivers as against local businesses which do not benefit from the same benefits, lose competitiveness in an already disadvantaged environment.

the nature of the market-creating local content, must be mapped into the national development strategy and must be clearly interlinked with the establishment and functioning of the Petroleum Commission.

Market-creating Local Content requires three things: 1. entrepreneurs who spot an unfulfilled industry need; 2. an exit strategy from LC that encourages further innovation and efficiency and; 3. policy-makers who create a viable economic platform, that is, LC as a part of the overall industrial policy and its instrument.<sup>8</sup>

Comments which have arisen from discussion of this section include the following:

*Questions have been raised regarding the Local Content Policy's link to the Green State Development Strategy and the manner in which local content development ties in to competitiveness improvements in private sector development. In addition, questions have been raised regarding a depletion policy and the mapping of the local content policy with the depletion policy. For the purposes of synchrony, it should be mentioned how the local content policy fits into the national framework of governance – in the national development plan, a depletion policy and the Sovereign Wealth Fund. A clear definition of LC helps in avoiding common pitfalls. LCP is guided by a national vision that clarifies how to prioritize different policy objectives and identifies the sectors of strategic importance to government. In this way, the social values that govern national development priorities will also influence LCP.*

### **C. Timeline for the Introduction of Legislation**

There is the allusion of the introduction of legislation into the framework of local content governing Guyana<sup>9</sup>. The introduction of legislation into the framework is impeding. To ensure that credible signals are sent to the local and foreign private sector, an estimated timeline of the introduction from local content legislation should be made pellucid in the Local Content Policy at this juncture.

### **D. Requirements and Timing for Approval of the Local Content Plan**

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<sup>8</sup> Page 13, Local Content Policies in Resource Rich Countries – Kalyuzhnova et. al (2016)

<sup>9</sup> Guyana's Third Draft Local Content Policy – "...subsequent Introduction of Regulation is Undemanding" (page 3)

There has been an insertion of Automatic Approval being granted by the Minister when there existed lapses in timeliness on Minister's part.<sup>10</sup> There needs to be examination and clarification of this. Essentially, the section allows the Minister a timeframe to review applications, but if not completed, automatic approval is guaranteed. This equates to a company being given an automatic approval until and unless some serious objection is raised by the Minister. This fundamentally distorts the power which the Sovereign has. There needs to be a comprehensive review of this language in this section as no approval should be automatically granted.

An alternative, derived from the Ghanaian context<sup>11</sup> can be utilized as it relates to the procedure for approval of the local content plan:

*(i) The Minister should within seven working days acknowledge the receipt and lodge of the local content plan with the Local Content Committee.*

*(ii) Where the Committee is dissatisfied with the local content plan the Committee shall recommend that the Minister reject a plan and it shall state the reasons for the recommendation. Further, twenty-five additional days can be permitted for re-submission.*

*(iii) Where based on the recommendations made by the Committee, the Minister determines not to approve the local content plan, in whole or in part, the Commission, shall within seven working days of making that determination, notify the applicant and furnish the applicant with a written statement of the reasons for refusal of the Commission to approve the local content plan.*

#### ***E. Classification of goods into Group A and B***

The third draft of Guyana's Local Content Policy refers to the categorization of goods according to Group A and B. Group A refers to the categories of goods and services where evidence shows the presence of one or more Guyanese Suppliers with the required capability, capacity and competitiveness sufficient to be invited to provide and expression of interest or otherwise engage in a tender process, either directly, as a partner or sub-contractor to another supplier. Group B means categories of goods and services where evidence shows an absence of any

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<sup>10</sup> Section 7 of Guyana's Third Draft Local Content Policy

<sup>11</sup> Ghana's Local Content Legislation of 2013

Guyanese Suppliers with the required capability, capacity or competitiveness sufficient to be invited to provide and expression of interest or otherwise to engage in a tender process, or where the Operator or its Primary Contractors can justify single or sole sourcing for reasons fully consistent with good industry practice.

There is the introduction of the notion of sole-sourcing contingent on the evidence. However, importantly, no mention is made as to which is the competent authority charged with the responsibility of providing this evidence. This is of extreme importance to identify in the policy as the information in this case, is only as reliable as its source.

#### ***F. Monitoring and Reporting***

The responsibility for monitoring and reporting of local content is currently the sole responsibility of the Minister of Business.<sup>12</sup> There should be the establishment of a Local Content Dialogue Commission which is made up of the Government, operators, civil society, academia and private sector. This Commission should be established as the formal mechanism for oversight. Guyana's Natural Resources are the national patrimony and whilst the state has the function to advance the welfare of the Guyanese people, there are other extremely important stakeholders in the Petroleum sector and national development process. These include the forementioned, who should be included on the Commission.

#### ***G. Absence of Penalty***

The Local Content Policy does not speak to anything regarding penalties for companies which fail to report or follow the commitment to Local Content. Good faith and 'handshaking' cannot suffice. Whilst there does not need to be the inclusion of details of penalties in the Local Content Policy, there ought to be some mention of what the penalty in a general sense will look like should there be violation.

There should be a relative fine i.e. a fine which is a percentage of an identified indicator. In addition, there should be a general policy on dealing with foreign companies which will affront Guyanese partners simply to obtain local content treatment, in situations where the company

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<sup>12</sup> As per the third draft of Guyana's Local Content Policy. Even with a change in the minister responsible, this does not affect the thrust of the comment, as there should not be monitoring being done by only the minister.

is not materially a Guyanese. The Local Content Policy is the document which needs to set out a general guiding principle as to how these situations will be dealt with.

#### ***H. Transparency about Local Content Plans***

It is critical to ensure transparent, and free flowing information within the boundaries of commercial sensitivities. Transparency creates confidence, while steady supply of information creates the opportunities and requirements can be known. Public mechanisms for the dissemination of company's local content plans should be established in a manner where it can come under scrutiny.

This is where the establishment of the Local Content Dialogue Commission is pivotal as this body, comprising members of different sectors of society will examine the Local Content plans of each operator and prime contractors, to ascertain its merit. The mechanism of scrutineering by the collective is important.

#### ***I. Domestic-Only Tenure Lists and Ringfencing***

This policy does not contain any domestic-only tenure list. Guyana's local industry has comparative advantage in the production of some commodities which are going to be utilized in the Petroleum industry. There should be an analysis of those industries and a list should be published as a matter of Local Content policy. Those industries should be ringfenced for provision by Guyanese companies. There should be escape clauses which are included to ensure that no entity is perpetually bounded to the Guyanese company.

#### ***J. Focus areas for Local Content development to maximize value***

The following focus areas are pivotal in ensuring that there exists local content development in a manner that maximises value. These points are the ones which ought to bridge the Local Content policy with any national development strategy or, in a more isolated sense, a competitiveness plan

- (i) Ensure operators and contractors from abroad have partnering system to enable local companies and investors to learn about oil and gas industry and its supply needs.



(ii) There should be awareness sessions to bring Guyanese up to date on the developments of the local content activities and the publishing of varying statistics in the public domain.

(iii) There should be a discussion on the tiers of supplier's development plan and by category.

(iv) There should be a clear plan of action by Government to directly or indirectly support the development of the capacity of local businesses, as well as providing suitable infrastructure (physical, financial, technological etc). This will ensure that companies can participate in the oil industry in a competitive manner.

(v) There should be an emphasis placed on ensuring the relevant standards and certifications are made readily accessible to Guyanese businesses. A plan of action in this regard should be clearly delineated in this regard.

*Generally, the latter two (2) points are in keeping with the 'efficiency Local Content' and the 'market-creating' Local Content approach. This means that the domestic private sector is guided and supported by government action to become more internationally competitive. This ensures that a market-led approach to development continues whilst, in the medium-term, creates internationally competitive firms.*

#### ***K. Developing the Capacity of Individuals***

The comments below are specific to the development of the capacity of individuals. The policy should ensure that there is a bridge with the national development strategy to address:

(i) **Certifications** – The University of Guyana or an Institute in the University being a body to run courses and certification with link to international bodies which perform certification of workers for oil industry.

(ii) **Skill Transferal** – A deliberate and explicit plan for skill transferal and development of the indigenous capacity needs to be articulated in the local content policy. There are skills in the O&G industry which can only be acquired via the 'learning by doing'

method. As such, suitable apprenticeship or understudy-type programmes should be incorporated.

(iii) **Training** – There should be a deliberate effort by government to engage in Labour Market Information Analysis (LMIA) and align the educational institutions with the forecasted demand for skills.

Suggestions:

(i) The quarterly report shall state the number of new Guyanese employees employed during the respective quarter and their job descriptions

(ii) Where Guyanese are not employed because of lack of expertise, the contractor, subcontractor, licensee or other allied entity shall ensure, to the satisfaction of the Commission that every reasonable effort is made to provide training to Guyanese in that field locally or elsewhere

(iii) A quarterly report shall state the number of new Guyanese employees employed during the respective quarter and their job descriptions. At least five Guyanese should have managerial positions in every oil and gas company.