DERIVING MAXIMUM VALUE FROM THE JOINT VENTURE PARTNERSHIP – SHOULDERING THE LOAD, ENHANCING THE VALUE

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Introduction

**Mandate**

- The Petroleum Commission was established by an Act of Parliament 2011 (Act 821) to **regulate** and **manage** the utilization of petroleum resources and **co-ordinate policies** in relation to them.

**Local Content Mandate**

Ensures the promotion of Local Content and Local Participation in the upstream petroleum industry.
Regulation 1 (L.I.2204) – Purpose of the Regulations

a. Promote the maximisation of value addition and job creation through the use of local expertise, goods and services, businesses and financing in the petroleum industry value chain and their retention in the country.

b. Develop local capacities in the petroleum industry value chain through education, skills transfer and expertise development, transfer of technology and know-how and active R&D programmes.

c. Increase the capability and international competitiveness of domestic businesses
WHY JOINT VENTURES?
Why JVs?

The framers of the L.I. 2204 based on lessons learnt from other oil producing jurisdictions and other sectors i.e mining & telecom, considered JVs as the most practical and effective strategy to **stimulating** and **accelerating** capacity development and ensure in-country value addition.
Definition of a Joint Venture

• A JV is a contractual agreement or rather a business relationship between/among two or more parties for the purpose of executing a particular business undertaking. The parties to the JV are jointly responsible for cost; and profit and loses are apportioned according to dividend policies.
Why JVs: Industry Specific Necessity

• Oil & Gas Industry Specific Characteristics:
The industry is characterized by the use of specialized input, often at the high end of the technology spectrum, sourced through globally integrated supply chains. Consequently, supplier concentration in many industry-related sub-sectors is high, adding barriers to the development of a local supply sector.

• Capital Importing Country
Countries such as Ghana with a limited economy would naturally find it difficult to develop a local supply industry at the pace, size, and quality necessary to satisfy the demand from petroleum projects.
Remote Locations of Oil & Gas Operations:

Petroleum operations often take place in remote locations away from domestic manufacturing centres and with limited access to infrastructure and electricity. Restrictive business conditions, such as difficulties in accessing finance, lack of relevant skills, and information asymmetry, typically constrain an efficient supply response from domestic entrepreneurs. As a consequence often, a very high share of the value of goods and services used in petroleum projects are imported, - there is therefore a need for an international partnership.
Why JVs: Industry Specific Necessity

• **High Market Concentration:**
The petroleum industry is generally known for the relative high market concentration, and substantial investment in R&D to reduce costs, improve productivity, and secure technological advantages. Countries experience shows that the agglomeration of activities can accelerate productivity and efficiency through knowledge spillovers, synergies, better coordination, and efficient access to public goods –thus necessitating Joint Venture Formation.

• **Social License:**
Local sourcing and relationships with local firms through JV can also help support the foreign companies’ social license to operate.
Formation of JVs is a tool intended to:

✓ Ensure minimum Ghanaian interest through **equity participation (ownership)**

✓ Promote a **mutually beneficial partnership** that leads to growth, capacity building through know-how and technology transfers

✓ Prepare indigenous Ghanaian companies to eventually become **competitive** locally and internationally

**THE IFC, WTO, NAFTA, EU, ASEAN AND THE WORLD BANK HAVE ALL EITHER FOSTERED JVS OR CREATED ENABLING ENVIRONMENTS FOR JVS**
Legal Framework For JV Formation – L.I 2204

Regulation 4(2)
• There shall be at a five percent (5%) equity participation of an indigenous Ghanaian company other than Corporation to be qualified to enter into a petroleum agreement or a petroleum license.

Regulation 4 (6)
• A non-indigenous Ghanaian company which intends to provide goods or services to a contractor, subcontractor, licensee, the corporation or other allied entity within the country shall incorporate a joint venture company with an indigenous Ghanaian company and afford that indigenous Ghanaian company a equity participation of at least ten percent (10%).
Legal Framework For JV Formation – L.I 2204

**Regulations 4 (7)**

A before the commencement of petroleum activities a plan to the Commission specifying:

a. The role and responsibilities of the indigenous Ghanaian company;

b. The equity participation of the Ghanaian company

c. The strategy for technology transfer and know-how to the Ghanaian company.
Challenges of JV Companies

- Limited participation of IGCs in JVs
- Fronting
- Dividend based JV’s vs. contract/participatory based
- Pseudo/Shell JVs
- Transfer Pricing
- Limited Capacity of IGCs
- Over reliance on Short-profit by IGCs
- Limited Duration of Contracts
The Missing Link
The Missing Link cont’d

IOC SIDE

• Low/no commitment to providing *relevant* training of Ghanaians
• Unwillingness to undertake technology transfer to IGCs
• Ring fencing and Transfer pricing
• Deliberate attempts to continuously keep IGCs/ Ghanaian personnel from becoming competitive

IGC SIDE

• Low technical & financial capacity
• Non-alignment of services
• Absence of strategic vision/plan for business sustainability
• Low/no investment in operations
• Not participating in management decision making
• Absence of legal advise during execution of JV agreement
MAXIMISING VALUE FROM JVs
What Is Value Addition?

L.I. 2204 defines Value Addition as:

“the economic improvement of a product or service in the petroleum industry”.
Maximising Value

• The Choice Partner
The choice of a partner is of crucial importance for the success of a joint venture. There is a need to have a clearer understanding of the other, of their goals and operations. It helps either sharpen the basic mutuality of interests or bring to light potential areas of conflict.

• The Negotiation of a Basic Understanding
The parties contemplating a joint venture should try to come to a preliminary understanding. A “memorandum of understanding” might cover, in general terms, nature, scope, and location of activities to be carried out, duration of the partnership, financing, facilities to be utilized and management, exclusive or monopoly privileges etc.
• **Drafting the Terms of the Contract**

Success in matching the interests of the partners in the writing of the contract depends very much on the thoroughness of preparatory work. Often, however, the extent to which the contract meets the individual partner’s aims is a reflection of relative bargaining power. What both sides must not forget in the bargaining process is that there are limits beyond which demands for concessions become unreasonable, when the other party will be inclined - or even forced - to break off negotiations.

• **Capitalization of the Venture & Naturalization**

Difficulties may be avoided if the other provisions of the contract (relating to capitalization, material inputs, manpower, etc.) are specific on the time periods within, which “naturalization” (transfer of ownership or responsibilities) is to take place.
• **Decisions in Management Control**

It is better to have both partners participating in management. The sharing of management responsibilities, and the “becoming acquainted with each other's problems” that this entails, enhances the likelihood of the overall common interest being served more adequately.

• **Provisions Relating to Business Operations**

The contract should, as far as possible, outline particulars on how the joint venture intends to achieve its operational objectives and be specific also on relations with the host government, the foreign company, and non-affiliated private interests.

• **Relationship with Affiliates**

The joint venture contract must contain clauses to ensure that transactions between the joint venture and the parent company of the foreign partner are strictly commercial. Transactions to be shunned are sales of services that may not be essential or excessive charges for them.
Shouldering the load and enhancing value requires that JV Partners work together to ensure the following:

i. **Transfer of knowledge, skills and relevant technology,**

ii. Incremental use of local raw materials and manufactured goods

iii. Improved services for business

iv. Support infrastructure development

v. Invest in local/national technology availability

vi. Promote local/national research, development and innovation

vii. Invest in initiatives that promote linkages for cross-sector benefits
The components of technology transfer should include:

• Transfer of plant, equipment, machinery and other technology related **hardware**;

• **Skills development** – experience, expertise/know-how, skills, relevant certifications necessary to utilise technology being transferred;

• Information/databased solutions, software, manuals, procedures required to apply/operate the hardware transferred; and

• Organisational development internal systems and structures which would aid in the development, absorption and utilization of available or new technology.
Maximising Value cont’d

Technology, skills or know-how to be transferred **MUST** be:

i. Relevant to the industry, IGC and the activity to be undertaken.

ii. Clear strategy and timelines for the transfer of the skills and know-how.

iii. Clear scope of work of both companies especially in the execution of contracts.

iv. Active participation of the local company in the management and operations of the JV company.
Maximising Value

The local partner in the JV is expected to:

i. Create an enabling environment for the smooth transfer of technology and know-how

ii. Ensure the acquisition of requisite facilities and equipment

iii. Employ and train qualified personnel

iv. Establish requisite business culture, philosophy and strategy to ensure business continuity & sustainability
LOOKING AHEAD
Looking Ahead

Existing & prospective JV Partners must:

• Be strategic in selecting JV partners
• Strictly follow L.I 2204 and the JV Guidelines
• Fully implement the terms & conditions in the JV Agreement
• Avoid Fronting
• Invest in local R&D initiatives with the view of creating value for both the venture and supporting innovation in Ghana.
Petroleum Commission will:

- Transparency is crucial. The JV requirements must be public. The Commission will develop *Regulatory Rule Book* which will specify all JV requirements and guidelines.
- Consolidated regulatory framework – harmonize framework for approving JVs
- Standardization of JV framework and governance structure. The Commission will in consultation with the industry come out with a Model JV Agreement just as we have Model Petroleum Agreement for E&P companies. The scope for discretionary decision-making need to be curtailed;
- Intensify its inspections and monitoring activities to ensure compliance. *All companies have to be treated equally and companies’ performance relative to targets has to be audited equitably.*
- Facilitate speedy implementation of Local Content Fund
- Consider placing a ceiling on the total number of ventures authorized
Conclusion

• The ultimate objective of the Local Content Regulations and JV Guidelines is create a Win-Win situation for both IOCs and IGCs operating in Ghana.

• Formation of JV is not only vehicle for IGCs participation in the industry;

• Participation in JVs comes with responsibilities.

• Government will continue to develop and enhance the business environment to stimulate and accelerate enterprise development and economic growth through AOGC and other initiatives.

• PC will continue to provide platforms (local & international) for business development and partnership building.

• Commission’s doors remain open for dialogue, guidance and direction on issues relating to local content and the industry in general.
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Thank you