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ENERGY AND INFRASTRUCTURE

Employment and Training of Ghanaians, and Succession of Expatriates by Ghanaians in the Petroleum Industry

This newsletter considers the guidelines published by the Petroleum Commission for the implementation of the upstream Local Content Regulations on employment and training of Ghanaians and the succession of Ghanaians to roles occupied by expatriates.

Under the Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204) ("**LI 2204**") companies operating in the upstream petroleum industry are required to employ and train Ghanaians for the various positions in their companies. Petroleum companies must also recruit and train Ghanaians to succeed expatriates who are engaged in any capacity in the company. Further to LI 2204, the Petroleum Commission (PC) published the Guidelines on Employment and Training of Ghanaians, and Succession Plans for Expatriate Positions in the Upstream Industry dated 5 April 2018 (the "Guidelines") to administer the employment, training and succession planning requirements under LI 2204.

In brief, the Guidelines requires affected companies to give the first option to Ghanaians during recruitments and reserves junior and middle level roles for Ghanaians. Also, a company may only employ an expatriate if it demonstrates to the PC that no Ghanaian applicant qualifies for the vacant role taking cognizance of the technical and experience requirements. The Guidelines further mandates submission of succession plans to the PC for approval, quarterly appraisal reporting on trainings, and yearly submission of training plans/programmes for approval.

Under the Guidelines, any recruitment process must be preceded by submission of relevant information on the vacant position to the PC at least 3 months before initiating the recruitment process. After which the companies are required to advertise the roles to qualified Ghanaians in 2 or more national newspapers. The PC must be notified of all scheduled interviews. A company may only employ an expatriate if the PC confirms that no Ghanaian is qualified for the position after the PC has reviewed the information received from and relating to the Ghanaian applicants. In such an instance and before the expatriate assumes duty, a Ghanaian of similar background must be engaged to understudy, and eventually succeed the expatriate under a succession (including training) plan approved by the PC. The PC must be given at least 3 months notice before a duly engaged expatriate assumes duty. This notification requirement may be waived by the PC due to an emergency or other reasonable ground.

The Guidelines require that a company submits for review signed quarterly appraisal reports of Ghanaians who are undergoing training to succeed expatriate employees. A company must also submit to the PC for approval yearly programmes for the training of both Ghanaian employees and non-employees.

We note that paragraph 8(g) of the Guidelines purports to permit expatriates to fill junior and middle level roles in petroleum companies. Such provision clearly contradicts both paragraph 2 of the Guidelines itself and LI 2204. Given that LI 2204 expressly reserves such roles for Ghanaians, any purported attempt by the Guidelines to allow expatriates to perform junior and middle level roles would be illegal and of no effect. The Guidelines must, therefore, be revised to rectify this inconsistency and to duly reserve junior and middle roles for Ghanaians, as provided under LI 2204.

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