

Business and Regulatory Policy in India

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India's rapid industrialization and increased role in the world economy continues to substantially increase its demand for oil and gas. India's total primary energy consumption was 272.1 million tones of oil equivalent (mtoe) in 1998. This increased by almost 50 per cent by 2007 when the primary energy consumption rose to 404.4 mtoe. So a vibrant and dynamic oil and gas sector is an imperative for a national economy attaining growth and realizing its potential.

Reforms in the oil and gas sector began to stimulate production after 1991 by opening onshore exploration and production blocks to private and foreign firms through production sharing contracts under NELP. In the last 10 years, a number of policy initiatives have been taken by the Government to attract investors in the upstream sector. Several private players have ventured in to the sector thereby ending the monopoly of public sector companies like ONGC and OIL. To increase upstream investments the ministry of petroleum & Natural gas has introduced a transparent bidding process for allocation of oil and gas blocks. Prior to NELP blocks were given only to NOC (National Oil Companies) and Joint Venture is the only option for the Private entity to enter the sector. After NELP the industry structure has changed significantly. Eight round of competitive bidding have taken place under the New Exploration Licensing Policy (NELP) and around 250 blocks have been awarded to various players who have made a cumulative investment commitment of nearly USD 12 billion.

Now Public sector units have to compete on the same terms with the private participants under NELP. So the ONGC and OIL have to bid for blocks instead of being awarded blocks on nomination basis in the past. The legal framework for E & P of oil and gas is provided by the Oilfields (Regulation and Development) Act 1948 and the Petroleum and Natural gas rules 1959. These two main pieces of legislations govern the exploration and production activity apart from other laws which governs fiscal and environmental issues. The Oilfields (Regulation and Development) Amendment Act 1998 which was passed by the Lok Sabha in December 1998 paved the way for a higher flow of foreign direct investment in exploration and production activities. Even though there is a separate statutory body to regulate the downstream segment, i.e., Petroleum and Natural gas regulatory board, there is no such statutory body to govern the upstream petroleum industry. The need for an upstream regulator is very much felt now because so much exploration activity is going on. Once we have a regulator, then it won't be a mere advisor to the ministry but it will be on its own. Presently, DGH has no statutory authority to decide all or some of the issues at hand and they are ultimately referred to the ministry of Petroleum and Natural Gas.

DGH as an agency under the ministry of petroleum and natural gas and is involved in the issue of licenses and production sharing contract, major multinational players in the industry are still uninterested to enter the sector due to the lack of efficient regulatory frame work, not to mention the very low response for the eighth offer of blocks. On the contractual part the model production sharing contract (Between Contractor and Government) give arise to many legal issues in the area of dispute resolution, force majeure, abandonment, assignment etc... The determination of royalty based on well head price has also attracted debate among legal and tax experts. So a stable and effective regulatory framework is an essential need to encourage private investment in E & P business. As the owner of the natural resources the government should make sure there is a well defined regulatory frame work in place to attract private participation in to E & P business for the development of the resources. The main purpose of this research paper is to critically analyze our present regulatory framework including the production sharing contract governing the exploration & production activities and highlighting the legal issues.