

## Recent Indian Petroleum, Petroleum Products and Natural Gas Regulations

a report by

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With an increase in the demand and supply for petroleum and natural gas products, and with multiple new players entering the market, the Indian government has enacted the Petroleum and Natural Gas Regulatory Board Act, 2006 (the 'act').

Its aim is to:

- promote competition among entities;
- avoid infructuous investment;
- maintain or increase supplies;
- secure equitable distribution; and
- ensure adequate availability of petroleum, petroleum products and natural gas nationwide.

The act is to provide for the establishment of the Petroleum and Natural Gas Regulatory Board (the 'board') in order 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. This is to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas, and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country whilst promoting competitive markets.

### Foreign Direct Investment

The Ministry of Finance, Government of India, now permits up to 100% foreign direct investment (FDI) into the petroleum and natural gas sector, under the automatic approval route of the Reserve Bank of India. The caps on FDI are as follows:

- FDI up to 100% is permitted on the automatic route on petroleum product marketing. FDI for this sector would be permissible subject to the existing sectoral policy and regulatory framework in the oil marketing sector.
- FDI up to 100% is allowed on the automatic route in oil exploration in both small and medium-sized fields, subject to and under the policy of the government on private participation in: (1) exploration of oil and (2) the discovered fields of

national oil companies.

- FDI up to 100% is permitted on the automatic route for petroleum product pipelines subject to and under the government policy and regulations thereof.
- FDI up to 100% is permitted for natural gas/liquefied natural gas (LNG) pipelines with prior government approval.
- FDI up to 100% is permitted in, other than refining and including market study and formulation; investment/financing, setting up infrastructure for marketing in petroleum and natural gas sector subject to sectoral regulations, issued by the Ministry of Petroleum & Natural Gas, and in the case of actual trading and marketing of petroleum products, divestment of 26% equity in favour of Indian partner/public within five years.
- FDI up to 26% are permitted in the refining sector in case of public sector undertakings (PSUs), with prior approval of the Foreign Investment Promotion Board (FIPB) and up to 100% in case of private companies under the automatic route.

### Policies and Procedures

A number of policy initiatives have been taken by the Government of India for facilitating the inflow of foreign capital and for encouraging entrepreneurs to invest in India, such as:

- equity participation in commercial and industrial ventures, which has been freed from all restrictions, FDI is now permitted up to 100% in different activities in the petroleum sector;
- rupee convertibility on the current account;
- deregulation and delicensing of various petroleum products in the country;
- gradual decontrol of pricing and distribution;
- freedom to form joint venture companies (JVCs) for the development of infrastructure and for marketing and refining activities; and
- procedure for obtaining industrial licences has been simplified by making an application to the Secretariat for Industrial Approvals (SIA), Department of Industrial Policy & Promotion,

Ministry of Industry. Approvals will normally be available within six to eight weeks under a fast time-bound schedule.

### Important Provisions Under the Act

#### Transit Period

One of the tasks assigned to the board is to monitor the implementation of agreements that have been entered into between one oil company and another, for the purpose of sharing petroleum products or sharing of infrastructure facilities among the oil companies. Such agreements have been approved by the central government before the commencement of this act, for the transition period that has been defined as three years from the date of commencement of the act.

The board is also required to monitor the setting up of dealerships and distributorship of motor spirit, high-speed diesel, superior kerosene oil, liquefied petroleum gas and compressed natural gas (CNG) stations and for natural gas (during transition period) by the entities without encroaching on the retail network of the existing entities.

#### Functions of the Board and Registration with the Board

The main purpose for which the board has been formed is to protect the interests of consumers by fostering fair trade and competition amongst the entities.

Entities that:

- market notified petroleum and petroleum products and natural gas;
- establish and operate liquefied natural gas terminals;
- establish storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations required to be registered with the board and entered into the Petroleum and Natural Gas Register, maintained by the board at its head office for this purpose. This register is open for public inspection by obtaining the relevant authority's approval.

Approval of the board is also required to lay, build, operate or expand a common carrier or contract carrier and lay, build, operate or expand a city or local natural gas distribution network.

The board also has the authority to declare:

- pipelines as common carrier or contract carrier; regulate access to common carrier or contract carrier so as to ensure fair trade and competition

amongst entities; and

- transportation rates for common carrier or contract carrier; access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipelines access code.

If the board is of the opinion that it is necessary or expedient to declare an existing pipeline for transportation of petroleum, petroleum products and natural gas, or an existing city or local natural gas distribution network, as a common carrier or contract carrier or to regulate or allow access to such pipeline or network, it may approve the same after giving wide publicity of it, and invite objections and suggestions within a specified time from all persons and entities likely to be affected by such a decision.

Every entity laying, building, operating or expanding a pipeline, for transportation of petroleum and petroleum products or a local natural gas distribution network, shall have right of first use for its own requirement and the remaining capacity shall be used amongst entities as the board has determined, whilst keeping in mind the needs of fair competition in marketing and availability of petroleum and petroleum products throughout the country.

However, in cases where an entity is engaged in both marketing of natural gas and laying, building, operating or expanding a pipeline for transportation of natural gas, on a common carrier or contract carrier basis, the board would require such entity to comply with such codes of conduct as may be specified by regulations. Additionally, the board may also require such an entity to separate the activities of marketing of natural gas and the transportation, including the ownership of the pipeline within such stipulated period, and only within the said period, such an entity shall have right of first use.

The board, in respect of notified petroleum, petroleum products and natural gas, has the power to ensure adequate availability, ensure display of information about the maximum retail prices fixed by the entity for consumers at retail outlets, monitor prices and take corrective measures to prevent restrictive trade practice by the entities. The board is also empowered to secure equitable distribution for petroleum and petroleum products, provide, by regulations, and enforce retail service obligations for retail outlets and marketing service obligations for entities, monitor transportation rates and take corrective action to prevent restrictive trade practice by the entities.

The board has the power to lay down the technical standards and specifications, including safety standards, in activities relating to petroleum, petroleum products and natural gas, including the construction and

operation of pipeline and infrastructure projects, related to downstream petroleum and natural gas section.

The board is required to maintain a data bank and information system relating to activities of entities dealing with petroleum, petroleum products and natural gas.

For this purpose, every entity is required to maintain such documentary records as specified by the board, allow inspection of such facilities and records to a person authorized by the board, commence operations within the period specified by the board, and register the agreements and any other document with the board for use of pipelines for supply of petroleum, petroleum products and natural gas, and also comply with the marketing service obligations and retail service obligations.

The board is entitled to call for such information from any entity for ensuring transparency or ascertaining the true ownership of that entity.

### Transportation Tariffs

The board has been authorised to lay down transportation tariffs for common carriers, or contract carriers or a city or local natural gas distribution network, based on the factors that may encourage competition, efficiency, economic use of the resources, good performance and optimum investments. It will also safeguard the consumer interest, and at the same time recover the cost of transportation in a reasonable manner, the principles rewarding efficiency in performance; the connected infrastructure such as compressors, pumps, metering units, storage and the like connected to the common carriers or contract carriers, benchmarking against a reference tariff calculated based on cost of service, internal rate of return, net present value or alternate mode of transport and the policy of the central government applicable to common carrier, contract carrier and a city or local distribution natural gas network.

### Settlement of Disputes

Any disputes that arise in respect of the matters below among entities or between an entity and another person could be decided by a bench consisting of the member (legal) and one or more members nominated by the chairperson under the act. The matters are as follows:

- refining, processing, storage, transportation and distribution of petroleum, petroleum products and natural gas by the entities;
- marketing and sale of petroleum, petroleum products and natural gas, including the quality of

service and security of supply to the consumers by the entities; and

- registration or authorisation issued by the board under the relevant sections of the act.

The bench as constituted above would exercise such jurisdiction, powers and authority as were exercisable by a civil court in India.

### Contravention and Penalties

The board is authorized to fine an entity with a prescribed penalty, as well as punish an entity with imprisonment for such prescribed terms as set out in the act for every contravention set out below, including an additional penalty for continuing contravention till the wrong is remedied to the satisfaction of the board:

- if a person contravenes the directions of the board;
- if any person willfully fails to comply with the order of the Appellate Tribunal;
- if any person, being an entity, markets any notified petroleum, petroleum products or natural gas without a valid registration, or authorization;
- if a person establishes or operates an LNG terminal without registration as required under the act;
- if a person lays, builds, operates or expands a common carrier or contract carrier or a city or local natural gas distribution network without obtaining authorisation required under the act; and
- if a person willfully removes, destroys or damages any pipelines or city or local natural gas distribution network or other work of the common carrier or contract carrier for supplying petroleum, petroleum products or natural gas.

### Conclusion

India is developing into a major market for the petroleum and natural gas segment, with the government opening up the sector and laying down liberalized guidelines and transparent procedures. The statute has been promulgated this year and the board as a regulator is shortly expected to be formed. Different provisions of the act would be notified from time to time as stipulated in the act. These provisions will encourage development in all areas of petroleum and natural gas segment in the drive to meet India's growing demand. ■

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