

GETTING THE DEAL THROUGH

Oil Regulation

in 33 jurisdictions worldwide

2014

Contributing editor: Bob Palmer



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Bob Palmer
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Getting the Deal Through is delighted to publish the fully revised and updated eleventh edition of *Oil Regulation*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 33 jurisdictions featured. New jurisdictions this year include Croatia, Ecuador, Egypt, India, Indonesia and Morocco.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. *Getting the Deal Through* would also like to extend special thanks to contributing editor Bob Palmer of CMS Cameron McKenna for his invaluable assistance with this volume.

Getting the Deal Through

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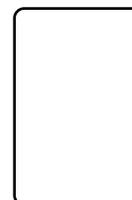


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India

Santosh Pandey

Dhir & Dhir Associates

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The Indian oil industry is divided into three sectors: upstream (exploration and production), midstream (processing, storage and transportation) and downstream (refining, distribution and marketing).

The oil sector (ie, exploration, extraction, refining, transportation, distribution and marketing) in India is mainly dominated by the public sector companies. Oil and Natural Gas Corporation (ONGC), was renamed and incorporated from the Oil and Natural Gas Commission in 1961 to develop India's upstream sector. It is also the parent company of ONGC Videsh (OVL), its overseas investment arm and of Mangalore Refinery and Petrochemicals Corporation Limited (MRPL), a single integrated refinery and petrochemical plant in Mangalore.

Oil India Limited (OIL) was incorporated in 1959 and is one of the oldest upstream companies in India, focusing on the north-east regions of India and Rajasthan. Both of these undertakings account for about more than 70 per cent of the total market. The remaining share is cluttered with various private players in the market.

Oil Marketing Companies (OMCs) in the petroleum products retail business in India include Indian Oil Corporation Limited (IOCL), Bharat Petroleum Corporation Limited (BPCL) and Hindustan Petroleum Corporation Limited (HPCL), which are all vertically-integrated companies. IOCL is the largest company in India in terms of revenue and also owns Chennai Petroleum Corporation Limited (CPCL) as a subsidiary, operating two small refineries in Tamil Nadu. At present, these three OMCs have a near monopoly on the petroleum products retail business in India.

Apart from the above public sector companies, private players like Reliance Industries Ltd, Essar Oil, Adani Gas, Cairn Energy, Shell and BP are also active in both upstream and downstream sectors.

India has both onshore as well as offshore oil reserves. There is a proven oil reserve of 758.27 million metric tonnes (MT) in India at the end of the financial year 2012–13, out of which onshore reserves are 331 MT and offshore reserves are 426.84 MT.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

18,180 petajoules of energy were generated in India in 2012-13, out of which 1595 petajoules were generated by oil and crude petroleum, which is 8.71 per cent of the total energy production. Coal generated 9753 petajoules or 53.64 per cent of total energy production, gas generated 1567 petajoules or 8.61 per cent of total energy production and electricity (hydro and nuclear) generated 5274 petajoules or 29 per cent of total energy production.

In 2012-13, primary energy production added up to 642,792 kilotonnes of oil equivalent (ktoe). The share of crude oil accounted for 35 per cent and the contribution of coal was 64 per cent. In 2012-13, national energy consumption was 332,935 ktoe.

Around 24 per cent of the petroleum product needs of the country is supplied with domestic production. Crude oil production in 2012-13 was 37.862 MMT, whereas consumption of petroleum products was 156.528 MMT against a total production of 217.736 MMT.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Indian government as a whole plays an indispensable role in the energy sector through state-owned enterprises, public policy and market regulation.

There are three major policy objectives that India pursues: energy access, energy security and mitigation of climate change. All three objectives are closely related, but sometimes conflict with one another and are derived from the reality in India. Thus, it is challenging for India to maintain a balanced approach in pursuit of all three objectives.

There are a number of players in India's energy sector. With the Planning Commission at the top, five ministries are in charge of energy policy for individual fuel sectors, and other ministries and state governments directly and indirectly have influence on energy policy. The Ministry of Petroleum and Natural Resources oversees all aspects of the oil and natural gas sector, including exploration, production, marketing and import and export.

Key policies

After independence, India focused on regaining control over its oil and gas sector, which had been dominated by foreign players. It was recognised that majority ownership and effective control of critical industries like petroleum should always rest in Indian hands and the need for developing an independent and self-reliant petroleum industry was felt. Under the Industrial Policy Resolution in 1956, the Oil and Natural Gas Commission and Indian Oil Corporation were created for the upstream and downstream sectors respectively. The government nationalised the hydrocarbon sector during the 1970s, reaching completion in 1981. Upstream blocks for exploration were then allocated to oil PSUs on a nomination basis and private companies could later participate as well, but only through a joint venture with PSUs. However, slow exploration and development of hydrocarbon reserves led to a re-liberalisation of the sector in the 1990s.

New Exploration Licensing Policy (NELP)

The NELP, effectuated in 1999, is a cornerstone of India's upstream policy. Its aim was to accelerate exploration and development of hydrocarbon resources in India against the backdrop of increasing domestic demand. The NELP awards exploration blocks through

international competitive bidding and allows 100 per cent foreign and private participation. While earlier allocation of upstream projects to PSUs was controlled through administrative orders from the government, under the NELP, the PSUs had to begin competing on an equal footing with private and foreign companies, with the Production Sharing Contract (PSC) as the managing instrument. A total of nine bidding rounds of NELP have been implemented since the first in 1999, with mixed outcomes.

India Hydrocarbon Vision (IHV) 2025

Introduced in 2001, IHV 2025 laid out the long-term vision for the oil and gas sector with objectives of enhancing energy security and promoting a free market and competition within the sector. In the medium- and long-term strategies contained in the IHV 2025, some salient features stand out, notably increasing operational flexibility and autonomy of PSUs, developing the sector to a globally competitive level and better utilisation of domestic hydrocarbon resources. The IHV 2025 confirmed the importance of foreign investment, but also emphasised the critical role of Indian PSUs.

- 4 Is there an official, publicly available register for licences and licensees?

There is no official or publicly available register for licences or licensees. However, the required information is available on the website of the Ministry of Petroleum and Natural Resources and the website of the Director General of Hydrocarbons.

- 5 Describe the general legal system in your country.

The Constitution of India, 1950 is the supreme law of the land and the fundamental source of law in India. The Constitution gives due recognition to statutes, case law and customary law (common law). India has a single unified judicial system. The Supreme Court is at the apex of the entire judicial system followed by High Courts in each state or group of states. There is a hierarchy of subordinate courts below each state's High Court. Panchayat Courts also function in some states under various names like Nyaya Panchayat, Panchayat Adalat and Gram Kachheri to decide civil and criminal disputes of a petty and local nature.

India is a secular society and has adopted common law concepts into its legal system. It has codified and uniform commercial codes that include contract law, corporate law, exchange control regulations and the like. The Industrial Policy, naturally, is coloured by the political philosophy of the government in power and finds expression in the form of policy pronouncements, press notes and notifications under the Industries (Development and Regulation) Act and cognate legislations such as the FEMA, Competition Act.

Foreign judgments and arbitral awards are enforceable in India owing to the express provisions contained in the Civil Procedure Code, 1908 and Arbitration and Conciliation Act, 1996. India's Arbitration and Conciliation Act, 1996 provides a statutory framework for the enforcement of foreign arbitral awards given in countries that are signatories to either the 1927 Convention on the Execution of Foreign Arbitral Awards (Geneva Convention) or the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

A foreign judgment can be enforced in India in one of two ways:

- judgments from courts in 'reciprocating territories' can be enforced directly by filing an execution decree, before an Indian court; and
- judgments from 'non-reciprocating territories', such as the United States, can be enforced only by filing a lawsuit in an Indian court for a judgment based on the foreign judgment. The foreign judgment is considered evidentiary. The time limit to file such a lawsuit in India is within three years of the foreign judgment.

There are a number of statutes that have anti-corruption and anti-bribery provisions such as the Indian Penal Code, 1860 (IPC), Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002, Right to Information Act, 2005, Central Vigilance Commission Act, Lokayukta Acts of states, etc. India recently enacted the Lokpal and Lokayukta Act, which is a landmark legislation aimed at combating corruption by creating an anti-graft ombudsman with broad powers to prosecute all offending politicians, ministers and senior civil servants, including the Prime Minister of the country. Key stated objectives of the new law are the more effective implementation of the United Nations Convention Against Corruption, which India has ratified, and the prompt and fair investigation and prosecution of cases of corruption. The legislation was adopted on the basis and in furtherance of India's main anti-corruption law, the Prevention of Corruption Act, 1988.

Regulation overview

- 6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

Regulatory frameworks are the laws and regulations that outline the legal requirements to be met. They may also be complemented by policies, standards, directives and guidelines. At present, the Ministry of Petroleum and Natural Gas (MOPNG) is in charge of regulating the upstream sector and the Director General of Hydrocarbons (DGH) performs technical advisory functions. The government is empowered under the constitution to make laws with respect to regulation and development of oilfields and mineral oil resources and petroleum and petroleum products. In exercise of these powers, the government has drawn up a comprehensive set of petroleum legislation that regulates and covers various facets of the industry. The MOPNG is responsible for the administration of the petroleum legislation. The Oil Fields (Regulation and Development) Act, 1948 and the Petroleum and Natural Gas Rules, 1959 made by the government provide the regulatory framework for domestic exploration and production of oil and gas. In April 1993, DGH was set up under administrative control of the MOPNG to promote sound management of domestic oil and gas resources, keeping in view the environmental safety, technological and economic aspects of upstream activities. In September 2006, the government designated DGH as the authority or agency under the 1948 Act to exercise statutory powers to carry out its functions.

The regulatory regime specific to the oil and gas industry constitutes primarily the Petroleum Act, 1934, the Petroleum Rules, 1974, the Petroleum and Natural Gas Rules, 1959 and the Oilfields (Regulation and Development) Act, 1948. These statutes and rules lay down the substantive and procedural requirements to be complied with in order for a private party to engage in E&P, refining, import and distribution activities relating to petroleum products. In addition, the Petroleum Ministry, from time to time, announces various notifications and regulations, which govern the procedural and policy norms for the sector.

The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 provides for the grant of a licence by the government to explore and exploit the resources of the continental shelf and the Exclusive Economic Zone.

- 7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

As per Rule 21 of The Petroleum and Natural Gas Rules, 1959, (PNG Rules) the licence of a licensee can be cancelled if the licensee or the lessee or his or her executor, administrator or assignee at any time during the term of the licence or the lease:

- fails to fulfil, or contravenes, any of the terms, covenants and conditions contained therein;
- fails to use the land covered by it bonafide for the purposes for

- which it has been granted; or
- uses such land for a purpose other than that for which it has been granted.

In such a case, the central government or as the case may be, the state government with the prior approval of the central government, may, where it is satisfied that the failure, contravention or use is such as cannot be remedied, on giving 30 days' notice to such a person and after considering the representation, if any, made by him or her forfeit the whole or any part of the security deposit made under rule 11 (1) or rule 13 (1) (a) of the PNG Rules and may cancel the licence or the lease.

- 8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

Ministry of Petroleum and Natural Gas (MOPNG)

The MOPNG oversees the entire oil and gas sector and is responsible for the grant of licences and leases to private and public sector companies alike, ranging from exploration and production (E&P), refining, supply, distribution to marketing and pricing, and initiates and implements the five-year plans for the oil and gas sector. It oversees import, export and conservation of petroleum products and natural gas. The MOPNG regulates the allocation of gas under the Gas Utilisation Policy and pricing of gas produced by its PSUs through administrative orders, while gas from JVs and from NELP fields are governed through PSCs. The MOPNG supervises eight statutory bodies and 14 PSUs. It also has responsibility for the development and implementation of the pricing policy and for supervising the marketing of biofuels.

The Directorate General for Hydrocarbons (DGH)

The DGH was established in 1993 and acts as the upstream regulator. Its original role was to provide technical advice to the MOPNG on upstream sector development. Since 2000, the DGH generally represents the Indian government at the management committee meetings for the PSCs. In 2006, DGH was empowered to monitor the country's E&P activities and coal bed methane projects and to obtain all data from all lessees and licensees to monitor the government revenues from upstream projects.

The Petroleum Planning and Analysis Cell (PPAC)

The PPAC was created in 2002 to enhance the institutional capacity of oil and gas-related data management and analysis. It administers the subsidies on kerosene and domestic LPG and analyses trends in the oil and gas market, including prices and import and export.

Petroleum and Natural Gas Regulator Board (PNGRB)

The PNGRB was created in 2006 as a downstream regulator. The members of the board are nominated by the government and although it operates independently from the MOPNG, it receives directions from the ministry. The PNGRB regulates the refining, processing, storage, transportation, distribution, marketing and sales of both petroleum products and natural gas. It also regulates transportation access and rates and access to distribution or city networks.

- 9 What government body maintains oil production, export and import statistics?

The Economic Division of the Ministry of Petroleum and Natural Gas maintains all data and statistics relating to production of oil and export and import statistics. Further, the Central Statistics Office, Ministry of Statistics and Programme Implementation of the government also brings out a publication titled *Energy Statistics*, which

contains the latest data available from the concerned Ministries of the government, in respect of different energy sources and a brief analysis of the data on reserves, installed capacity, potential for generation, production, consumption, import, export and wholesale price of different energy commodities.

Natural resources

- 10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

As per Entry 53 of List I of the Constitution of India, the jurisdiction to regulate oilfields vests with the central government.

As per Entry 25 of List II of the Constitution of India, regulation and development of oilfields and mineral oil resources and petroleum and petroleum products vests with the central government. Further, by virtue of article 297 of the Constitution of India, petroleum in its natural state in the territorial waters and the continental shelf of India is vested in the Union of India.

As per Indian law, all rights over minerals on any land, surface or subsurface, vest absolutely with the central government.

- 11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil reserves in India are found both onshore as well as offshore. Therefore, both onshore and offshore oil exploration activity is undertaken in India.

Generally, the areas having oil reserves are earmarked or declared as off-limits for any other activity, the reason being that both the reserves as well as production are acutely short of meeting the oil demand of the country. However, an application for prior screening for environmental clearance has to be submitted before starting any construction work or preparation of land on the identified site, project or activity by the project management, except for securing the land.

- 12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The rights to explore and produce are granted by a competitive bidding process post introduction of NELP. The NELP awards exploration blocks through international competitive bidding and allows 100 per cent foreign and private participation. While earlier allocation of upstream projects to PSUs was controlled through administrative orders from the Indian government, under the NELP, the PSUs had to begin competing on an equal footing with private and foreign companies, with the PSC as the managing instrument.

- 13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The state oil companies do have the right to participate in a licence, albeit through the competitive bidding route under NELP. There is no limit on a maximum participating interest. The state oil companies have the right to participate in the operatorship of a licence and the state oil companies such as ONGC and OIL have won various blocks under NELP and have entered into PSCs with the government, wherein they are the operators.

- 14** If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are there any tax stabilisation measures in place?

Under the PSC, the companies (lessees) are required to pay a royalty to the government (lessor) for offshore areas at the rate of 10 per cent of the wellhead value of crude oil and natural gas. In the case of an onshore area, companies are required to pay to the state government at the rate of 12.5 per cent of the wellhead value of crude oil and 10 per cent of the wellhead value of natural gas. Where an offshore area falls beyond 400 metres isobath, the rate of royalty payable by companies to the government is at the rate of 5 per cent of the wellhead value of crude oil and natural gas for the first seven years from the date of commencement of commercial production in the field.

Apart from the royalty, the contractor, licensee or lessee is required to pay an initial licence or lease fee, security deposit, annual licence fee and mining lease fees rent as per the provisions of the Petroleum and Natural Gas Rules, 1959.

- 15** What is the customary duration of oil leases, concessions or licences?

The term of a licence shall, in the first instance, be valid for a period of four years, which may be extended for two further periods of one year each. The term of a lease shall ordinarily be 20 years, which may be extended by five more years or such period as may be agreed after taking into account the balance recoverable reserve and balance economic life of the field or development area from the expiry of the initial period.

- 16** For offshore production, how far seaward does the regulatory regime extend?

The sovereign right of India over territorial waters extends up to 12 nautical miles measured from the appropriate baseline to the seabed and underlying subsoil, as well as the airspace over such waters. The Union of India also has sovereign rights for the purpose of exploration, exploitation, conservation and management of natural resources in the Exclusive Economic Zone, which includes the continental shelf and extends up to 200 nautical miles. It also exercises exclusive jurisdiction in respect of authorising all such operations as are necessary for the exploration and exploitation of the resources of the zone. The Union of India is further empowered to extend the jurisdiction of any of the existing laws of India to the Exclusive Economic Zone. In pursuance of these powers, the government of India has extended the applicability of the Income Tax Act, 1961 to operations carried out within the continental shelf and the applicability of the Customs Act, 1965 to specific coordinates within the zone.

- 17** Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is no difference between the onshore and offshore regimes as the governing ministry for both the regimes is the same. Similarly, the policies, acts, rules and regulations are common for both the regimes. The right to explore and produce crude oil and gas is now awarded under NELP.

However, for shale gas, in September 2013, the government approved the shale gas and oil exploration policy. The government's policy initially permits state-run ONGC and OIL to explore shale resources from onland blocks that were allotted to them on a nomination basis before the advent of the NELP. This policy will allow national oil companies to carry out exploration and exploitation of unconventional hydrocarbon resources, particularly shale gas and

oil in their already awarded onland Petroleum Exploration Licence and Petroleum Mining Lease (PEL/PML) acreages under the nomination regime. The companies will be permitted three assessment phases, each with a maximum period of three years and the royalties and taxes would be the same as for conventional production in a particular area.

- 18** Which entities may perform exploration and production activities? Describe any registration requirements. What criteria and procedures apply in selecting such entities?

Under the NELP, both the foreign and Indian private companies are invited to supplement the efforts of national oil companies in the discovery of hydrocarbons. The development of the E&P sector has been significantly boosted through this policy of the government of India, which has brought major liberalisation in the sector and opened up E&P for private and foreign investment, where 100 per cent foreign direct investment (FDI) is allowed. Under NELP, acreages are offered to the participating companies through the process of open competitive bidding.

- 19** What is the legal regime for joint ventures?

As per the NELP, both the domestic and foreign companies can participate in the bidding process for the oil and gas blocks, either as a sole bidder or as a joint venture. There is no requirement for incorporating an SPV or a subsidiary by foreign companies or joint ventures for the purpose of bidding. Foreign companies can operate a block through a project office opened in India and the provisions of PSC are applicable in such a case. However, the provisions of the FDI policy are applicable for foreign companies desiring to invest in the petroleum sector.

- 20** How does reservoir unitisation apply to domestic and cross-border reservoirs?

Unitisation is the consolidation of exploration and production activities affecting several parcels of land or several interest holders in a given parcel. The process of sharing the benefits and costs of exploration and production according to the percentage of the reserves located within its maritime territory undertaken as a single development scheme is often referred to as 'unitisation'. The consolidated activities are usually conducted by a unit operator. The goal is the efficient development of a common reservoir and equitable distribution of the costs, risks and benefits of production. Reservoir unitisation is not prevalent in India and there is no policy relating to the same.

- 21** Is there any limit on a party's liability under a licence, contract or concession?

Under the PSC, the liability of the contractor is limited to any liability undertaken or incurred in respect of, relating to or connected with the contract and any claim arising out of, or in relation to, the act of negligence, misconduct, commission or omission in carrying out petroleum operations during the period between the effective date and the date of relinquishment of the contract area or termination or expiry of the contract, as the case may be.

- 22** Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

As per the PSC, the licensee (including every member thereof) is required to furnish a bank guarantee in favour of the government. Further, financial and performance guarantee in favour of the government from a parent company acceptable to the government, or, where there is no such parent company, the financial and

performance guarantee from the company itself is required to be furnished.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

No, there is no such requirement that a company must use a minimum amount of locally sourced goods, services and capital and 100 per cent FDI is allowed in E&P activities.

Transfers to third parties

24 Is government consent required for a company to transfer its interest in a licence, concession or production-sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any preemptive rights reserved for the government?

Any party comprising the contractor may assign, or transfer, a part or all of its participating interest, with the prior written consent of the government. Such consent shall not be unreasonably withheld, but is subject to the terms and conditions provided in the PSC.

A change in control requires similar approval.

For seeking approval for transfer of interest or change of control, an application for consent to assign or transfer has to be submitted, which should be accompanied by all relevant information concerning the proposed assignment or transfer, including detailed information on the proposed assignee or transferee and its shareholding and corporate structure, as was earlier required from the companies constituting the contractor, the terms of the proposed assignment or transfer and the unconditional undertaking referred to in article 28 of the PSC.

25 Is government consent required for a change of operator?

Government consent is required to change an operator as it is a licensed operation.

26 Are there any specific fees or taxes levied by the government on a transfer or change of control?

The government does not levy or charge any fee or tax for transfer or change of control.

Decommissioning

27 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Rule 12 of The Petroleum and Natural Gas (Safety in Offshore Operations) Rules, 2008 stipulates for a detailed decommissioning plan to be submitted either by the licensee, the lessee or, as the case may be, the operator, to the competent authority.

Rule 142 (6) provides that when a well is abandoned, the barriers shall be designed to provide for well integrity for the longest period of time that the well is expected to be abandoned, inter alia, in such a manner that outflow from the well or leakages to the external environment do not occur.

Rule 148 (1) provides that all wells shall be secured before they are abandoned in such a manner that well integrity remains intact during the time they are abandoned.

Further, provisions of the Model PSC issued by the Ministry of Petroleum and Natural Gas relating to abandonment shall apply to particular cases of abandonment or decommissioning.

28 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

There is no requirement for any security deposit in respect of future decommissioning liabilities.

Transportation

29 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The Petroleum Act, 1934 was the first act to regulate the transport of petroleum products in India. The Petroleum Rules, 2002 regulate the transport of petroleum products. As per Rule 16 of the Rules, petroleum cannot be imported into India by sea except through the ports that are duly approved for this purpose by the Ministry of Shipping in consultation with the Chief Controller of Explosives, and declared as customs ports by the Commissioner of Customs.

Chapter III of the above Rules deal with transport of petroleum. Part II deals with transport by water, Part IV deals with transport on land by vehicles and Part V deals with transport by pipeline.

The PNGRB regulates the transportation of crude oil and crude oil products. It also regulates transportation access and rates, and access to distribution or city networks.

The Petroleum and Minerals Pipeline Act, 1962 provides for acquisition of rights of user in land for laying pipelines for transport of petroleum and minerals.

The Petroleum and Natural Gas (Safety in Offshore Operations) Rules, 2008 prescribes rules for the transportation of crude oil and crude oil products.

30 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

For obtaining a permit or licence for transporting crude oil and crude oil products, the provisions of Chapter VII of the Petroleum Rules, 2002 are applicable. The application for licence has to be made in appropriate format, provided in the Rules, giving the necessary details and getting a (No Objection) Certificate from the district authority in relation to the location of the premises proposed to be licensed. The licence is issued on payment of requisite fee and on fulfilling all the conditions prescribed for grant of licence under the Rules.

Health, safety and environment

31 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Prior environmental clearance from the Ministry of Environment and Forest is required before starting any construction work or preparation of land on the identified site, project or activity by the project management, except for securing the land for any oil-related activity under the provisions of the Environment Protection Act, 1986 and the Rules made thereunder.

Safety standards published by Oil Industry Safety Directorate are applicable for all oil related facility operations.

The Petroleum and Natural Gas (Safety in Offshore Operations) Rules, 2008, which have been framed under the Oilfields (Regulation and Development) Act, 1948, also prescribe safety standards and measures in offshore operations and the Oil Industry Safety Directorate has been designated as the competent authority to exercise powers and functions under the Rules. The Rules provide for the maintenance of information and records as well as providing

for penalty for contravention of the Rules. Such a penalty may be imprisonment, which may extend to six months or with a fine, which may extend to 1,000 rupees or with both.

The Mines Act, 1952 contains provisions for measures relating to the health, safety and welfare of workers in coal mines, metalliferous mines and oil mines. The Act is administered by the Ministry of Labour and Employment through the Directorate General of Mines Safety (DGMS). DGMS is the Indian government regulatory agency for safety in mines and oilfields. It conducts inspections and inquiries, issues competency tests for the purpose of appointment to various posts in the mines and organises seminars and conferences on various aspects of safety of workers.

Section 67 of the Mines Act provides that whoever, except as permitted by section 38, contravenes any provision of this Act or of any regulation, rule or by-law, or of any order made thereunder, prohibiting, restricting or regulating the employment or presence of persons in or about a mine shall be punishable with imprisonment for a term, which may extend to three months or with fine, which may extend to 1,000 rupees, or with both.

32 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The provisions of the Environment Protection Act, 1986 and the Rules made thereunder are applicable to oil and oil product composition. The Ministry of Environment and Forest is the ministry concerned with the implementation of the provisions of the Environment Protection Act and the Rules made thereunder. The Central Pollution Control Board and State Pollution Control Boards are the agencies administering the various rules and regulations issued under the Environment Protection Act.

Labour

33 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Apart from the acts, rules and regulations relating to the petroleum industry, the oil industry labour in India are covered under the various labour legislations enacted from time to time, such as The Mines Act, 1952, Payment of Gratuity Act, Maternity Benefit Act, Equal Remuneration Act, The Workmen's Compensation Act, 1923, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, etc.

As per the guidelines issued by government, employment visas for foreign personnel coming to India for the execution of projects and contracts may be granted by Indian missions to highly skilled and professionals to the extent of 1 per cent of the total persons employed on the project, subject to a maximum of 20.

Taxation

34 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The Petroleum Tax Guide, 1999 compiles the specific provisions of the laws relating to income tax, customs duty, central excise, cess, royalties and licence and lease fees as applicable to activities connected with the prospecting for, extraction or production of petroleum in the upstream sector under contracts entered into on or after 1 January 1999 in terms of the NELP.

The Indian tax structure is governed by the provisions of the Income Tax Act, 1961. A brief synopsis of the Indian taxation system for this sector is outlined below:

- taxable profits of a tax payer, who has entered into a PSC with the government for participation in the business of prospecting and E&P of mineral oil are to be determined in accordance with the special provisions contained in the PSC. Specific allowances in addition or in lieu of allowances under normal provisions, as specified in the PSC are permitted;
- a special deduction of 100 per cent of exploration and drilling expenses. Allowable expenditure is aggregated until the commencement of commercial production. Accumulated expenditures are then allowed in the year of commencement of commercial production or permitted to be amortised over a period of 10 years;
- all unsuccessful exploration costs in other contract areas can be set off against income in such contract area in which commercial production has successfully commenced;
- a 100 per cent tax holiday is available in respect of profits earned from production of mineral oils under section 80IB(9). Such a tax holiday is available for seven consecutive years from the year of commencement of commercial production. However, companies availing deduction under these provisions would still be liable to pay Minimum Alternative Tax (MAT) on 'book profits';
- though the period of carry forward of MAT credit remains the same at 10 years, the rate of MAT has been increased from 18 per cent to 18.5 per cent on book profits, increasing the burden of companies claiming tax holidays and exemptions;
- a special deduction is available for site restoration expenses. Such a deduction is an amount lower than the sum deposited either in a special account or in a 'site restoration account' or 20 per cent of the profits calculated in the prescribed manner; and
- deduction is allowed for capital expenditure incurred by a taxpayer for the business of laying and operating a cross country natural gas, crude or petroleum oil pipeline for distribution, including storage facilities being an integral part of such a network, if at the least one-third of a natural gas pipeline or a quarter of the petroleum product pipeline capacity is made available for use on common-carried basis, as prescribed by the PNGRB. This is as per section 35AD of the Act.

Section 42 of the Indian Income Tax Act, 1961 only provides for deduction of expenditure incurred on drilling and exploration activities in relation to the agreement entered into with the central government.

Crude oil and natural gas is subject to a zero rate of excise duty but excise duty and service tax is payable on goods and services used in exploration and extraction of these products. Further, no customs duty is levied on imports required for petroleum operations.

Besides the above, the state governments levy Sales Tax and VAT on petroleum products.

Commodity price controls

35 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Pricing of India's petroleum products was decided by the government under the Administered Pricing Mechanism (APM) until it was dismantled in April 2002. The APM was based on a cost of operating capital plus formula. Under the post-APM regime, OMCs were allowed to set the price of all fuels, while two strategically important products for the poor, kerosene and LPG, remained regulated. However, two major transportation fuels, gasoline (petrol) and diesel, were still regulated by the government, although there was no official subsidy provided for these fuels. The Indian government announced the deregulation of gasoline prices and the phased

deregulation of diesel prices in 2010, but in 2013, diesel prices were still regulated.

At present, the retail selling prices of only three products, namely, diesel (retail sales), PDS kerosene and subsidised domestic LPG are regulated by the government. The prices of all other petroleum products including petrol have been made market-determined. The price of diesel since 2006 is based on trade parity pricing (TPP) computed as the weighted average price of IPP and EPP. The weight assigned to IPP is 80 per cent and the weight assigned to EPP is 20 per cent for computing TPP. The RGP of PDS kerosene and domestic LPG are based on IPP as provided for in the policy enunciated in the PDS Kerosene and Domestic LPG Subsidy Scheme, 2002. The prices of the three products are worked out on the basis of the daily FOB quotes of Arab Gulf prices as published by Platts & Argus.

Competition, trade and merger control

36 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Competition Commission of India (the Competition Watchdog) has been empowered under the Competition Act, 2002 to inquire, investigate and penalise any anti-competitive behaviour by any company (whether a government undertaking or otherwise). However, any other regulatory issues and inconsistencies are dealt with by PNGRB.

37 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The Competition Commission of India upon receipt of information investigates the matter for any alleged cartelisation, abuse of dominant position, anti-competitive agreements between the parties, resale price maintenance, etc. The Competition Commission of India is also empowered to investigate any merger or acquisition that may have adverse effect on competition. However, in such cases, the companies may approach the Competition Commission of India and engage in a consultation mode. The Competition Commission of India, generally, gives an opinion on the issue and advises parties on remedial measures.

International

38 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

India is signatory to the Law of the Sea Treaty and has sovereign rights over territorial waters extending up to 12 nautical miles measured from the appropriate baseline to the seabed and subsoil

Update and trends

NELP has opened new avenues for foreign companies in the E&P sector in India. The CBM policy in India is one of the most investor-friendly policies in the world. Besides attractive fiscal and contractual terms, a totally transparent and fair-bid evaluation criteria (BEC) has been evolved and is in place. In September 2013, the government approved the shale gas and oil exploration policy. The government's policy initially permits state-run ONGC & Oil to explore shale resources from onland blocks that were allotted to them on a nomination basis before the advent of the NELP. In the future, the government will offer shale oil and gas blocks to other companies.

To attract foreign investment in the petroleum and natural gas sector, various policy initiatives have been taken in recent years. The present FDI policy for the petroleum and natural gas sector allows a 100 per cent automatic route for exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas pipelines, LNG regasification infrastructure, market study and formulation and petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector.

underlying and the airspace over such waters. The Union of India also has sovereign rights for the purpose of exploration, exploitation, conservation and management of natural resources in the Exclusive Economic Zone, which includes the continental shelf and extends up to 200 nautical miles. It also exercises exclusive jurisdiction in respect of authorising all such operations as are necessary for the exploration and exploitation of the resources of the Zone. The Union of India is further empowered to extend the jurisdiction of any of the existing laws of India to the Exclusive Economic Zone.

India is a member of the World Trade Organization (WTO) and a party to various WTO agreements. These instruments generally prevent member states from discriminating against imported products and services or between products and services of different member states.

39 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

One hundred per cent FDI is allowed in petroleum refining, oil exploration in both small and medium-sized fields, pipelines (both petroleum products and gas) and marketing and retail through the automatic route. Moreover, marketing of transport fuels (petrol, diesel and aviation fuel) is also permitted subject to an investment of 20 billion rupees in E&P, refining, pipelines or terminals. At present, 100 per cent FDI is allowed through the FIPB route for both LNG



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projects and natural gas pipeline projects. Also, the Natural Gas Pipeline Policy has been enacted to promote competition. Moreover, the Planning Commission's thrust to meet the demand for energy through safe, clean and convenient forms of energy at the least cost in a technically efficient, economically viable and environmentally sustainable manner is laid down in the report, Integrated Energy Policy, August 2006.

Foreign companies or individuals can acquire stakes in oil-related assets through their subsidiaries incorporated under the Indian law, subject to FDI regulations.

40 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

The import of petroleum is regulated by the provisions of the Petroleum Act, 1934 and Rules made thereunder. The Exim Policy of India provides that importation of all petroleum products is permitted under the Open General Licensing Scheme, except crude oil, motor spirit, diesel, ATF, FO and bitumen. These imports are permitted under a freely-tradable Special Import Licence.

Exports of ATF, bitumen, crude oil, diesel, kerosene, LPG, motor spirit, naphtha and raw petroleum coke are canalised through the Indian Oil Corporation Ltd. All other petroleum products can be freely exported.

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