

Recent Indian Petroleum, Petroleum Products and Natural Gas Regulations

a report by

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Introduction

With increase in the demand for and supply of 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) to provide for the establishment of a 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. This excludes the production of crude oil and natural gas so as 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 and to promote competitive markets. The objectives of the Act are to:

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

Foreign Direct Investment

The Ministry of Finance of the government of India now permits even 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 by the automatic route in 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 permitted by 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: (i) exploration of oil and (ii) the discovered fields of national oil companies.
- FDI up to 100% is permitted by 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/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 the 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% is permitted in the refining sector in the case of public sector units (PSUs) with prior approval of Foreign Investment Promotion Board (FIPB) and up to 100% in the 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 has been freed from all restrictions and 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 relaxation of controls on pricing and distribution.
- Freedom to form joint venture companies (JVCs) for the development of infrastructure and for marketing and refining activities.

The 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 infrastructure facilities among the oil companies. Such agreements were approved by the Central Government before the commencement of this Act, for the transition period that has been defined as a period of three years from the date of commencement of the Act.

The Board is also required to monitor setting up of dealerships and distribution of motor spirit, high-speed diesel, superior kerosene oil, liquefied petroleum gas and compressed natural gas (CNG) stations 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 was formed is to protect the interests of consumers by fostering fair trade and competition among the entities.

Entities that (i) market notified petroleum and petroleum products and natural gas; (ii) establish and operate LNG terminals; (iii) establish storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations, are required to register with the Board and are 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 or 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 and regulate access to common carrier or contract carrier so as to ensure fair trade and competition among entities; and
- transportation rates for common carrier or contract carrier and access to city or local natural gas distribution network so as to ensure fair trade and competition among 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 to it and inviting objections and suggestions within a specified time from all persons and entities likely to be affected by such 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 by such entities as the Board has determined 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 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 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 entity shall have right of first use. ■

A longer version of this can be found in the Reference Section on the website supporting this briefing (www.touchoilandgas.com).