

Oil & Gas Industry in India

Legal, Regulatory and Tax

February 2018

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1. Introduction

India is one of the fastest growing major economies in the world and the third largest consumer of petroleum products, after US and China.¹ Although there is an increased focus on gas and renewables, demand for oil has always been on the rise, and is estimated to grow at least until 2040.² As per the report published by India Brand Equity Foundation (IBEF)³, India's energy demand is expected to double to 1,516 million tonnes of oil equivalent (Mtoe) by 2035 from 723.9 Mtoe in 2016. Moreover, India's share in global primary energy consumption is projected to increase by two-folds by 2035.

India's total oil imports rose 4.24 percent year-on-year to US\$ 86.45 billion in 2016-17. India's oil consumption grew 8.3 percent year-on-year to 212.7 million tonnes in 2016, as against the global growth of 1.5 percent, thereby making it the third-largest oil consuming nation in the world. India is the fourth-largest Liquefied Natural Gas (LNG) importer after Japan, South Korea and China, and accounts for 5.8 percent of the total global trade.⁴

In 2016-17, India consumed 193.745 MMT of petroleum products, while the consumption stood at 184.674 MMT during 2015-16. In 2017-18, up to September, the figure stood at 96.82 MMT. India has always been an import dependent nation in the Oil and

Natural Gas ("O&NG") sector. India's domestic crude oil production of 36.95 million tonnes in 2015-16 barely met 20 percent of its oil needs. Natural gas output at 32.249 billion cubic meters meets less than half of its needs.⁵ As a result of significant dependence on import, Prime Minister Narendra Modi has set a target to reduce dependence on crude imports by 10% by 2022.

In India, the O&NG industry has huge potential and contributes over 15% to the India's GDP. The landscape in the O&NG sector promises to be dynamic with scope for growth of business entities. This industry has always attracted foreign direct investments, and according to data released by the Department of Industrial Policy and Promotion (DIPP), the petroleum and natural gas sector attracted FDI worth US\$ 6.86 billion between April 2000 and September 2017.⁶ With 3.14 million sq. km of potential reserves lying unexplored until 2016, India's potential in the oil and gas sector is immense and there exists vast headroom for new discoveries.⁷

There has also been an increase in the refining of petroleum products in India. IBEF's report suggests that in the current financial year, India had 234.5 MMTPA of refining capacity, making it the 2nd largest refiner in Asia. The rise in refined petroleum products is primarily driven

1. 'Cautious optimism has returned across the industry' (published on December 31, 2017), available on <http://www.thehindubusinessline.com/specials/year-in-review-cautious-optimism-has-returned-across-the-industry-indian-oil-chief/article10007043.ece> (accessed on 9 January 2018).
2. 'India's time to capitalize on oil and gas sector' (published on December 22, 2017), available on <http://www.livemint.com/Opinion/FjMgDDggOkPZO5qounbRjM/Indias-time-to-capitalize-on-oil-and-gas-sector.html> (accessed on January 8, 2018).
3. IBEF is a trust established by the Department of Commerce, Ministry of Commerce and Industry, Government of India. IBEF's objective is to promote and create international awareness of the Made in India label in markets overseas and to facilitate dissemination of knowledge of Indian products.
4. India Brand Equity Foundation, The Indian Oil and Gas Sector (published in October, 2017) https://www.ibef.org/download/Oil_and_Gas-October-2017.pdf; also see <https://www.ibef.org/industry/oil-gas-india.aspx> (accessed on January 8, 2018).

5. 'Year that saw oil, gas production switch to revenue-sharing mode' (published on December 30, 2017), available on <https://economictimes.indiatimes.com/industry/energy/oil-gas/year-that-saw-oil-gas-production-switch-to-revenue-sharing-mode/articleshow/62306282.cms> (accessed on January 8, 2018).
6. Fact sheet on Foreign Direct Investment, available on http://dipp.nic.in/sites/default/files/FDI_FactSheet_June2017_2_0.pdf (accessed on January 8, 2018).
7. 'India's time to capitalize on oil and gas sector' (published on December 22, 2017), available on <http://www.livemint.com/Opinion/FjMgDDggOkPZO5qounbRjM/Indias-time-to-capitalize-on-oil-and-gas-sector.html> (accessed on January 8, 2018).

by the massive domestic market. Separately, the Government of India's push towards a gas based economy⁸ is estimated to present new investments and opportunities in this area. India's focus on a gas based economy is in line with the global commitment made at the Paris meeting on climate change, which aims to reduce India's carbon emissions by up to 35% from 2005 levels by 2030 and producing 40% of the power from non-fossil fuel sources by 2030. These developments present an opportunity for India's downstream and midstream oil and gas sectors.

It is expected that India's petrochemical market will grow at a compound annual growth rate of 10% over the next five years and reach the \$100 billion mark by 2022. The industry can potentially enhance India's growth through the development of niche products and promotion of exports.⁹

The Government of India, under the Constitution of India, 1950 ("**Constitution**") has the power to legislate in respect of O&NG. Legislative powers are conferred on the Government of India under Entry 53, to List I of Schedule VII of the Constitution.¹⁰ From an industry perspective, O&NG industry is divided into three major segments:

- **Upstream:** Comprises of activities pertaining to exploration, recovery and production of O&NG. In industry parlance, it is simply called Exploration and Production ("**E&P**").
- **Midstream:** Processes, stores, markets and transports commodities such as crude oil, natural gas, natural gas liquids (liquefied natural gas such as ethane, propane and butane) and sulphur.
- **Downstream:** Refers to the refining of crude oil and the selling and distribution of natural gas and products derived from crude oil.

8. Press Information Bureau, Government of India, Ministry of Petroleum & Natural Gas, '*Steps being taken to make India a Gas based economy*', (published on November 21, 2016), available on <http://pib.nic.in/newsite/PrintRelease.aspx?relid=153957> (accessed on January 9, 2018).

9. '*India's time to capitalize on oil and gas sector*' (published on December 22, 2017), available on <http://www.livemint.com/Opinion/FjMgDDggOkPZo5qounbRjM/Indias-time-to-capitalize-on-oil-and-gas-sector.html> (accessed on January 8, 2018).

10. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

2. Industry at a Glance

I. Import¹¹

| Item | Quantity [TMT] | value [Rs. (billion)] |
|--------------------|----------------|-----------------------|
| Crude Oil | 213932 | 470251 |
| LNG | 18631 | 40813 |
| Petroleum Products | 35413 | 70727 |

II. Export¹²

| Item | Quantity [TMT] | value [Rs. (billion)] |
|--------------------|----------------|-----------------------|
| Crude Oil | N.A. | N.A. |
| LNG | N.A. | N.A. |
| Petroleum Products | 65513 | 194893 |

The key domestic oil and gas companies are:¹³

| Company | Financial Year 2017 turnover (US\$ billion) |
|---|---|
| Indian Oil Corporation Limited | 55.29 |
| Reliance Industries | 48.46 |
| Bharat Petroleum Corporation Limited | 31.13 |
| Hindustan Petroleum Corporation Limited | 29.26 |
| ONGC | 11.99 |
| Gail India Limited | 7.68 |
| Oil India Limited | 1.69 |

The key International oil and gas companies operating in India are Cairn India, Shell, BG group and British Petroleum.¹⁴

11. Ministry of Petroleum and Natural Gas, 'Indian Petroleum and Natural Gas Statistics'(published in September, 2017),available on <http://www.indiaenvironmentportal.org.in/files/file/pngstat%202016-17.pdf> (accessed on January 24, 2018).

12. Ministry of Petroleum and Natural Gas, 'Indian Petroleum and Natural Gas Statistics'(published in September, 2017),available on <http://www.indiaenvironmentportal.org.in/files/file/pngstat%202016-17.pdf> (accessed on January 24, 2018).

13. India Brand Equity Foundation, the Indian Oil and Gas Sector (published in October 2017) https://www.ibef.org/download/Oil_and_Gas-October-_2017.pdf; also see <https://www.ibef.org/industry/oil-gas-india.aspx> (accessed on January 8, 2018).

14. India Brand Equity Foundation, Oil and Gas, (published in April, 2016), available on <https://www.ibef.org/download/Oil-and-Gas-April-2017.pdf> (accessed on January 24, 2018).

III. Major Industry Players

The major industry players in India's O&NG sector currently are:

- i. **Upstream Sector:** Oil and Natural Gas Corporation (ONGC), Oil India Limited and Crain Energy. ONGC is the largest upstream company in E&P segment accounting for approximately 61.5 percent of India's total oil output. During the Financial year 2016, 1,118,000 meters of wells were explored and developed in India, and during the same period, 506 wells were drilled in India.
- ii. **Midstream Sector:** Indian Oil Corporation, Gas Authority of India Limited, etc. Indian Oil Corporation operates a 11,214 km network of crude, gas and product pipelines, with a capacity of 1.6 million barrels per day (mbpd) of oil and 10 million metric standard cubic meters per day (mmscmd) of gas. This is around 30 percent of the India's total pipeline network.
- iii. **Downstream Sector:** Indian Oil Corporation, Bharat Petroleum Corporation Limited, Hindustan petroleum, etc. Indian Oil Corporation is the largest company, controlling 10 out of 22 Indian refineries, with a combined capacity of 1.31 mbpd.

3. Recent Initiatives by the Government of India

As per India Brand Equity Foundation (IBEF) report,¹⁵ the Government of India has taken some key initiatives to promote the oil and gas sector, which are as follows:

- i. The Government of India has announced its plans to merge state oil companies to create integrated oil major. This oil major would then compete globally and utilize the synergy between various state entities for achieving efficiency and cost competitiveness in order to create more value for all shareholders.
- ii. The Government of India plans to build a nine million tonne (MT) refinery in Rajasthan and a 60 MT refinery in Maharashtra, auction oil and gas fields, increase use of liquefied natural gas (LNG). Further, the Government of India is in discussions with Saudi Arabian Oil Co (Saudi Aramco) regarding investments in India.
- iii. The Government of India plans to unveil a new policy for renewing and extending the lease of 28 oil and gas blocks in the country. This initiative is intended to attract more investments into these fields.
- iv. In order to promote clean energy and generate employment, State-run oil firms are planning investments worth (US\$ 111.30 million) in Uttar Pradesh to improve the liquefied petroleum gas (LPG) infrastructure.
- v. The Government of India is planning to introduce a new policy to encourage the use of biofuels in transport fuel. For this policy, the Government of India is looking at an investment of Rs 1 lakh crore (US\$ 15.64 billion) in the entire value chain.¹⁶

15. India Brand Equity Foundation, The Indian Oil and Gas Sector (published in October, 2017) https://www.ibef.org/download/Oil_and_Gas-October_2017.pdf; also see <https://www.ibef.org/industry/oil-gas-india.aspx>(accessed on January 8, 2018).

16. India Brand Equity Foundation, The Indian Oil and Gas Sector (published in October, 2017) https://www.ibef.org/download/Oil_and_Gas-October_2017.pdf; also see <https://www.ibef.org/industry/oil-gas-india.aspx>(accessed on January 8, 2018).

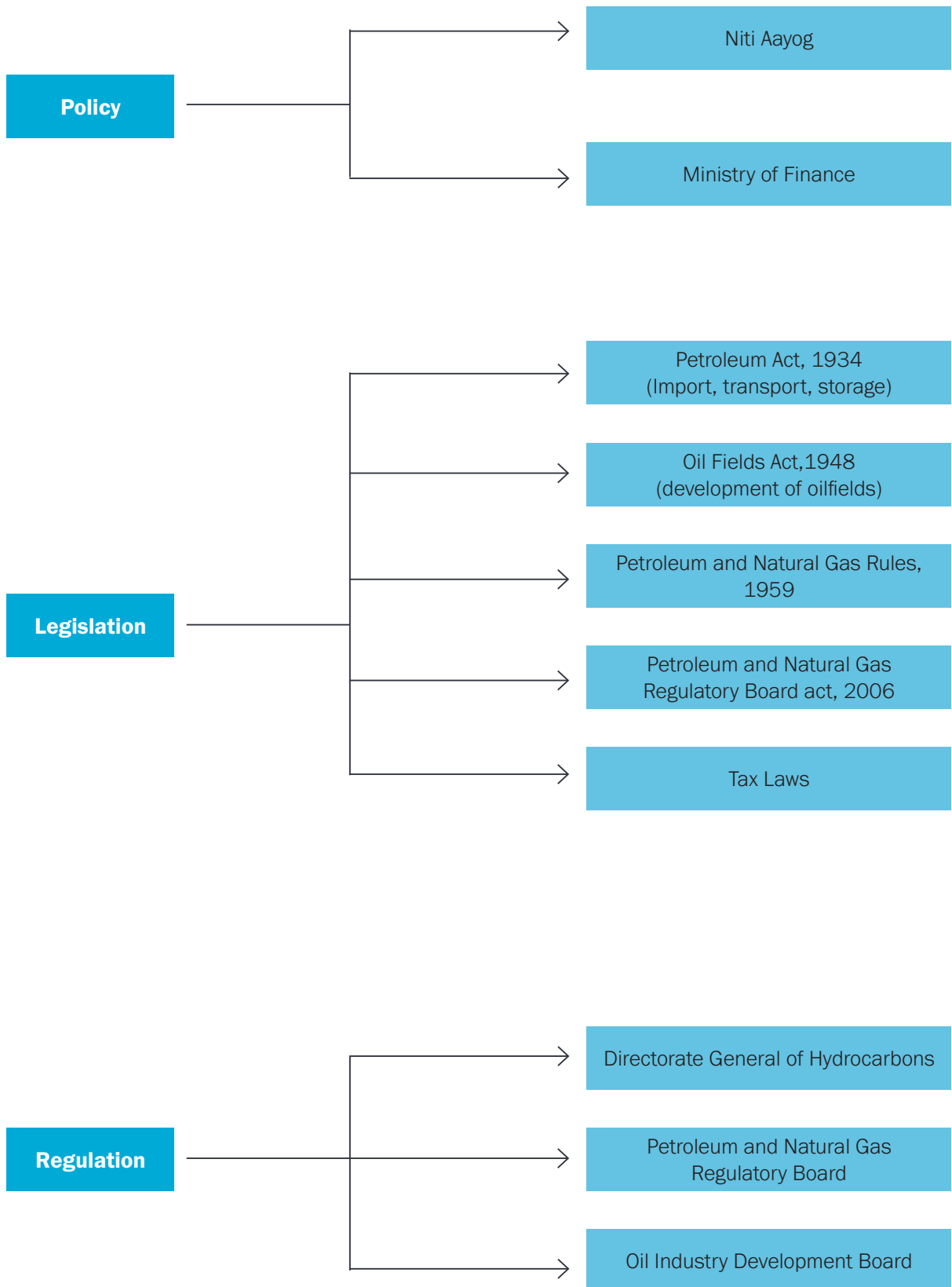
4. Foreign Investment

In O&NG industry, Foreign Direct Investment (FDI) is allowed through the automatic route. FDI is allowed:¹⁷

- up to 100% in areas such as exploration of oil and natural gas fields, infrastructure & marketing related aspects of the industry, refining in the private sector, etc.; and
- Up to 49% in PSUs engaged in petroleum refining.

17. Press Information Bureau, FDI in petroleum sector permitted across the hydrocarbon value chain (published on August 8, 2016), available on <http://pib.nic.in/newsite/PrintRelease.aspx?relid=148494> (accessed on January 24, 2018).

5. Regulatory and Legal Framework



A. Legal Framework

a. The main laws affecting the O&NG Industry have been explained below.

- **The Petroleum Act, 1934:** This act regulates the import into India, transfers within, storage, production, refining and blending of petroleum and deals substantially with midstream activities.
- **The Oilfields (Regulation and Development) Act, 1948:** This act constitutes the basic statute for licensing and leasing of petroleum and gas blocks by Government of India, empowering the same with broad authority to make rules providing for the basic regulation of oilfields and for the development of mineral oil resources. Along with Petroleum Rules, the Oilfields Act governs the grant of Production Exploration Licenses and mining leases.
- **The Petroleum and Natural Gas Rules, 1959:** These rules provide a framework for grant of exploration licenses and mining leases, and together with the Petroleum Act, 1934, regulate the sale and distribution of petroleum and petroleum products.
- **The Petroleum and Natural Gas Regulatory Board Act, 2006:** This act provides for the setting up of the Petroleum and Natural Gas Regulatory Board to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas (excluding production of crude oil and natural gas).
- **NELP:** NELP was formulated by Government of India and the Directorate General of Hydrocarbons (“DGH”) as the nodal agency in 1997-98 to provide a level playing field to both public and private sector companies in E&P of hydrocarbons, though NELP is not a law by itself and is not passed in exercise of any rule-making powers. NELP promotes investments in E&P Sector by facilitating allotment of exploration blocks through

international competitive bidding. Although the NELP regime was successful in the early days, NELP VIII and IX are often criticized for its failure to attract widespread participation by large international oil and gas operators and since 2009, and it has been the endeavor of Government of India to change the model. NELP has now been replaced by HELP.

- **Hydrogen Exploration and Licensing Policy (HELP):** HELP aims to enhance domestic oil and gas production by encouraging exploration in sedimentary basins, and introduces a number of measures including a uniform license regime for conventional as well as non-conventional hydrocarbons, an open acreage licensing policy, a revenue sharing model and freedom in marketing and pricing (subject to certain limits).¹⁸

b. Taxation Laws

i. Corporate Income Tax

Indian Resident companies are taxed at the rate of 34.61% (rates mentioned herein are the maximum effective rates inclusive of applicable surcharge and education cess and secondary and higher education cess) and non-resident companies are taxed at the rate of 43.26% on net taxable income. The Budget 2018-19 proposes to reduce corporate tax rates to 25% for Indian companies whose turnover is less than INR 2.5 billion (approx. USD 40 million). While residents are taxed on their worldwide income, non-residents are only taxed on income arising from sources in India. A company is said to be resident in India, if it is incorporated in India or if its place of effective management for that year is in India. A minimum alternative tax is payable at the rate of around 21.34% (18.5% plus surcharge, education cess and secondary and higher education cess) if the Non-Resident has a Permanent Establishment in India. Further, the Budget 2018-2019 has replaced the Education Cess (2%) and Secondary and

18. Press Information Bureau, Government of India, Hydrocarbon Exploration and Licensing Policy (HELP), (published on March 10, 2016), available on <http://pib.nic.in/newsite/PrintRelease.aspx?relid=137638> (accessed on July 17, 2017).

Higher Education Cess (1%), with a 'Health and Education Cess' at the rate of 4%. It will be applicable on the sum of income tax and surcharge payable by a taxpayer.

Non-residents in the business of supplying plant, machinery, facilities or services in connection with prospecting or extraction of mineral oils are subject to a presumptive tax regime, wherein taxable profits are deemed to be 10% (plus surcharge and education cess) of the gross revenues.

A number of special allowances and incentives have been provided which are relevant to the oil and gas industry in India:

- With respect to exploration and production activities, a special allowance may be claimed in relation to infructuous or abortive exploration expenses, drilling or exploration activities, and depletion of mineral oil in the mining area (subject to the terms of the agreement with the Government of India).
- An allowance may be claimed with respect to capital expenditure incurred in laying and operating a cross-country natural gas, crude or petroleum oil pipeline network for distribution, including storage facilities.
- With effect from April 1, 2014, income earned by a foreign company from sale of crude oil to any person in India is exempt from income tax if the income is earned in Indian currency, the agreement is entered into or approved by the Central Government, the agreement and foreign company is specifically notified by the Central Government and the foreign company does not have any other activity in India. With effect from April 1, 2016, the exemption is also available on income earned by a foreign company from storage of crude oil in any facility in India and sale therefrom to any person resident in India.
- New machinery or plant acquired and installed after March 31, 2005, may be subject to additional depreciation of 20%. Additional depreciation of 35% is allowed on new plant or machinery acquired and installed between April 1, 2015, and April 1, 2020, for the purpose of an undertaking set up after

April 1, 2015, in a notified backward area in either of the states of Andhra Pradesh, Telangana or West Bengal.

- Losses of domestic companies can be carried forward and set off against future revenue for a maximum of eight assessment years from the year in which the loss was first computed.
- With effect from April 1, 2018, as a measure of promoting effective restructuring and rehabilitation of companies underdoing insolvency resolution under the Insolvency and bankruptcy code, 2016 (IBC), the budget proposes to exclude the applicability of section 79 of the ITA in the case of companies where a change in shareholding takes place pursuant to a resolution plan being approved under the IBC, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner, or Commissioner, of Income Tax. Section 79 of the ITA restricts the ability of a closely held company to carry forward its losses for set off against income earned in future, where there is a substantial change in its shareholding. Essentially, shareholders of the company at the end of the FY in which the loss was incurred must own at least 51% of the shares in that company in the year that the carried forward loss is claimed as a deduction; otherwise, the company loses the ability to carry forward the loss.

ii. Dividends

Dividends distributed by Indian companies are subject to a dividend distribution tax at the rate of 20.36% payable by the company. However, no further Indian taxes are payable by the shareholders on such dividend income once dividend distribution tax ("DDT") is paid. Having said that, a shareholder being any person other than a domestic company and certain charitable institutions, trusts or funds, is taxed at 10% if the aggregate amount of dividend received in a year exceeds INR 1 million. An Indian company would also be taxed at the rate of 23.07% on gains arising to shareholders from distributions made in the course of buy-back of shares.

Currently, a DDT of 15% on a gross basis is applicable to companies on any amount declared, distributed or paid by a company by way of dividends. Further, certain deeming provisions have been included in the ITA to curb tax evasion by closely held companies, which distribute accumulated profits in the form of loans or advances to their shareholders instead of dividends in a bid to avoid paying DDT. These loans or advances are deemed to be in the nature of dividends and are brought to tax in the hands of the shareholders at the applicable tax rate and no DDT is payable at the corporate level.

The Budget- 2018-19 proposes to bring deemed dividends in the nature of loans or advances to shareholders under the scope of the DDT from April 1, 2018. Such deemed dividends are proposed to be subjected to a higher rate of tax at 30% (without grossing up) as opposed to regular dividends.

iii. Capital gains

Tax on capital gains depends on the period of holding of a capital asset. Short-term gains may arise if the asset is held for a period lesser than 3 years (or 1 year for listed securities and 2 years for unlisted shares). Long-term gains may arise if the asset is held for a period more than 3 years (or 1 year for securities listed securities and 2 years for unlisted shares). Long-term capital gains earned by a non-resident on the sale of unlisted securities may be taxed at the rate of 10.81%. The Finance Bill has proposed a removal of the existing exemption on LTCG arising out of sale of listed equity shares of an Indian company on a stock exchange. The Finance Bill has introduced a new provision (section 112A) to levy a 10% tax on LTCG arising from the transfer listed equity shares, units of an equity oriented mutual fund, or units of a business trust where such gains exceed INR 100,000 (approx. USD 1500). This tax shall be applicable on LTCG arising on or after April 1, 2018.

As a pre-condition for claiming the beneficial tax rate of 10%, the proposal makes it mandatory for Securities Transaction Tax (“STT”) to have been paid at the time of sale of units, while in

respect of LTCG on listed shares, it makes it mandatory for STT to have been paid at the time of acquisition and sale of the share. The Finance Bill provides for a limited grandfathering of gains in respect of listed shares or units acquired by a person before February 1, 2018 and sold after March 31, 2018. In cases where the shares / units were acquired before February 1, 2018, the cost basis in calculating the capital gains will be considered to be the higher of:

- The actual cost of acquisition; and
- Fair Market Value (“FMV”) of the asset or the full value consideration derived upon its transfer, whichever is lower.

FMV refers to the highest price of the listed share / unit quoted on the exchange on January 31, 2018 or its net asset value as on January 31, 2018, in case of an unlisted unit. Short-term gains earned by a non-resident on the sale of listed securities (subject to STT) is taxable at the rate of 16.22%, or at ordinary corporate tax rate with respect to other securities. India also taxes non-residents on the transfer of foreign securities, the value of which is substantially (directly or indirectly) derived from assets situated in India, (for this purpose more than 50% of the value of the foreign share must be derived from assets located in India).

iv. Withholding taxes

Tax would have to be withheld at the applicable rate on all payments made to a non-resident, which are taxable in India. The obligation to withhold tax applies to both residents and non-residents. Withholding tax obligations also arise with respect to specific payments made to residents. Failure to withhold tax could result in tax, interest and penal consequences.

v. Double tax avoidance treaties

India has entered into more than 80 treaties for the avoidance of double taxation. A tax payer may be taxed either under domestic law provisions or the tax treaty to the extent it is more beneficial. A non-resident claiming treaty relief would be required to file tax returns and furnish a tax residency

certificate issued by the tax authority in its home country. Certain tax treaties such as the treaties with Mauritius, Singapore, and the Netherlands have till the recent past provided significant relief against Indian withholding tax on capital gains and interest income in specific circumstances. However, recently the tax treaties with Mauritius and Singapore have been amended to remove the capital gains relief on shares in Indian companies acquired after April 1, 2017. Having said that, the Mauritius tax treaty has also been amended to provide significant relief against Indian withholding tax on interest income.

vi. Anti-avoidance

A number of judicial specific anti-avoidance rules are enforced in India. Cross-border transactions between related parties would be viewed for tax purposes on an arm's length basis. Transfer pricing rules apply to certain specified domestic transactions as well. India has recently introduced thin capitalization rules, which provides a cap on the total interest deduction to 30% of a company's earnings before interest, taxes, depreciation and amortization.

From April 1, 2017, wide general anti-avoidance rules ("GAAR") have been implemented to tax or disregard certain 'impermissible avoidance arrangements' that are abusive or lack commercial substance. GAAR targets some of the conventional tax optimization structures for India. It has been clarified that while structures in place before April 1, 2017, will be grandfathered, continuing violations may not be allowed. Further, among other additional clarifications, tax benefits from the sale of convertible instruments which were acquired before April 1, 2017, but which were converted after that date prior to transfer have also been grandfathered. Hence there is some ambiguity in that respect.

v. Indirect Taxes

Until recently, indirect taxes were imposed at the federal and state level, which included service tax, customs and excise duty, value added tax ("VAT") and central sales tax. Most of the indirect taxes have now been consolidated into a Goods and Services Tax ("GST") with effect from July 1, 2017. GST is a harmonized system of tax, which levied on the supply of goods and services in India. It comprises of a three tier tax structure – Central GST ("CGST") (levied by the Central Government) and State GST ("SGST") (levied by respective State Governments) are levied for every intra-state supply, while an Integrated GST ("IGST") (levied by the Central Government) is levied for every inter-state supply. Further, goods and services are taxed at any of the five prescribed rates – 0%, 5%, 12%, 18% and 28%. Additionally, goods falling under the 28% bracket may also be subject to an additional cess.

GST has subsumed several indirect taxes including service tax which was levied on services and central excise, VAT, central sales tax and entry tax which was levied on goods. In respect of import of goods, additional customs duty and special additional duty of customs have been subsumed by IGST while basic customs duty continues to apply and it varies based on the product. Petroleum products such as crude oil natural gas, high speed diesel, petrol etc. are currently subject to the existing VAT and cesses and shall be integrated into GST from later date as decided by the GST Council.

B. Regulatory Framework

There are primarily three regulators which monitor the O&NG industry in India i.e., DGH, Oil Industry Development Board, and Petroleum and Natural Gas Regulatory Board.

i. Directorate General of Hydrocarbons (DGH)

DGH was established under Regulation No.O-20013/2/92-ONG, D-III, Ministry of PNG, Government of India on April 8, 1993.¹⁹ The DGH, under the administrative control of the Ministry of PNG, is responsible for the environmental, safety, technological, and economic activities related to the oil and gas industry. The DGH facilitates E&P activities through regulation as well as research. In unexplored or poorly explored areas, the DGH conducts studies, surveys, information drilling, and other related activities.²⁰ The DGH reviews the exploration programs and reservoir production of companies for adequacy and advises the Government of India on such activities.²¹ Further, the DGH oversees matters concerning production sharing contracts for discovered field and exploration blocks.

ii. Petroleum and Natural Gas Regulatory Board (“REGULATORY Board”)

The Petroleum and Natural Gas Regulatory Board was established in 2006 in terms of Section 3 (2) of the Petroleum and Natural Gas Regulatory Board Act, 2006.²² The Regulatory Board is empowered to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum and petroleum products and natural gas, and to foster fair

trade and competition amongst oil and gas companies. The Regulatory Board registers entities to market petroleum and natural gas products, establish and operate liquefied natural gas terminals, and establish storage facilities for petroleum, petroleum products, or natural gas that exceed capacity specified by regulations.

iii. Oil Industry Development Board (“OIDB”)

OIDB was established through the Oil Industry (Development) Act of 1974 (“**Oil Development Act**”). This legislation was enacted in response to increasing international prices of crude oil since the 1970s. Accordingly, the Oil Development Act’s purpose was to facilitate increased self-reliance in petroleum and natural gas through various measures such as providing financial assistance to the organizations engaged in development programs of the oil industry. The OIDB renders assistance in the following: (a) prospecting for and exploration of mineral oil within India (including the continental shelf thereof) or outside India; (b) the establishment of facilities for production, handling, storage and transport of crude oil; (c) refining and marketing of petroleum and petroleum products; (d) the manufacture and marketing of petrochemicals and fertilizers; (e) scientific, technological and economic research which could be, directly or indirectly, useful to oil industry; and (f) experimental or pilot studies in any field of oil industry.²³

19. No.O-20013/2/92-ONG, D-III Government of India Ministry of Petroleum & Natural Gas, (April 8, 1993), available on <http://www.dghindia.gov.in/assets/downloads/56cc049f79208Resolution.pdf> (accessed on January 14, 2018)

20. DGH—Role & Functions, Ministry of Petroleum & Natural Gas, Government of India, available on <http://www.dghindia.org/index.php?page?pageId=24&name=About%20DGH> (accessed on January 7, 2018)

21. DGH—Role & Functions, Ministry of Petroleum & Natural Gas, Government of India, available on <http://www.dghindia.org/index.php?page?pageId=24&name=About%20DGH> (accessed on January 7, 2018)

22. For details on power of the Regulatory Board regarding complaints and resolution of disputes, see Section 12 of the Petroleum and Natural Gas Regulatory Board Act, 2006

23. Oil Industry Development Board, About Us, available on <http://oidb.gov.in/index1.aspx?l-sid=187&lev=2&lid=143&langid=1> (accessed on January 8, 2018)

6. The Discovered Small Fields Policy and Bidding Round

I. Overview

The Discovered Small Fields Policy and Bidding Round (“**DSF Bid Round**”) was launched in 2016 in order to develop and commercialize production from the already discovered small fields and marks India’s move towards a new era of hydrocarbon production. Forty six contract areas consisting of sixty seven fields spread across nine sedimentary basins were offered in this bidding round. Some of the key fiscal benefits were: no oil cess applicable on crude oil production, moderate royalty rates, no upfront signature bonus and pricing and marketing freedom for oil and gas. Under the DSF Bid Round, a total of 134 e-bids were received for 34 contract areas. Subsequently, in February 2017, 22 companies (singly or in consortium) were shortlisted for 31 contract Areas.²⁴

II. Salient Features of Discovered Small Fields Policy

Some of the key highlights of the Discovered Small Fields policy (“**DSF Policy**”) were as follows:

- **Revenue Sharing contract:** A simple and easy way to administer contractual model in line with Government of India’s effort to promote ‘ease of doing business’.
- **Single license for conventional & un-conventional hydrocarbon:** Single license in order to explore and extract all types of hydrocarbon resources.
- **No restriction on exploration activity during contract period:** Contractor was allowed to carry out exploration during the entire contract duration.
- **Crude Oil & Gas Pricing and Sale:** Freedom to sell crude oil exclusively in domestic market. For gas pricing, contractor had the freedom for pricing of the gas produced.
- **Custom duty:** Custom duty was exempted on import of goods and services for Petroleum operations.
- **Oil Cess:** No oil cess was applicable on crude oil production.²⁵
- **Allowed up to 100% FDI** participation by foreign companies, joint ventures.²⁶
- **No carried interest** by National Oil Companies (ONGC, OIL) or state participation.²⁷

24. Press Release, Discovered Small Fields Bid Round 2016, Award of 31 Contract Areas under DSF 2016 (published on February 15, 2017), available on http://dghindia.gov.in/assets/downloads/58a463707a613DSF_Press_Release_150217.pdf (accessed on January 9, 2018).

25. Resolution of the Government of India Ministry of Petroleum and Natural Gas (published on October 14, 2015) available on http://182.19.5.116/dsf/Content/pdf/MFP_Gazette_notification.pdf (accessed on January 23, 2018).

26. Discovered Small Field Bid Round 2016, Ministry of Petroleum and Natural Gas, Government of India (published on August 23, 2016) available on http://182.19.5.116/dsf/Content/pdf/04_DG_Presentation_Dubai.pdf (accessed on January 23, 2018).

27. Press Release, Discovered Small Fields Policy, Award of 31 Contract Areas under DSF 2016, (published on February 15, 2017) available at http://dghindia.gov.in/assets/downloads/58a463707a613DSF_Press_Release_150217.pdf (accessed January 23, 2018).

7. Hydrocarbon Exploration and Licensing Policy (HELP)

I. Overview

The Hydrocarbon Exploration and Licensing Policy (“HELP”) was introduced in 2016, in order to revamp the oil and gas sector and address various industry concerns in the New Exploration and Licensing Policy (“NELP”) regime. HELP is a huge improvement from NELP in so far as it provided (a) uniform license for exploration and production of all forms of hydrocarbon; (b) marketing and pricing freedom for the crude oil and natural gas produced; (c) easy to administer revenue sharing model; and (d) an open acreage policy.²⁸

II. Uniform License

Unlike the multiple license model under NELP, HELP brings in a uniform licensing model, allowing drilling of all forms of hydrocarbons, including shale gas, coal bed methane, oil and gas, to be done under a single contract.²⁹ Under the new regime, a common license for all hydrocarbons is awarded to firms offering maximum revenue to the Government of India would be given. It does away with complex investment multiples and provides for a lot more autonomy and flexibility to the operator.³⁰

III. Revenue Sharing Model

NELP mechanism of profit-sharing was such where explorers first recovered their costs and then shared profits with the Government of India. HELP introduces revenue-sharing mechanism which replaced the profit sharing model under NELP. Where the government would not micro-manage the costs incurred, and would instead concentrate on receiving a share of the gross revenue. Revenue sharing will not be subject to cost recovery, monitoring will be simple, and the government share will acquire immediately on production, unlike in cost-recovery, monitoring will be simple, and the government share will accrue immediately on production.³¹

IV. Marketing and Pricing Freedom for Crude Oil and Natural Gas

The HELP policy provides for freedom in the marketing and pricing of crude oil and natural gas from these blocks, which are produced under the new contractual and fiscal regime. This is in sharp contrast with the previous NELP policy. In addition, the HELP policy is aimed at incentivizing production.

28. Press Information Bureau, Government of India, Hydrocarbon Exploration and Licensing Policy (HELP), (published on March 10, 2016), available on <http://pib.nic.in/newsite/PrintRelease.aspx?relid=137638> (accessed on July 17, 2018).

29. Financial Express, HELP v. NELP: How Investors Bid will be key to hydrocarbons policy's success, (published on October 3, 2016), available on <http://www.financialexpress.com/economy/help-vs-nelp-how-investors-bid-will-be-key-to-hydrocarbons-policys-success/401920/> (accessed on January 23, 2018).

30. IndianExpress, Profit-share to Revenue-Share, multiple windows to single: HELP for Explorers (published on March 16, 2016), available on <http://indianexpress.com/article/explained/profit-share-to-revenue-share-multiple-windows-to-single-help-for-explorers/> (accessed on January 23, 2018).

31. IndianExpress, Profit-share to Revenue-Share, multiple windows to single: HELP for Explorers (published on March 16, 2016), available on <http://indianexpress.com/article/explained/profit-share-to-revenue-share-multiple-windows-to-single-help-for-explorers/> (accessed on January 23, 2018).

First, it is intended that the marketing and pricing freedom will be provided for the purposes of gas drilled from difficult geologies, including deep-water, ultra-deep and high pressure and high temperature areas. Second, it is envisaged that for certain categories of blocks extension of up to 10 years would be allowed subject to increases in the profit share of the Government of India by 10%.

Further, the Government of India has incentivized deep-sea drilling, through the mechanism of concessional royalty. Under the mechanism, no royalty is charged for the first seven years. After that, a 5% royalty for deep water areas and 2% royalty in ultra-deep waters is charged. Developers found it commercially unviable to extract gas from such sites. This is because of the risk and high cost of production associated with deep-sea drilling. It has been suggested that approximately 190 bcm or around 35 mmscmd of gas reserves (15-year production profile) can be better tapped from the change in policy.³²

V. Open Acreage Policy

The Open Acreage Licensing Policy (“OALP”) was introduced as part of the HELP. Blocks would be allocated under the policy wherein companies can submit bids for areas of their choice. Companies can choose blocks from the designated area round the year without waiting for roadshows and auctions like in NELP.³³

OALP is aimed at increasing the domestic production of petroleum and expediting the appraisal of Indian sedimentary basin by providing the investors with an access to geo-scientific data available in National Data Repository (NDR). OALP further provides the flexibility to carve out exploration acreages through an open acreage licensing process and increased operational autonomy through a new revenue sharing model. Under the OALP, an Expression of Interest (EOI) can be made round the year with bidding round every six months. The EOIs would form the basis of blocks being offered in the bidding rounds.³⁴

VI. Other Changes

Under HELP, lower royalty as compared to NELP has been provided to encourage exploration and production. A graded system has been introduced in which royalty decreases from shallow water to deep water and ultra-deep water. Onland royalty has been kept intact so that revenues of states are not impaired.³⁵

32. Financial Express, HELP v. NELP: How Investors Bid will be key to hydrocarbons policy's success, (published on October 3, 2016), available on <http://www.financialexpress.com/economy/help-vs-nelp-how-investors-bid-will-be-key-to-hydrocarbons-policys-success/401920/> (accessed on January 23, 2018).

33. Indian Express, Profit-share to Revenue-Share, multiple windows to single: HELP for Explorers (published on March 16, 2016), available on <http://indianexpress.com/article/explained/profit-share-to-revenue-share-multiple-windows-to-single-help-for-explorers/> (accessed on January 23, 2018).

34. The announcement of OALP – 1 is available on http://online.dghindia.org/oalp/Content/pdf/NIO_OALP_Bid_Round_1_01.pdf. The procedure for operationalization of Open Acreage Licensing Policy is available on http://online.dghindia.org/oalp/Content/pdf/OALP_03.pdf. A copy of the Model Revenue Sharing Contract is available on http://online.dghindia.org/oalp/Content/pdf/MRSC_booklet_02.pdf

35. Indian Express, Profit-share to Revenue-Share, multiple windows to single: HELP for Explorers (published on March 16, 2016), available on <http://indianexpress.com/article/explained/profit-share-to-revenue-share-multiple-windows-to-single-help-for-explorers/> (accessed on January 23, 2018).

8. Hydrocarbon Exploration & Licensing Policy (HELP) Open Acreage Licensing Policy (OALP) Bid Round – 1

On January 18, 2018, under the Hydrocarbon Exploration and Licensing policy (HELP) and the Open Acreage Licensing Policy (OALP) Bid Round- 1 (“OALP-1”), the Ministry of Petroleum & Natural Gas, Government of India (“**Ministry of PNG**”) published a Notice inviting offers (NIO) for Exploration and Development of Oil & Gas blocks in India.³⁶

Under the OALP programme, an Expression of Interest (EOI) was received between July 1, 2017 and November 15, 2017. Based on the EOI, 55 blocks, which include, 46 on-land blocks, 8 shallow water blocks and 1 deep water block, are on offer through the International competitive bidding process.

I. The Bidding Process

A. Step One

Based on the access to the data available in the National Data Repository (NDR), investors will be able to submit their *suo moto* Expression of Interest (EOI) for blocks of their choice for the purpose of contracting. The DGH will assist the investors in submitting their proposals. In addition, the DGH will also administer, when deemed necessary, rounds of awards of blocks carved out by it for contracting.

B. Step Two

The “qualification criteria” will be used to assess the Expression of Interest (EOI) received from the investors.

C. Step Three

The DGH issues notes inviting offers for the exploration of O&NG. Further, it seeks bids from eligible interested parties for hydrocarbon blocks in India. The Government of India invites bids from companies for two types of contracts, the petroleum operations contract and the reconnaissance contract.³⁷

D. Step Four

At the time of submission of the bid, the bidders are required to furnish a bid bond, with a validity of one year and of value USD 150,000 (United States Dollar one hundred and fifty thousand) per sector for POC for all types of blocks. This should be in the form of a bank guarantee from a scheduled commercial bank. The bid bond is released upon the signing of the contract for the block. The bid bond will be forfeited, if the contract is not signed within 90 days from the date of the award of the block. The following amount is the upper limit to be taken as bid bond:

- Onland block USD 1.0 million
- Onland Type S block USD 1.0 million
- Deep-water block USD 2.0 million
- Ultra Deep Water Block USD 2.0 million

The deadline for bid submission is 12:00 hrs IST on April 3, 2018. E-bidding portal (ebidding.dghindia.gov.in) has to be used to submit the bids. Certain documents which are to be mandatorily submitted in physical form must be submitted in duplicate and sealed envelopes

36. The announcement of OALP – 1, (2018), available on http://online.dghindia.org/oalp/Content/pdf/NIO_OALP_Bid_Round_1_01.pdf. The procedure for operationalization of Open Acreage Licensing Policy (2018), available on http://online.dghindia.org/oalp/Content/pdf/OALP_03.pdf. A copy of the Model Revenue Sharing Contract is available on http://online.dghindia.org/oalp/Content/pdf/MRSC_booklet_02.pdf

37. The procedure for operationalization of Open Acreage Licensing Policy, (2018), available on http://online.dghindia.org/oalp/Content/pdf/OALP_03.pdf (accessed on January 25, 2018).

at the DGH address, Non receipt of physical submissions shall lead to rejection of bids. The qualification submissions of the bids will be opened online at 13:30 hrs IST on the same day.

E. Step Five

Bid Qualification Criteria

- a. The bidder must pay the tender fees on or before the bid closing date.
- b. A bidder must furnish a bid bond of the required value and as per the in prescribed format.
- c. The bidder must furnish a proof of purchase of requisite value of data from the NDR.
- d. The bidder must also satisfy the technical qualification criteria.
- e. The bidder must be a company, singly or in association with other companies through an unincorporated or incorporated venture.
- f. Notarized deed or declaration shall be submitted along with the bid stating that it is not in a state of liquidation, bankruptcy, receivership, cease of operations or other similar state. In addition, the declaration should also confirm that no process of being placed in liquidation, receivership bankruptcy, or other similar process has been filed against him or her.
- g. A copy of the Memorandum and Articles of Association of the applicant must be furnished. A registration certificate along with the name of any sovereign state or legal entities or nationals of any sovereign state that directly or indirectly holds 50% (fifty percent) or more of the voting shares of each member of the bidder consortium, or otherwise has an interest that could constitute control shall be submitted. For a group of companies, the group structure and organization shall also be submitted.
- h. The Notice Inviting Offers (NIO) includes the financial capacity criteria for bidder. The net worth of the bidding company (ies) should meet these criteria. It is suggested that the calculation of the net worth of the companies will be done according to the prescribed format. Bids that do not fulfill the net worth criteria in the NIO shall not be considered for further evaluation.
- i. For each member of the consortium, a certificate of net worth from the company's statutory auditor(s) based on the audited annual accounts for the latest completed year and the annual report including the audited annual accounts for the latest completed year, should be submitted.

If the bidder company has a parent company which has committed to provide financial and performance guarantee for its subsidiary, then the annual report, annual accounts, and net worth certificate in respect of the parent company should be submitted. Further, the evaluation of the financial capability of the bidding company will be undertaken by taking into consideration the financial capability of the parent company. (this applies for each member of the consortium in case of consortium bidding).
- j. Bidder should submit a board approved financing plan. The plan should in clear terms, specify the sources of funding for the biddable work programme, which is submitted in the bid for the initial exploration phase. The financing plan shall be supported with the necessary documents, which may be required by the DGH.
- k. Any additional information supporting the financial capacity of the bidder should also be submitted.

F. Step Six

Bid Rejection Criteria

The Government of India at its sole discretion reserves the right to accept or reject any or all of the bids received, without assigning any reason. The criteria for rejection is as follows: Any bid which does not conform to any of the requirements of financial and/or technical pre-qualification criteria shall be rejected.

- Bids which are without any documentary proof of payment of tender fees for the block to be bid shall be rejected.
- Any bidder who does not purchase the basic data package from the NDR and does not provide documentary proof of the purchase of the data shall be rejected.
- Any bid not accompanied by a bid bond of adequate value and specified validity period shall be rejected.
- Any bid which is not submitted in the prescribed format, as per the requirements of the e-bidding portal, incorporating all the information or details listed therein including bid bond, in prescribed format with requisite value and validity, is liable to be rejected.
- Any bid which is submitted with any assumptions or deviations which are inconsistent or does not comply with the terms listed in the NIO shall be rejected.
- Any bid which is not accompanied by the annual report incorporating the audited annual accounts for the last completed year along with a certificate of net worth from the company's statutory auditor(s), based on the last audited annual accounts certifying the net worth of the bidding company shall be rejected.

- Any bid that does not meet the net worth requirement at the bid evaluation stage (subject to fulfilling the minimum net worth at the pre-qualification stage without any bank guarantee) unless the deficit is secured through required bank guarantee against deficit net worth vis a vis of work programme/ LD shall not be considered for further evaluation.
- The bids will be rejected if the required submissions are not received in hardcopy format by the bid closing date.

G. Step Seven

Bid Evaluation Criteria

The bid evaluation criteria comprise of two components: biddable government share of revenue at two specified revenue points and the biddable work programme (to be agreed as the committed work programme).

The revenue share offered to the Government of India by the bidder at the Lower Revenue Point (LRP) and at the Higher Revenue Point (HRP) will be considered for evaluation. The bids with the highest Net Present Value (NPV) will be given the maximum score and other bids will get points proportionately computed with reference to the Government NPV computed for the highest bid.

The work programme commitment assigns marks for various activities which are as follows:

- Bidder quoting highest number of wells is assigned 15 marks. While others will be assigned marks proportionately.
- Bidder quoting maximum number of wells with core analysis of target shale plays will be assigned 5 marks. While others will be assigned marks proportionately.

- The Originator will be assigned 5 marks. This will take place only on a first come first served basis.
- Bidder quoting highest 2D seismic survey (LKM) will be assigned 8 marks. While others will be assigned marks proportionately.
- Bidder quoting highest 3D seismic survey (Sq. KM) will be assigned 17 marks. While others will be assigned marks proportionately.

H. Step Eight

The Government of India enters into a Revenue Sharing Contract (RSC) with the successful bidder in respect of each block offered. The RSC is on the lines of published Model Sharing Revenue Contract (MSRC). This is subject to any amendments that the Government of India may, in its sole discretion, carry out to address any specific contractual issue that requires any amendment.³⁸

38. The announcement of OALP – 1, 2018, available on http://online.dghindia.org/oalp/Content/pdf/NIO_OALP_Bid_Round_1_01.pdf; The procedure for operationalization of Open Acreage Licensing Policy, 2018, available on http://online.dghindia.org/oalp/Content/pdf/OALP_03.pdf.

9. Dispute Resolution

The oil and gas industry has proved to be a fertile ground for disputes and in particular for practitioners of international arbitration, given the cross border aspects of exploration and production activities. Litigation in the O&NG sector is generally governed by rules of the relevant PSU which is awarding a contract or in the form of representations before an authority under the Ministry of PNG. Contracts with PSUs generally have an arbitration clause. However, before initiation of an arbitration, there are generally provisions for mediation and conciliation before the dispute resolution mechanism is invoked.

I. Arbitration

A. Arbitrations/ Litigation arising out of arbitrations before Indian Courts

The Production Sharing Contracts (PSCs) have an arbitration clause and disputes arising out of PSCs are settled by arbitration. Since most of the applicants/ bidder in the exploration and production activity are from a foreign jurisdiction, it is a common practice to designate a foreign seat of arbitration, and a foreign governing law. The arbitration typically takes the nature of an international commercial arbitration. In such instances, recourse to Indian Courts are limited *albeit* for interim protection under Section 9 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) and the consequent appeal arising thereof under Section 37 of the Arbitration Act, or Indian Court’s assistance in recording of evidence under Section 27 of the Arbitration Act.

In case of a foreign seated arbitration, recourse to Indian Court can also be exercised at the time of enforcement of the arbitral award under Section 48 of the Arbitration Act. Whereas, if the seat of arbitration is in India, then Indian Courts have jurisdiction on appointment of the arbitrator, interim protection, and also challenge to the arbitral award, if any. Part I ³⁹ of the Arbitration Act becomes applicable in such instances. These provisions are invoked by the parties to litigate before Indian Courts in aid of the arbitration proceedings.

Just to cite an example: *In Union of India v. Reliance Industries*,⁴⁰ the partial award passed by the Arbitral Tribunal was challenged under Section 34 of the Arbitration Act by the Government of India on the ground that subject-matter of the arbitration comprising of payment of royalty, cess, service tax and audit issues involved questions of public policy and therefore are non-arbitrable.

The Delhi High Court held that questions of arbitrability of claims cannot be tested only as per the applicable law of arbitration or *lex arbitri* ⁴¹ but needs to be analysed in accordance with the public policy and intention of parties governed as per laws of the country to which it has the closest connection. The ruling clarified that clauses of the agreement need to be read in a holistic manner to discern intention of parties and whether exclusion of Indian laws done for the purpose of governing arbitration could be extended if subject matter of the arbitration is non arbitrable. It is in this context that the Delhi High Court rejected the objections on lack of jurisdiction due to express choice of law provisions. The matter was appealed in the Supreme Court by way of special leave petition, and on May 28, 2014, the Supreme Court held

39. Part I of the Arbitration Act is applicable when the seat of arbitration is in India. Part I determines the conduct of the arbitration including issues of maintainability, interim relief, recording of evidence and setting aside of arbitral award.

40. 199 (2013) DLT 469.

41. Law governing the seat of arbitration.

that Section 34 petition filed in Delhi High Court was not maintainable. Supreme Court also opined that when a final award is made, the enforceability of the same in India can be resisted on the ground of public policy. Supreme Court opined that the conclusion of the Delhi High Court that in the event, the award is sought to be enforced outside India, it would leave the Indian party remediless is without any basis as the parties have consensually provided that the arbitration agreement will be governed by the English law.

B. Investment Treaty Arbitrations

There are also couple of investment treaty arbitrations pending against Republic of India. These claims (for example: the claim filed by Cairn Energy PLC) have been filed invoking the provisions of bilateral investment treaty with India. The arbitration proceedings are now well advanced and an Award is expected towards the end of this year.

II. Litigation

Apart from initiating arbitration against a PSU, another right exercised by companies in the O&NG sector is the right to approach the state High Court under the Constitution seeking extraordinary remedies in the nature of writs. Historically, a writ is a relief by which a court can restrain the government from taking any action, or it can set aside any action taken by the government or provide directions. In the O&NG sector, at the stage of tender, an aggrieved party can approach the High Court and challenge the process of tender as the process adopted was arbitrary or if the grant of the tender in favor of another party was arbitrary.

In recent times, the Supreme Court and High Court have also examined policies relating to FDI, liberalization and privatization. Although the courts have shown an inclination to examine issues relating to policy, they have generally adopted a “hands off” approach, unless there is serious allegation of fraud or arbitrariness in the decision making process. In this context, recently, with respect to spectrum wavelength, mines and minerals and other natural resources, the Supreme Court has held these to be resources that belong to India.⁴² Consecutively, a challenge to an executive decision relating to such resources would always be open to examination on the ground that the decision affects ‘public policy’ of India.

Even in the context of gas pricing, in the past, the Supreme Court and the Delhi High Court have refused to intervene in policy matters. However, where petitioners have been able to demonstrate a degree of arbitrariness in the policy matters, courts have shown a willingness to exercise jurisdiction.⁴³ The rationale of such intervention is the Supreme Court’s recognition of the fact that,⁴⁴ *“the people of the entire country have a stake in natural gas and its benefit has to be shared by the whole country”*. This observation was in the context of water and other natural resources. However, this principle has since been applied to mines, minerals and pertinently, O&NG.⁴⁵

42. Reliance Natural Resources Limited v. Reliance Industries Limited (2010) 7 SCC 1; Centre for Public Interest Litigation and Ors. v. Union of India (UOI) and Ors, AIR 2013 SC 3725.

43. (1990) Supp. 1 SCC 397.

44. In Re: Special Reference No.1 of 2011 (2004) 4 SCC 489.

45. Reliance Natural Resources Limited v. Reliance Industries Limited (2010) 7 SCC 1.

10. Conclusion

The Oil and gas sector has been identified as a key metric that will drive future GDP growth. From an economic and financial perspective, investment in O&NG is lucrative, with substantial prospects in India. Given the growing demand for crude oil in India and its wide application in household and industrial activities, it is apparent that there will be major investments in this industry in future. The Government of India has recently revamped

the regulatory framework in the upstream sector with a view to attract foreign investment (i.e., a shift from NELP to HELP), and this is also consistent with the government's objective to facilitate ease of doing business in India. While the Government of India resolves teething issues in the O&NG sector, the landscape in the O&NG sector promises to be dynamic with scope for growth of business entities.

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At Nishith Desai Associates, we have earned the reputation of being Asia's most Innovative Law Firm – and the go-to specialists for companies around the world, looking to conduct businesses in India and for Indian companies considering business expansion abroad. In fact, we have conceptualized and created a state-of-the-art Blue Sky Thinking and Research Campus, Imaginarium *Aligunjan*, an international institution dedicated to designing a premeditated future with an embedded strategic foresight capability.

We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bangalore, Singapore, New Delhi, Munich, and New York. Our team comprises of specialists who provide strategic advice on legal, regulatory, and tax related matters in an integrated manner basis key insights carefully culled from the allied industries.

As an active participant in shaping India's regulatory environment, we at NDA, have the expertise and more importantly – the VISION – to navigate its complexities. Our ongoing endeavors in conducting and facilitating original research in emerging areas of law has helped us develop unparalleled proficiency to anticipate legal obstacles, mitigate potential risks and identify new opportunities for our clients on a global scale. Simply put, for conglomerates looking to conduct business in the subcontinent, NDA takes the uncertainty out of new frontiers.

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- **Legal 500 (2011, 2012, 2013, 2014):** No. 1 for International Tax, Investment Funds and TMT

- **Chambers and Partners Asia Pacific (2017 – 2018):** Tier 1 for Labour & Employment, Tax, TMT
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Our dedication to research has been instrumental in creating thought leadership in various areas of law and public policy. Through research, we develop intellectual capital and leverage it actively for both our clients and the development of our associates. We use research to discover new thinking, approaches, skills and reflections on jurisprudence, and ultimately deliver superior value to our clients. Over time, we have embedded a culture and built processes of learning through research that give us a robust edge in providing best quality advices and services to our clients, to our fraternity and to the community at large.

Every member of the firm is required to participate in research activities. The seeds of research are typically sown in hour-long continuing education sessions conducted every day as the first thing in the morning. Free interactions in these sessions help associates identify new legal, regulatory, technological and business trends that require intellectual investigation from the legal and tax perspectives. Then, one or few associates take up an emerging trend or issue under the guidance of seniors and put it through our "Anticipate-Prepare-Deliver" research model.

As the first step, they would conduct a capsule research, which involves a quick analysis of readily available secondary data. Often such basic research provides valuable insights and creates broader understanding of the issue for the involved associates, who in turn would disseminate it to other associates through tacit and explicit knowledge exchange processes. For us, knowledge sharing is as important an attribute as knowledge acquisition.

When the issue requires further investigation, we develop an extensive research paper. Often we collect our own primary data when we feel the issue demands going deep to the root or when we find gaps in secondary data. In some cases, we have even taken up multi-year research projects to investigate every aspect of the topic and build unparalleled mastery. Our TMT practice, IP practice, Pharma & Healthcare/Med-Tech and Medical Device, practice and energy sector practice have emerged from such projects. Research in essence graduates to Knowledge, and finally to *Intellectual Property*.

Over the years, we have produced some outstanding research papers, articles, webinars and talks. Almost on daily basis, we analyze and offer our perspective on latest legal developments through our regular "Hotlines", which go out to our clients and fraternity. These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our Lab Reports dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research articles and disseminate them through our website. Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with much needed comparative research for rule making. Our discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged. Although we invest heavily in terms of time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. **Imaginarium AliGunjan** is a platform for creative thinking; an apolitical ecosystem that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire 'blue sky' thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness – that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear your suggestions on our research reports. Please feel free to contact us at research@nishithdesai.com



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