

# Oil Regulation

*Contributing editor*  
**Bob Palmer**



**2018**

GETTING THE  
DEAL THROUGH

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*Contributing editor*

**Bob Palmer**

**CMS Cameron McKenna Nabarro Olswang LLP**

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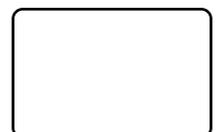


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# Preface

## Oil Regulation 2018

Fifteenth edition

**Getting the Deal Through** is delighted to publish the fifteenth edition of *Oil Regulation*, which is available in print, as an e-book, and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ecuador, India, Papua New Guinea, Peru and Senegal.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

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

GETTING THE  
DEAL THROUGH 

London  
May 2018

# India

Suniti Kaur and Alak Desai

Alaya Legal

## General

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

India has a total of 26 sedimentary basins spread over 3.14 million square kilometres (onshore and offshore). Crude oil and natural gas production in the country is from seven basins covering an area of 532,500 square kilometres and deep-water areas. So far, 240 hydrocarbon discoveries constituting 115 natural gas and 125 crude oil discoveries have been made.

10,734.57 million tonnes of oil and oil-equivalent gas (O+OEG), in-place hydrocarbon volume and 4,125.29 million tonnes' ultimate reserves have been established. India produced approximately 26.933 million tonnes of oil and 24.686 billion cubic metres of natural gas in 2017-18 (up to December 2017). India processed 245.3 million tonnes of the crude oil in 2016-17. India's refining capacity of approximately 234 million tonnes (as at 1.04.2017) exceeds the demand.

### 2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Approximately 35 per cent of India's energy needs is covered directly or indirectly by oil and gas. Coal supplies approximately 58 per cent of energy while the balance 7 per cent is supplied through nuclear and other non-conventional sources.

India produces more petroleum products than its domestic demand. The production of petroleum products was 243,551 million tonnes and consumption 193,745 million tonnes during 2016-17. India, however, still imports petroleum products. The total imports were 35.413 million tonnes and exports 65.513 million tonnes during 2016-17.

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

The cabinet secretariat, Government of India vide resolution dated 1 January 2015 constituted the 'National Institution for Transforming India (NITI) Aayog', replacing the planning commission.

In 2017, Niti Aayog has come out with a draft National Energy Policy as an omnibus policy to achieve the goal of energy security through coordination between these sources.

See question 6 for the policy framework regulating the upstream oil and gas activities. From time to time, the Ministry of Petroleum and Natural Gas (MoPNG) issues policies and guidelines for exploration and production activities, natural gas, refining, and marketing.

### 4 Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

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

### 5 Describe the general legal system in your country.

India follows the common-law system and the Constitution of India contains the basic law of the land. Rule of law prevails and the judiciary is known to uphold the law in cases of enforcement of contractual and property rights.

The procedure for enforcement and execution of decrees, whether foreign or domestic, is governed by the Code of Civil Procedure 1908 (CPC) and of arbitral awards is primarily governed by the Arbitration and Conciliation Act 1996 as well as the CPC. Domestic and foreign awards are enforced in the same manner as a decree of the Indian court. However, parties may encounter delay in enforcement of foreign awards or decrees on account of the functioning of the court system.

Laws governing the anti-bribery regime in India include:

- the Prevention of Corruption Act 1988, which is the principal anti-corruption law that penalises public servants for offences related to acceptance or attempted acceptance of any form of illegal gratification. Under this Act, any individual involved in the abetment of the offence committed by a public servant, may also be prosecuted;
- the Indian Penal Code 1860 contains provisions covering bribery and fraud matters, including those committed in the private sector;
- the Prevention of Money Laundering Act 2002 provides for the prevention of money laundering and use of those proceeds in India;
- the Foreign Contribution (Regulation) Act 2010 regulates the acceptance and use of foreign contributions and hospitality by corporate entities and individuals;
- the Whistleblowers' Protection Act 2011 provides a mechanism to protect anyone who exposes alleged wrongdoing in government bodies, projects and offices, and to investigate alleged corruption and misuse of power by public servants;
- the Companies Act 2013 also contains certain provisions to prevent corruption and fraud in the corporate sector;
- the Lokpal and Lokayuktas Act 2013 establishes the offices of the nodal ombudsman for the central and state governments, to facilitate and investigate cases of corruption in the public sector; and
- the Corporate Anti-Bribery Code 2017 issued by the Institute of Company Secretaries of India, which may be voluntarily adopted by companies to prevent bribery in private sector.

## Regulation overview

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

Parliament is vested with exclusive powers under the Constitution of India 1950 (Constitution) to make laws in respect of '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'.

The legal and regulatory framework with respect to oil and gas is as follows.

#### Regulatory framework

- The Petroleum and Natural Gas Regulatory Board (PNGRB): PNGRB, established in 2006 under the Petroleum and Natural Gas Regulatory Board Act 2006, 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 among oil and gas companies.

- The Directorate General of Hydrocarbons (DGH): the DGH, under the administrative control of the MoPNG, is responsible for the environmental, safety, technological, and economic activities related to the oil and gas industry.
- The Oil Industry Development Board (OIDB): the OIDB, established under the Oil Industry (Development) Act 1974, is mandated to provide assistance for establishment of facilities for production, handling, storage and transport of crude oil; refining and marketing of petroleum and petroleum products; manufacture and marketing of petrochemicals and fertilisers; scientific, technological and economic research which could be, directly or indirectly, useful to oil industry; experimental or pilot studies in any field of oil industry; training of personnel, whether in India or outside, engaged or to be engaged in any field of oil industry and such other measures as may be prescribed.

#### Policy framework

- The New Exploration Licensing Policy (NELP) was formulated by the Indian government and DGH as the nodal agency during 1997–98 to provide a level playing field to both public- and private-sector companies in exploration and production of hydrocarbons.
- On 14 October 2015, MoPNG notified the Discovered Small Field Policy in respect of identified discovered small fields or un-monetised discoveries.
- Marginal field policy: covers discovered small fields of Oil and Natural Gas Corporation Ltd and Oil India Ltd, which could not be monetised for years. Bids are based on a revenue-sharing contract (RSC) model.
- On 10 March 2016, the Hydrocarbon Exploration & Licensing Policy (HELP) replaced the NELP, with key aspects being:
  - single licence for exploration and production of all forms of hydrocarbons;
  - open acreage licensing programme;
  - revenue sharing model; and
  - marketing and pricing freedom for crude oil and natural gas produced.

The laws and regulations governing oil and gas activities in India include:

- The Oilfields (Regulation and Development) Act 1948: provides for regulation of oilfields and for the development of mineral oil resources. It provides for licensing and leasing of petroleum and gas blocks by the Indian government, and grants production exploration licenses and mining leases, among other things;
- The Petroleum and Natural Gas Rules 1959: provides for rules regulating the grant of exploration licenses and mining leases in respect of petroleum and natural gas that belongs to the government, and for conservation and development of it;
- The Petroleum Act 1934 and its rules: provides for the regulation of import, transport, storage, production, refining and blending of petroleum;
- The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976 and its rules: provides for matters relating to the territorial waters continental shelf, exclusive economic zone and other maritime zones of India.

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

The Petroleum and Natural Gas Rules 1959, enable the relevant government to cancel any licence or lease during the term of such licence, or lease if any part of land covered by the licence or lease is required for any public purpose. Any such cancellation is subject to restrictions and conditions as may be imposed by central government or state government, as the case may be, and such cancellation is required to be published in the Official Gazette and takes effect from the date of publication.

#### 8 May the government revoke or amend a licensee's interest?

The Petroleum and Natural Gas Rules 1959 allow the relevant government to cancel the licence or lease, in case the licensee or the lessee:

- 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.

Cancellation occurs if the breach is not remedied within the specified time period.

The relevant government may cancel either wholly or part upon the written request of the licensee or lessee or, where there are two or more of them, of not less than one-half of their number.

#### 9 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

- The DGH is the lead regulatory authority under the MoPNG for the upstream sector. The role and functions of the DGH include:
  - to act as a nodal agency for implementation of policies on behalf of the MoPNG;
  - to advise the MoPNG on exploration strategies and production policies;
  - to provide technical advice to the MoPNG on issues relevant to the exploration and optimal exploitation of hydrocarbons in India;
  - to review the exploration programmes of companies operating under Petroleum Exploration Licenses granted under the Oilfields (Regulation and Development) Act 1948; and
  - to assist the government in contract-management functions.
- The MoPNG represents the government in public sector undertakings in the oil and gas sector. The MoPNG is responsible for administration of various legislations and government orders including the Petroleum Act 1934 and the rules made under it and the Oilfields (Regulation and Development) Act 1948 (53 of 1948).
- The Petroleum and Natural Gas Regulatory Board (PNGRB) is a statutory body formed under The Petroleum and Natural Gas Regulatory Board Act 2006. The PNGRB is entrusted with functions including:
  - to protect the interest of consumers;
  - register entities involved in specified areas falling under mid-stream or downstream sector;
  - grant authorisations for specified midstream or downstream infrastructure; and
  - regulate, by regulations:
    - access to common carrier or contract carrier;
    - transportation rates for common carrier or contract carrier; and
    - access to a city or local natural gas distribution network.

The PNGRB has jurisdiction to adjudicate upon and decide any dispute or matter arising among relevant entities and receive any complaint from any person and conduct any inquiry and investigation in relation to specified matters.

A sanction for breach emanates from the contract and the various legislations.

The penalty for violating the provisions in the PNGRB Act 2006 is mostly in the form of monetary fine and in some cases, imprisonment.

#### 10 What government body maintains oil production, export and import statistics?

The economics and statistics division of the MoPNG, together with the petroleum planning and analysis cell maintains oil production, export and import statistics.

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**Natural resources**

- 11 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?**

As held by the Supreme Court in *Threesiamma Jacob and Others v Geologist, Department of Mining and Geology and Others* (2013) 7 SCR 863, there is nothing in the law that declares that all mineral wealth sub-soil rights vest in the state; on the other hand, the ownership of sub-soil or mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process.

Under article 297 of the Constitution:

- 'all lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union;
- all other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union; and
- the limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by parliament'.

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

Both onshore and offshore oil exploration activities are undertaken in India. Some areas may be off-limits due to defence requirements or other reasons like existence of national parks and will not come under bidding for exploration.

- 13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?**

The rights to explore and produce are granted by the MoPNG through international competitive bidding and pursuant to the policies of the government. The government executes RSCs with the successful bidder. The RSCs are not open for any significant negotiations.

The successful bidder is required to submit an application for a licence and, or a mining lease to the relevant government in accordance with the Petroleum and Natural Gas Rules 1959. A fee of 100,000 rupees for a licence and 200,000 rupees for a lease is to be paid to the relevant government along with the application. There are no time lines prescribed for grant of a licence or lease. The amount of fees provided here are subject to change.

Every licence or lease shall contain terms and conditions prescribed by applicable rules and such additional conditions as may be provided in the agreement between the government and the licensee or lessee.

- 14 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?**

A state oil company does have a right to participate in a licence. There is no mandatory participation through state oil companies or any carried interest of the government. Statutory mandate is with respect to participating interest.

The model RSC also provides for the determination of the government's share of revenue. Under this model of operation, the government receives a share of the gross revenue from the sale of oil, gas etc from the first day of production. Bidders are required to quote revenue share in their bids. They are required to quote a different share at two levels of revenue called 'lower revenue point' and 'higher revenue point'.

- 15 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?**

Royalties are paid to central government (in the case of offshore blocks) and to the state government (in the case of onshore blocks) at rates specified in the respective RSCs. Royalty rates shall be in accordance with the current model RSC under Discovered Small Fields Policy:

- onshore area: 12.5 per cent of the value of crude oil and condensates and 10 per cent of the value of natural gas produced and saved in the contract area;
- offshore areas: 10 per cent of the value of crude oil, condensates and natural gas produced and saved in the contract area; and
- offshore area beyond 400-meter isobath: 5 per cent of the value of crude oil, condensates and natural gas produced and saved for the first seven years and 10 per cent of the value of crude oil, condensates and natural gas produced and saved after the first seven years.

Under HELP:

- onshore area: 12.5 per cent for oil and 10 per cent for gas and CBM;
- shallow water: 7.5 per cent for oil, gas and CBM;
- deep water: no royalty for the first seven years. After seven years: 5 per cent for oil, gas and CBM; and
- ultra-deep water: no royalty for the first seven years. After seven years: 2 per cent for oil, gas and CBM.

The government's share of revenue shall be paid (in addition to the royalties) at rates specified in the RSCs. There are no tax stabilisation measures in India.

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

A licence is valid for a period of four years and extendable for two further periods of one year each. The term of a mining lease is ordinarily 20 years and the area for a mining lease is 250 square kilometres. The central government may, by way of public interest and by notification, relax the condition regarding the area and term.

Under the model RSC for a discovered small field, the duration of the concession is the lesser of 20 years from the grant of concession, or until the economic life of the block, unless the grant concession is terminated earlier, or if for any reason the holder of the lease or licence ceases to hold the lease or licence. A concession may be extended for a period not exceeding 10 years in accordance with the terms of the concession and prevailing government guidelines, in case it is determined that the production of petroleum is expected to continue beyond the term of such concession.

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

The sovereignty of India extends to the territorial waters of India (ie, up to 12 nautical miles from the nearest point of the appropriate baseline), seabed and subsoil underlying and the airspace over the waters.

The contiguous zone of India is an area beyond and adjacent to the territorial waters and the limit of the contiguous zone is the line every point of which is at a distance of 24 nautical miles from the nearest point of the baseline.

The continental shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline where the outer edge of the continental margin does not extend up to that distance.

The exclusive economic zone of India is an area beyond and adjacent to the territorial waters and the limit of such zone is 200 nautical miles from the baseline.

The central government, may by notification make provisions with respect to exploration, exploitation and protection of the resources in the continental shelf, and the exclusive economic zone. With respect to the exclusive economic zone, the central government may by notification also make provisions for other activities for the economic exploitation and exploration of such designated area such as the production of energy from tides, winds and currents.

The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976 prohibits any person including a foreign government from:

- exploring or exploiting any resources of the exclusive economic zone;
- carrying out any search or excavation or conduction of any research with the exclusive economic zones; or
- drill therein or construct, maintain or operate any artificial island, offshore terminal, installation or other structure or device therein for any purpose whatsoever in an exclusive economic zone except in agreement with the central government or in accordance with the terms of a licence of letter of authority issued by the central government.

**18 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 are certain differences in the onshore and offshore regimes under the Petroleum and Natural Gas Rules 1959 and model RSCs such as the time period for exploration licenses, rates of royalty payable to the government and insurance.

The policies, acts, rules and regulations are common for both onshore, and offshore regimes. HELP provides for a single, uniform licence to enable exploration and production operators to explore and extract all hydrocarbon resources which are regulated by the Oilfields Regulation and Development Act 1948 and the rules made under it.

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

All entities, Indian or foreign, may undertake exploration and production activities in India, subject to foreign exchange laws. Filing requirements would apply to all domestic companies and foreign companies under companies' legislation.

An approval process applies to a person who is not a resident and wishes to set up company, branch office or project in India. A timeframe of around four weeks may be estimated for the registration process. The conservation cost estimate is around US\$2,500. The entities are selected through international competitive bidding and pursuant to the policies of the government.

**20 What controls does the regulatory body have over operators? Can operatorship be revoked?**

The operators under the respective revenue sharing agreements are governed by the terms and conditions of the licence or mining lease granted under the Oilfields (Regulation and Development) Act 1948 and the terms and conditions stated in the respective RSCs, or joint operating agreement, if any.

The RSC under HELP does not envisage a situation where operatorship may be revoked. However, no change in operator may be undertaken without the approval of the government.

**21 What is the legal regime for joint ventures?**

Joint ventures are a matter of commercial arrangement and there is no specific statute governing them. Incorporated joint ventures would be required to follow the domestic laws as applicable to any company in India.

Normally, unincorporated joint ventures are formed for participation in the upstream sector.

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

Reservoir unitisation is envisaged in the RSCs. However, there are no policies in India that deal with cross-border reservoirs.

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

In accordance with the model RSC under HELP, the liability of the members comprising the contractor shall be to the extent of their individual participating interests and the liability of the contractor shall be limited to any liability undertaken by or on behalf of the contractor, in respect of the contract, or in relation or connection to the contract.

Further, if the contractor fails to complete the committed work programme, it shall be liable to pay to the government liquidated damages as specified under the RSC.

Joint liability and limitation of liability flows to the extent provided under contract law.

**24 Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?**

Under the RSCs, there is a requirement for a parental bank guarantee, by a parent company that is acceptable to the government. In addition, each member of the contractor, or the operator on behalf of the contractor, in respect of work commitments, is required to furnish a bank guarantee in favour of the government

**Local content requirements**

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

The RSC requires the contractor and operator to employ to the maximum extent possible citizens of India, taking into account the experience required in the level and nature of the petroleum operations. Further, there is a requirement for the operator to offer opportunity for on-the-job training and practical experience in petroleum operations during exploration.

In addition to these, the contractor may give preference to the purchase and use of goods manufactured, produced or supplied in India and employ Indian subcontractors.

There is no specific penalty provided for the breach of these terms.

**26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.**

While there are no specific social programme payment obligations under petroleum legislations, the provisions of corporate social responsibility under the companies' legislation shall be applicable to both domestic and foreign companies.

**Transferred to third parties**

**27 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 pre-emptive rights reserved for the government?**

The Petroleum and Natural Gas Rules provide that the licensee or the lessee shall not transfer its right, title or interest in a licence or a lease, without the written consent of the relevant government.

In case of assignment of participating interest by the contractor, prior written consent of the government shall be required.

The central government, in case of a national emergency, has the right of pre-emption for the refined petroleum or petroleum products, crude oil or natural gas.

**28 Is government consent required for a change of operator?**

Consent of the government is required for a change of operator.

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

There are no specific fees or taxes levied on transfer or change of control. Treatment of assignments is determined on the basis of general taxation principles.

**Title to facilities and equipment**

**30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?**

In accordance with the RSC, all assets purchased by the contractor for use in the petroleum operations shall be owned by the parties comprising the contractor in proportion to their participating interest; however,

the government shall have the right to require the contractor to vest full title and ownership in the assets (fixed or movable), free of any encumbrance to the government upon expiry or early termination of the contract.

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### Decommissioning and abandonment

**31 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?**

Specific regulations for abandonment and decommissioning of oil and gas facilities and pipelines are not in place. The MoPNG is expected to formulate legislation in this regard as mentioned under 'site restoration and abandonment guidelines for petroleum operations, April 2017'.

The RSC provides for compliance with Good International Petroleum Industry Practices 2016, which contain provisions in respect of abandonment and decommissioning. The Petroleum and Natural Gas (Safety in Offshore Operations) Rules, set forth safety provisions for abandonment and decommissioning in respect of offshore facilities.

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

No security deposits are required in respect of future decommissioning liabilities.

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### Transportation

**33 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 transportation of crude oil and crude oil products is primarily governed by the Petroleum Act 1934 and the rules made under it; and the PNGRB Act 2006 and the rules made under it.

There are various government bodies regulating the transportation of crude oil, such as

- the PNGRB, transportation by pipeline in accordance with various regulations made under the PNGRB Act 2006,
- the Petroleum and Explosives Safety Organisation (PESO), which regulates transportation by land and water in accordance with the Petroleum Act 1934 and rules made under it.

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### Cost recovery

**34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.**

The contractor shall be entitled to recover 100 per cent of development cost, exploration cost, production cost and royalty from the total value of petroleum produced.

All costs until the first year of production are aggregated and are recoverable. If the revenue in a particular year is not sufficient for recovery, the costs will be carried forward for recovery in subsequent year.

The maximum amount of cost petroleum to which the contractor shall be entitled (to be taken from the accepted bid) X per cent (X per cent) of the total value of the petroleum produced and saved from the contract area.

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### Health, safety and environment

**35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?**

The various legislations applicable to an upstream oil-related facility operation onshore and offshore include:

- the Water (Prevention and Control of Pollution) Act 1974;
- the Air (Prevention and Control of Pollution) Act 1981;

- the Environment (Protection) Act 1986;
- the Public Liability Insurance Act 1991; and
- the National Environment Tribunal Act 1995.

The provision of Mines Act 1952, along with the safety standards published by the Oil Industry Safety Directorate are applicable to all oil-related facility operations.

The Directorate General of Mines Safety is the regulatory agency for occupational safety, health and welfare of persons employed in mines (including oil mines).

Depending on the nature of offence, the legislations listed above provide for penalties ranging from nominal fines to rigorous imprisonment.

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### Labour

**36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?**

See question 25 for details with respect to the employment of local labour.

Foreign nationals are eligible for an employment visa subject to fulfilment of conditions as mentioned on the Ministry of External Affairs, Government of India website.

While India lacks a comprehensive anti-discrimination law, there are central legislations that endeavour to cover specific aspects such as:

- the Protection of Civil Rights Act 1955;
- the Equal Remuneration Act 1976;
- the Rights of Persons with Disabilities Act 2016;
- the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013; and
- the Maternity Benefits Act 1961.

The above-mentioned Acts contain penal provisions including fines and imprisonment.

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### Taxation

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

The direct-tax provisions are covered in the Income Tax Act 1961, which includes provisions for:

- the minimum alternative tax;
- deductibles (exploration development costs, expenditure on research and development, site restoration expenses);
- capital allowances (accelerated depreciation and allowance for investment in new plant and machinery);
- incentives (tax holiday, carry forward losses);
- withholding tax;
- tax on transactions (farm-in and farm-out, selling shares); and
- transfer pricing.

Indirect taxes are set forth in multiple legislations and include:

- customs duty (basic customs duty, additional customs duty, special additional customs duty, excess);
- excise duty; and
- goods and services tax.

There are regulatory authorities established under the relevant legislation.

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### Commodity price controls

**38 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?**

Oil Marketing Companies are allowed to set the price of all fuels, while two strategically important products for the economically underprivileged – kerosene and LPG – remain regulated. However, government intervention in prices of petrol and diesel cannot be ruled out.

**Competition, trade and merger control****39 What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?**

The authority to prevent or punish anticompetitive practices vests with the Competition Commission of India (CCI). The CCI has been established in accordance with the Competition Act 2002 and prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and mergers and acquisitions), which causes or is likely to cause an appreciable adverse effect on competition within India.

The sector specific regulatory body is PNGRB, which, in accordance with the PNGRB Act 2006, has the power to protect the interest of consumers by fostering fair trade and competition among the entities.

**40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?**

There is no specific provision for procuring government determination that a proposed action will not violate any competition laws.

However, the CCI allows for an informal and verbal consultation prior to the filing of the notice of a proposed action, and the parties intending to file for any action, are encouraged to approach the CCI for such consultation. Any request for pre-filing the consultation may be made at least 10 days prior to the proposed filing date.

**Data****41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?**

In accordance with the RSC, the title of all data obtained as a result of petroleum operations, shall vest with the government.

**International****42 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?**

India follows the dualist theory and, accordingly, domestic legislation is required for implementation of international law in India. The Constitution enables the Indian government to enter into and implement international treaties and empowers parliament to make any law, for the whole or any part of the territory of India, for implementing 'any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.'

India is signatory to the United Nations Convention of the Law of the Sea 1982, which primarily intends to settle all issues regarding the right to ocean space, and law of the sea. India is a member of the World Trade Organization (WTO) and a party to various WTO agreements.

The Indian Arbitration and Conciliation Act 1996 provides for enforcement of foreign awards in India, passed under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the Geneva Convention 1949.

**43 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?**

See question 19.

**44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?**

India does not have free trade with respect to export of crude oil. Accordingly, there are no volumetric supply obligations in respect of petroleum products. The cross-border sales generally take into account local market demand for petroleum products.

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