



**Private sector Position Paper on the National Local Content Bill 2019**

**Prepared by**

**Private Sector Foundation Uganda, Uganda Law Society, Uganda Insurers Association,  
Uganda Bankers Association, Uganda National Farmers Federation and Uganda National  
Chamber of Commerce**

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**Parliament of the Republic of Uganda**

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### **1. Background:**

The Private Sector appreciates the Parliament through the Parliamentary committee on Finance Planning and Economic Development for offering to meet the private sector and to have a discussion on National Local Content Bill, 2019.

Hon. Members, 60% of the Budget is for development. The development expenditure is mainly for infrastructure projects but unfortunately 80- 90% of this funds does not stay in the economy. This is possibly the biggest market if well harnessed for Ugandan producers of quality goods and providers of quality services. This is a long awaited bill and the opportunity to deliberate of this bill is well appreciated.

This paper has been developed through consultations from the members of Private Sector Foundation Uganda including members of Uganda Insurers Association, Uganda Bankers association, Uganda Law society, Uganda National Farmers Federation and Uganda national chamber of Commerce.

### **2. General Comments:**

#### **a) The Object of the Bill**

The object of the Bill is to impose local content obligations on a person using public money or utilizing Uganda's natural resources or carrying on an activity requiring a license; to prioritize Ugandan citizens, Ugandan and resident companies in public procurement; to ensure skills and technology transfer to Ugandan; to provide for the development of local content plans; to provide for the supervision, coordination, monitoring and implementation of local content in Uganda; and for related matters. This is very consistent with the private sector view of the need to use public procurement as a tool to foster economic development and is well appreciated.

#### **b) The Guidelines on Reservation Schemes, 2018**

The guidelines on reservation schemes, 2017 was changed by the Minister without the Private sector consultations and the new guideline 2018 has disadvantaged the local companies. Private sector welcomes this bill as a solution to correct these changes.

### 3. Specific Comments:

No.	Issue	Bill Proposes	Implications	Private sector recommendation
1.	Remedies	Remedy(1) of the bill proposes the application of local content to all undertakings where public money are used, in the extractive industries, in donor or loan funded projects and in activities carried out by a local content entity in possession of an investment agreement.	Use of donor money may not be easily applicable since there is limited control Uganda might have on the donations. However, in services sector, a lot of available service markets are in donations.	Maintain this remedy however amplify the case of services even if the public resources are donation or loans
2.	chronology of the bill	Several sections of the bill have some inconsistencies with the term Ugandan company, Ugandan entities & resident entities	If not well aligned will confuse readers and the implementers of the bill leading to inefficiencies in implementation.	Ensure the chronologic flow of the bill especially in the definitions
3.	natural resources	Under the preamble, bill proposes that an Act to impose local content obligations on a person using public money or utilizing Uganda's <b>natural resources</b> or carrying out an activity requiring a license; to prioritize Ugandan citizens, Ugandan and resident companies in public procurement; to ensure skills and technology transfer to Ugandan entities; to provide for the development of local content plans; to provide for the supervision, coordination, monitoring and implementation of local content in Uganda; and for related matters.	Statement on natural resources is confusing as people might interpret it differently.	Need to define “ natural resources” to include land and its resources, water etc.
4.	Definition of “Minister”	The bill defines a Minister responsible for finance	Finance though very big directly monitors procurement. If in future procurement is no longer under Ministry of Finance, the bill will be affected.	Change the definition to read “ minister responsible for procurement”

5	Definition of “Ministry”	The bill defines a Ministry responsible for finance	Finance though very big directly monitors procurement. If in future procurement is no longer under Ministry of Finance, the bill will be affected.	Change the definition to read “ministry responsible for procurement”
6.	Designation of a Department	Sec 3 of the bill provides for the designation of the department under the Ministry which shall be responsible for implementing the provisions of this Act.	The available reporting structure, reporting & monitoring system under GoU lacks autonomy and might be prone to inefficiency and corruption. Private sector have no influence in this current/proposed structure. The private sector are not comfortable with this structure.	Private sector proposes a structure that will have private sector participation and autonomy in its operations. An agency/ authority/Board would be best suited to effect this role.
7.	Functions of the Department	Sec 3 of the bill provides for the local content department and its related functions however, a specific function on capacity building for local content entities is missing.	Most of the Ugandan companies are SMEs that have a lot of capacity related aspects especially in regards to public procurement. This function would enable most youth, women and SMEs gain capacity to participate	Include a function on capacity building for local content entities
8.	Priority of Ugandan goods and services during procurement	Sec 4(2a) of the bill proposes that a good shall be taken to be <b>manufactured</b> in Uganda where the production, manufacture, processing, assembling or making of such a good is carried out wholly or partly in Uganda. The word manufactured is consistently used in the bill but seem to be limiting the non-manufactured goods eg. Agric. products, tourism products etc.	The word manufactured, if not changed might exclude the critical non-manufactured goods. Relatedly, this is confusing and clarity needs to be created.	Change the word manufactured to “produced or made”. This needs to be cross reference throughout the bill.

		Sec 4(3) of the bill proposes that in determining where a good was manufactured, the rules of origin applicable in the East African Community shall apply.	In the similar local content laws in Kenya, Rwanda and Tanzania such clauses that requires the application of the rules of origin are not considered. If we maintain this clause it means that we would have opened our market to the EAC companies without giving the local companies priority and yet we do not expect the same treatment from other EAC countries.	Recommend that this clause acts on reciprocal basis. Where we don't have capacity gives us opportunity to source EAC goods to solve our problems.
9.	Rejection of Ugandan goods and services during procurement	Sec 5 (5aii) of the bill proposes that A good locally manufactured in Uganda or service provided by a Ugandan citizen or company shall not be solely rejected on grounds of quality, if in case of a service, such a service is provided in accordance with best industry practices.	Very few services have clear standards however several services are envisaged to be provided in the local content space. The generally acceptable/ best industry practices are not defined in tis clause. This if not clarified is likely to bring confusion and eventually lead to quack service providers	There is need to define industry best practices by concentrating on UNBS, ISO standards and the alike
10.	Reservation of goods to be exclusively procured from Uganda.	Sec 6 of the bill is titled under Reservation of goods to be exclusively procured from Uganda.	This neglects services	Add services on this title

11.	Employment of Ugandan citizens	Sec 8 (2) of the bill proposes that all employment positions held by Ugandan citizens shall attract salaries, wages and benefits commensurate to the job description except that the difference in salary between the Ugandan citizens and the non-citizen employed in a similar job shall not exceed ten per cent.	The employment act requires that the differences in pay between a Ugandan citizen and a foreign citizen is put on work related benefits. This clause is centrally to the employment act.	Need to restrict ourselves on the differences in work benefits than wages and salaries
12.	Requirement to subcontract public works contracts or activities	Sec 14(3) of the bill proposes that the Minister may from time to time, by notice in the gazette, amend the minimum portion of a contract that is to be exclusively subcontracted to Ugandan Companies or individuals in subsection (1).	This provides a lot of powers to the Minister who may miss use them.	Need to spread some of these powers to the Board of directors to achieve efficiency.
13.		Sec 17 has poor numbering		Need to align the numbering issues
14.	Local content for public works funded through loans	Sec 26 (3f) of the bill proposes that undertake training of its Ugandan staff in all spheres of the project and dedicate at least two per cent of its total contract sum to this activity	The 2% of contract sum is very high considering the fact that a number of the local content entities do not even make this profit margins.	Need to reduce this percentage to 1% or even less
15.	Offences and penalties	Sec 31 of the bill proposes several offences and penalties however, they seem to concentrate only on the contractee but silent on the contractor	Temptations of corruption are always two folds.	There is need to add specific offence and penalties to the contractor in form of imprisonment, confiscation of property, termination from work etc.
16.	Appeal	Sec 40(1) of the bill proposes that a local content entity, contractor, provider or supplier aggrieved by the decision of the Department shall appeal that decision to the High Court within five <b>days</b> of the decision.	The period of 5 days might in some instance be sufficient but in most cases, it may not be sufficient time for someone to get an appeal.	Increase the period from 5 working days to 14 working days to cater for the concept of fairness.

#### 4. **Conclusion:**

Overall the bill captures most of the private sector interests however the need to create an autonomous structure to support the implementation is the pivotal to achieving the objectives of the bill.