



**Recommendation Paper 1**  
**on**  
**Review of design of future PSC**

July 31, 2012

**Petroleum Federation of India**

An industry study by PetroFed in Knowledge Partnership with KPMG

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# 1 General Comments

The main purpose of a legislative framework is to provide the basic context for, and the rules governing, petroleum operations in the host country; to regulate them as they are carried out by domestic, foreign and international enterprises; and to define the principal administrative, economic, and fiscal guidelines for investment activity in the sector.

Petroleum law is complemented by enabling regulations and one or several variants of a model contract. The framework gives both the host country and oil companies/investors a clear legal and contractual context in which to negotiate mutually advantageous exploration and production arrangements that develop the hosts state's petroleum resources.

The tax aspects of the framework may be detailed in the petroleum law or in a separate petroleum revenue code, either of which would complete the legislative package.

The three essential elements of the framework viz. petroleum law, regulations and model contracts are related to each other<sup>1</sup>.

The Exploration and Production (E&P) business is a high risk high cost business with innumerable uncertainties that occur during evaluation of the projected output from the field and planning of the development. Almost invariably, all PSCs have cases where contractors have submitted revised development plans for additional capital expenditure activities. During the implementation of NELP, several contractual & fiscal aspects have been litigated. Following are key strategic challenges for the industry:

- Exploration not permitted in producing acreage
- No policy on PSC extension
- Distinction between policymaker and implementer blurred
- Sub optimal functioning of Management Committee (MC)
- Inordinate delays in decision-making process due to post facto review of business decisions
- No resolution on numerous exploration blocks under force majeure

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<sup>1</sup> World Bank Policy Research Paper 1420, Legislative framework used to foster petroleum development

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- Pricing and Marketing freedom for gas

According to the Contractor (PSC participant), additional cost is considered a logical way to sustain or increase production volumes and hence recoverable from revenues. But as per Government of India (GoI) such cost is a part of the original plan and subject to initial cost recovery limits. Most critical aspect of PSC relates to cost recovery i.e., the extent of cost recoverable by the operator from revenue generated in the oil and gas field. Another area of dispute is the Investment Multiple (IM). IM determines the profit sharing between the Government and the Contractor.

There are three critical issues that have caused disputes between the two parties viz. Cost Recovery Limit (CRL), Establishment of limits and change scenarios, and additional development cost.

Every PSC defines the limit for the contractor to spend and recover costs from petroleum revenues. This limit excludes certain specific cost categories and cost escalation scenarios. Thus private contractors argue that CRL has not been clearly defined which leads to a dispute.

There is an immediate need to clearly define the recoverable and non-recoverable costs in the PSC. Establishment of limits and change scenarios need to be more deftly clarified in the PSC.

Further, post signing the PSC, changes including retrospective amendments/clarifications made in the Income Tax Act had a significant impact on the taxability of PSC participants. Further, new tax viz. service tax was introduced which was non-existent at the time of NELP.

Accordingly, whereas specific provisions in PSC exist for customs, cess, etc., service tax remains excluded.

In the following sections, Article by Article comments are provided for consideration of the Committee.

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## **2 Alternative contracting models**

The objective is to explore alternative contracting models with a view to minimizing the monitoring of expenditure without comprising on the hydrocarbons output across time and on the Government's take.

By its very nature, tax/ royalty regime requires lesser administration as compared to PSCs. However, experience has shown that tax/royalty regime will not be a panacea for all the current governance problems of PSCs:

- Does not get rid of extensive monitoring
- Does not create incentives to maximise recovery
- Does not incentivise exploration in basins with lower prospectivity or frontier basins

Tax/ Royalty regime makes exploration more risky in low prospectivity like the Ganga basin and high risk basins like deepwater. For a country like India, given the low prospectivity and the risk profile, PSC is more suitable. Only in 44 percent of the sedimentary basinal area, exploration has been initiated. Given the current stage of our exploration cycle PSC regime is more appropriate for India. High risk areas like Brazil deepwater, China and other countries have adopted PSC.

Moreover, migration of current PSCs to a Tax/Royalty regime would be a significant challenge given that:

- Each contract was bid competitively and has its own unique structure
- Negotiation process might have perceived lack of transparency and could be challenged later
- Contract sanctity gets violated

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## 2.1 **Alternative contracting models**

- Continue with current contracting regime (PSCs) and ensure adherence to the objectives of the original PSCs
- In line with stated objectives of NELP and Hydrocarbon Vision 2025, the focus of all stakeholders should be to find more oil and accelerating development of existing discoveries. Exploration should be encouraged throughout the field life of existing acreage. It is to be noted that nowhere in the world exploration is disallowed after an initial period. Exploration costs should be approved for recovery based on international benchmarks and reasonableness
- Budget approvals for development costs should be considered at a project level for the entire life cycle of the field / block as per approved FDP. Production costs can be considered during annual work programme and budget
- If the technical changes proposed by the Operator are within the prognosed FDP cost, then these changes should not require MC approval
- Approval limits specific to procurement contracts should be indexed to oil price and inflation. (As an example, USD 500,000 fixed in 1995 has little relevance for a contract executed in 2012)
- Keeping with the spirit of the Preamble of the PSC, the focus should be on improving the governance and management of the PSC provisions with a progressive and forward-looking interpretation rather than regressive interpretation. This will result in greater and additional positive results within the existing PSC framework. More work is needed to better understand the impact of fiscal regimes
- PSC should be a simple contract, in which only the percentage of profit sharing between Government and Contractor is to be mentioned. If the production reaches a threshold value (windfall), then an additional percentage of profit petroleum over and above the predetermined percentage (or value) should be given to the Government. There should not be any separate cost recovery formula and the contractor will recover total cost (Exploration, Development & Production cost) from its percentage share of profit. This will ensure minimum monitoring on the contractors various expenditure by DGH/MoPNG and avoid disputes related to investment made without compromising on the hydrocarbons output.
- India is a country with limited hydrocarbon prospectivity and not a mature E&P industry environment, PSC seems to be the appropriate method of contracting for now. Although

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alternate methods of contracting are in place in other countries like Concessionary Systems, Service Contracts etc., these can be successful if we have proven hydrocarbon province and high rate of success in finding hydrocarbons, which seems to be case where the similar contracts are in place.

- The existing PSC model provides for recovery of cost to the E&P companies for the expenditure incurred in exploration and development prior to sharing of profit petroleum with GoI, which is an essential parameter to develop the industry and bring in investment for the sector.
- The present system of PSC may be continued with modifications as proposed elsewhere in this document. Some major changes proposed are as follows:
  - The bid evaluation should be based on the amount (which would be biddable) that the consortium will spend on exploration activity and not on physical work program. The physical work program should only be indicative. This will give flexibility in selecting an effective exploration program and letting the contractor select the optimum balance between the seismic surveys and drilling of wells. Alternately, work program should be convertible with one another (through a pre-determined formula).

#### **Divergent view**

- There should not be any cost recovery. This would do away with the requirement of Government approval of costs, and budgets and thus would lead to minimal interface in terms of audit, etc. The contractor would also try to optimize costs.

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### 3 Review of existing PSC

#### 3.1 Recovery of cost petroleum & production sharing mechanism (Refer Article 15 & Article 16 of MPSC)

- The cost recovery percentage should be fixed instead of biddable item so as to attract serious E&P companies and avoid irrational bidding.
- While awarding the Type-S blocks (<200 Sq Km area) under NELP-IX Round, the Government modified Article 15.13 of the MPSC to state:

*“The Contractor acknowledges that the cost estimates for Minimum Work Programme are the realistic estimate of the expenditure. Under Article 15 herein read with Section 3 of the Accounting Procedure, the Contractor shall be allowed such recovery of the Exploration Costs on the basis of the cost estimates given by the Contractor in the bid documents towards the Minimum Work Programme in the Initial Exploration Period or the actual cost incurred in the Contract Area, whichever is lower.....”*

- In the above context, it is suggested that Type S blocks should not be treated differently with regards to cost recovery of the amount spent on Minimum Work Programme (MWP). The Article 15.13, as applicable in case of other blocks, should be retained particularly due to the following reasons:
  - The cost estimates indicated in the bid documents are based on the market conditions prevailing at that point of time. As there is a substantial time interval between submission of the bid and the actual work, these conditions are liable to change significantly, particularly in the highly volatile E&P sector. It is practically not possible to accurately predict the actual costs that may be incurred in seismic and drilling operations during Initial Exploration Period of 4 years. Therefore, the provision applicable in case of other blocks, which take care of the above eventualities, is quite logical and just.
  - The retention of provisions of Article 15.13 applicable in case of other blocks would also take care of additional expenditure that may have to be incurred on drilling of substitute well(s), in case the depth/geological objective is not achieved in some well(s) for any reason.
  - The existing provision for Type S blocks is a significant departure from reality and would expose the Contractor to circumstances totally beyond its control.

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- In any case, the onus lies on the Contractor to prove to the Management Committee's satisfaction that the excess costs incurred are bona fide and have been incurred due to change in circumstances, beyond the Contractor's control, after coming into effect of the Contract.
  - It is recommended to replace the profit sharing mechanism (linked to IM) prevalent in the current PSC structure with a royalty formula (based on either quantity or ad valorem) with a sliding scale linked to different slabs of production of hydrocarbons, for harmonizing the financial interest of both Government and the private contractors. However, this situation would lead to a considerable reduction in power/control vested to the MC.
  - Exploration costs can be approved for recovery based on benchmarks and reasonableness. Budget approvals for development costs should be considered at a project level for the entire life cycle of the field / block as per approved Field Development Plan (FDP). Production costs can be considered during annual work programme and budget
  - GoI audits should be limited to accounting records (as specified in the PSC). The audit should not challenge the cost recovery against development plans / annual budget funds approved by the MC as long as these costs are within the approved budget funds
  - All parties should strictly adhere to timelines. Penal provisions for Contractor and / or GoI for delays in execution and / or approvals should be clearly specified in advance. Retrospective penalty should be avoided
  - Single tier approval mechanism for work programme, budget and costs could be adopted. Cash calls should be cleared based on WP&B OCR. WP&B should be considered deemed approved if record notes / MCR is not signed within a month of holding the Budget MCM
  - If the technical changes proposed by the Operator are within the FDP cost, then these changes should not require MC approval. The changes should be resolved between the partners by signing an OCR
  - Annual benchmarking exercise can be carried out through a third party agency to establish reasonable costs in the current international environment
  - Approval limits specific to procurement contracts can be indexed with oil price and inflation. (As an example, USD 500,000 fixed in 1995 has little relevance for a contract executed in 2012)

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- There should be uniformity in budget and cost reporting to ensure alignment with the approved activities
  - The cost recovery for “S” Type blocks as per PSC Article 15.13 should be in line with the “Shallow” & “Deepwater” blocks. The cost recovery should be based on the actual expenditure incurred and approved by MC, since cost escalation due to delay in signing PSC, obtaining approvals from various Government. agencies, increase in rate for various services etc. are beyond the control of Contractor.
  - Moreover, if commercial production falls and Contractor is not able to recover the Cost Petroleum, they should be allowed to recover the balance Cost Petroleum from other producing Block.
  - Recovery of Cost Petroleum:
    - Recovery of cost petroleum is an integral part of the production sharing contract and essential to attract investments in to the sector given the amount risk and uncertainty involved at every stage of operation.
  - Production Sharing:
    - The existing production sharing contract provides for sharing of profit petroleum based on Pre-tax investment multiple which is prevalent in many countries besides India. This enables the contractor to share the profit depending upon the level of revenue it has generated from the block.
    - There are also other methods of production sharing between contractor and Government which are based on level of production achieved in terms of barrels per day for Oil and MMSCMD for Gas, which is also prevalent in many countries. However, this system seems to have some limitation in terms of arriving profit split in case the block produces both Oil & Gas and thereby need for bifurcation of cost between Oil & Gas, which could be arbitrary and may give rise to conflict.
    - As no option can be 100% foolproof, the more recent one can be tried out i.e., profit sharing based on production levels achieved from the block.
    - In many countries the profit split percentages are pre-fixed by the government and are not subject to bidding whereas in India this is one of the bidding parameters. This gives

rise to irrational bidding by participating companies in the bidding round, which can be avoided by having a pre-fixed profit split percentages for a particular category of blocks.

**Divergent view**

- There should not be any cost recovery. This would do away with the requirement of Government approval of costs, budget and thus minimal interface in terms of audit etc. The contractor would also try to optimize costs.

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## **4 Managing the contract implementation of PSCs**

### **4.1 Suitable mechanism for the contract management (Refer Article 6 of MPSC on Management Committee)**

The objective is to explore suitable mechanism for the contract management of PSCs which is being handled at present by the Regulator/Government nominee appointed to the Managing Committee.

PSC regime is contractual by nature. GOI's stated contractual objective as stated in the preamble of PSC is "that the Petroleum resources which may exist in India be discovered and exploited with utmost expedition in overall interest of India". The contractors are contractually obligated under the PSC to work diligently, expeditiously, efficiently and in a safe and workman-like manner. With this background, Operators are chosen carefully and should be treated as first among equals to meet the PSC objectives. The Operator should be given all required flexibility to decide the best technical work program and budget for the acreage under the guidance of the Operating Committee (OC). It must be recognized that each acreage / block is unique from the geological and prospectivity perspective.

The MC should be focussed on taking decisions of a more strategic nature - maximising production with optimal investment. Over the past few years, however, the overlap between MC and OC has significantly increased with MC taking over all decisions previously delegated to OC.

Internationally accepted best practices are at variance to our existing MC governance. For example, in Norway, changes in minimum work programme are allowed with approval from the regulator. Similarly, fresh exploration in brown field production is allowed and more importantly, review of declaration of commerciality by MC is not required.

The approach should be to adhere to well-laid out norms under each of the PSC. For example, in case of delay in decisions, deemed approval should be enforced, as provided for in the PSCs.

#### **Recommendations**

- Matters requiring MC review and attention should be reviewed. MC should leave operational decisions to the Operator and the Operating Committee

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- Align process with international practices by reducing number of approvals and reviews before FDP and enforce deemed approval provisions. Fix accountability of timeliness of these with MC Chairman and make performance transparent
  - MC should function like a board of the company. A calendar should be decided in advance for all the MC meetings for the year; much like a board meeting calendar. The Chairman of the MC should have increased accountability
  - The WP&B for a particular financial year should be reviewed or approved (as the case may be) by the MC before the initiation of the financial year
  - MC approvals should be required only for FDP and non-exploration related WP&B
  - Minutes of MC meetings should be agreed and signed by all members of MC before close of the meeting
  - In the interest of decision making process of the MC meetings, all the members of MC should have requisite authority. When MC's decisions are required to be unanimous under the provisions of the PSC, no qualifying remarks should be added by any MC member
  - Time frame within which MC needs to convene the meeting from the date of recommendation by OC should be fixed.
  - Necessary modification in clause 6.5 may be made , to make the MC approving authority instead of reviewing with respect to matters mentioned in article 6.5 (a-f) so as to bring certainty at the time of cost recovery.
  - There should be a clear cut policy to protect the interests of the Contractor if any operational constraints are imposed by any department/agency of the concerned State/Central Government, after the block is awarded, as being experienced by some of the Contractors in case of environmentally sensitive areas like desert national park, wildlife sanctuary, etc. falling inside their blocks
  - All approval processes from Government or Ministry of Petroleum & Natural gas (MoP&NG) should be within a stipulated time frame for the following activities:
    - Grant of Petroleum Exploration License (PEL) by State Governments for on land assets.
    - Any exemption/compensation on account of delay in grant of environmental clearance.
    - Claim for 'Declaration of Force Majeure' on account of any unforeseen happening in their block activity.

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- MC should play a more active and effective role in the discovery to delivery process. Greater discipline is imperative in the conduct of MC and its administration requires considerable improvement. The focus should be to ensure optimisation of JV / work programme performance
  - MC should function like a board of the company. The Chairman of the MC should have increased accountability. A calendar should be decided in advance for all the MC meetings for the year; much like a board meeting calendar
  - The WP&B for a particular financial year should be approved by the MC before the initiation of the financial year. This will lend significant clarity to the entire process
  - MC should also facilitate the approval process in issues that are beyond its purview or remit
  - Minutes of MC meetings should be agreed and signed by all members of MC before close of the meeting
  - In the interest of decision making process of the MC meetings, it would be assumed that all the members of MC do have requisite authority to decide on the matters in the MC and commit their respective organizations for the same. When MC's decisions are required to be unanimous under the provisions of the PSC, no qualifying remarks should be added by a MC member
  - All parties should promptly fill the MC vacancies, as and when they occur, to ensure continuity in the MC functioning
  - The notice period for MC meetings stated in the PSC's is only meant for the convenience of the parties to the PSCs. Agreeing to convene MC meetings earlier does not constitute violation of PSC provisions. Necessity and / or purpose should be the guiding factor for convening the MC meetings
  - Special care and attention is required for timely approval of work programs and budgets. This not only helps compliance with the provisions of the PSC but also helps in avoiding delays in the execution of work programs and consequences thereof
  - Paucity of time on the part of MC members should not be allowed to come in the way of convening of MC meetings and conducting business therein
  - In the interest of efficient conduct of MC meetings and for taking quality decisions it is incumbent upon all the members of MC to come well prepared for the MC meetings

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- Members to the MC can be limited to DGH and Contractor parties. MoPNG being a policy maker should not be a member of the MC
  - Management Committee under the Production sharing contract should act as facilitator for the operation of the Block and should act as an interface between the regulator / Ministry and the contractor. This would ensure faster development of the block.
  - Management Committee should focus on the broad framework and advise the contractor on an overall / macro level and should not get involved in detailed operational matters. The contractor should be provided with operational freedom to decide and act on the operational issues. This is essential considering the fact that the contractor takes all the risks and uncertainties involved in the project be it financial / geological / market etc.
  - The multidisciplinary team should ensure that the recommendations/reports etc. are submitted in a time bound manner. Functioning of this team should be faster and transparent and their opinion should be made available to concerned Contractors.
  - In order to shorten the turnaround times of Management Committee decisions, deemed approval clauses should be made effective in areas such as approvals for FDP, commerciality approvals and budget expenditures.
  - The functions of Management Committee to that of the regulator should be independent of each other.
  - MC review should be in a time bound manner subsequent to submission of OC resolutions / approvals / requests of the Operator.

### **Role of DGH**

Regulator is a pre-requisite in a model where the governance structure and contracts are not in place. The PSC, however, has a very well defined contractual framework. The rights and obligations of all parties are well defined and articulated. The need is for empowered and competent administration of the existing contractual structure and not a regulator. DGH is well placed to act as an administrator of acreage under PSC regime.

Unfortunately, DGH today doesn't have adequate access to technical expertise or budget or manpower. DGH is also not seen to be independent. For DGH to be effective it should be modelled on the lines of Securities and Exchange Board of India.

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International best practices support this view. For example, Norway has a high degree of transparency and a well-equipped regulator. The regulator is well staffed with permanent cadre. More importantly, most of the management staff has prior international exploration experience. Similarly, independent, empowered and competent regulators are a pre-requisite for contract administration. For example, Brazil has significantly strengthened hydrocarbon security through a robust regulatory framework and market linked pricing.

### **Recommendations**

- There has to be clear distinct role of the policymaker and the regulator. There is a need to have an empowered independent regulator for Oil & Gas sector (same as IRDA or TRAI) and clear separation between the policy making entity (the Government) and policy implementing body (the Regulator)
- It is important to build the technical competence and leadership skills of the administrator. DGH is well placed to take up this role. DGH should act as the single point contact for the operators and obtain all clearances and approvals on behalf of the contractors. This could be modelled on lines of SPVs in successful Ultra Mega power plants. DGH should also be a central custodian for all technical data
- Codify standard practices on certain provisions that attract subjective interpretation in the PSC in line with the stated objectives of maximising exploration and production (and publish them on the website)
- Clarify policies as per international practices around extension of licenses, exploration in producing blocks and extension of block areas and codify requirements around these so as to enable timely decisions
- DGH should facilitate the approval process in dealing with issues that are beyond its purview or remit. DGH should also facilitate all the clearances required
- In the immediate future, DGH should establish a Technical Advisory Board with competent staff which is empowered to take decisions on certain provisions that attract subjective interpretation within the current PSCs. This Board should be independent and function as a third-party agency with a mandate to provide key decisions within a defined timeframe

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- DGH should be empowered to approve the Development Plan. It should be mutually agreed by the DGH as a regulator and / or as a technical arm of the MoPNG and the contractor. Only in case of disputes, the Development Plan should be referred to the MoPNG
  - In case of development & production phase, the OC approved WP&B should be approved only by the DGH and the MoPNG should not play a role. Only in case of disputes the concerned parties may refer to the MoPNG
  - Management Committee (MC) should be empowered to give clear & transparent guidance in the PSC, including giving necessary approvals such as, extension of Phase, granting time extension for excusable delays, transfer of Participating Interest etc. This will help in taking quicker decisions and the exploration activities will not suffer. No separate approvals should be insisted from MOP&NG.
  - DGH should form a multidisciplinary team consisting of technical/legal/financial experts of both internal & International repute, who will be involved in checking and validating the different activities related to Drilling, G&G and Development/ Productions. This team should function under DGH.
  - DGH should enhance its skilled resources and strengthen the existing staff. Gradually, DGH should stop drawing officials from PSUs on deputation / tenure and have their own permanent staff. If, however, a need is felt to continue the rotation policy then we should have consistencies

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## **5 Audit of GoI share of profit petroleum**

### **5.1 Suitable government mechanism to monitor and to audit GoI share of profit petroleum (Refer Article 25 of MPSC)**

The objective is to explore suitable government mechanism to monitor and to audit GoI share of profit petroleum.

By definition, audits are financial in nature. An audit of financial statements is the verification of the financial statements to provide reasonable assurance that the financial statements are presented fairly, in all material respects, and/or give a true and fair view in accordance with the financial reporting framework. The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements. The model PSC, as an example, in Section 1.9 of the accounting procedure clearly enunciates the role of an audit agency.

For a private sector operator, audit is best performed by qualified firm of recognised chartered accountants with the scope as laid out in PSC.

It has to be appreciated that the Oil & Gas business is ever-changing and very unpredictable. Risks in the E&P sector are distinct from other businesses.

#### **Recommendations**

- Private contractors object to CAG audit of their activities particularly in areas which they consider beyond CAG audit scope.
- CAG in addition to auditing the financial aspects also go into operational and technical aspects of a project to which the private contractors are strongly objecting.
- This has led to disputes between the Government. and the private contractors which, on one hand, have caused loss of revenue to the Government and, on the other hand, has delayed the process of recovering the project costs invested by the contractors.
- PSC should clearly specify the timelines by which Government will exercise its rights to conduct Audits. In view of the periodic production, DGH should carry out Audit including hiring of third party Consultants to monitor the Production & distribution of Hydrocarbons.
- Current provision gives right to Government for conducting their audit without any timelines. There is a possibility that Government can conduct audit at its will which may be after 4-5 years. There may be practical difficulties in maintaining all the records, vouchers,

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Invoices, contracts etc. for 4-5 years. Considering this, there has to be some timelines for conducting Government Audit.

- Audit should be limited to transactional and should not question business or operational decisions post facto
- Audit agency's role should pertain to financial audit and it should not comment on the policy, technical and contractual issues
- Audit agency should be an independent qualified firm of recognised chartered accountants
- In case cost recovery mechanism is abolished and the profit petroleum is only based on quantum of production, it would be easier to audit. The frequency of calibration of measurement devices can be decided by the Government and if required, a Government nominee can witness the process. Suitable provisions to be incorporated to provide records of measurement.

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## 6 Natural Gas

### 6.1 Formula for pricing domestically produced natural gas (Refer Article 21 of MPSC)

The objective is to develop structure and elements of the Guidelines for determining the basis or formula for the price of domestically produced natural gas and monitoring actual price fixation.

PSC and NELP regimes clearly provide marketing and pricing freedom to contractor. This in fact is one of the key incentives provided by Government to incentivise exploration investments under NELP. During the initial few years of Pre NELP/ NELP regime, domestic gas prices were market linked and close to prevalent prices in international markets. This has changed in the past few years and Gas prices have stayed constant over the last 4 years despite rising input costs and increased price of alternates. At current gas prices, deepwater exploration is not viable.

#### Recommendations

- Price should be determined by the market fundamentals. Till we have a competitive gas-to-gas market, the process of price discovery should reflect mutual interests of the producers and consumers. We should establish a gas price benchmark which is linked to international gas prices and reflects international gas demand-supply fundamentals
- The pricing of Natural Gas should be determined as per the International Price mechanism.
- The mechanism of price discovery should be defined in more clear terms especially for natural gas.

#### Divergent views

- Articles under the PSC and CBM Contract states a timeline for approval of gas prices by the Government within a stipulated timeline, however, these timelines are not strictly adhered to by the government which delays the process. It is therefore recommended that a separate clause should be added in the PSCs and CBM contracts to allow sale of gas to customers by the Contractor at a price determined by the Contractor and the buyer at mutually agreed price till the final price approval from the Government is granted.
- Further, keeping a price cap on the gas produced domestically deters the confidence of E&P players to participate in exploration activities in the country. A formula may be devised based on the weighted average gas price of all the gas available in India (from all the sources including LNG) in order to arrive at a fair gas price to the E&P company.

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## **6.2 Marketing freedom for domestically produced natural gas (Refer Article 21 of MPSC)**

- Consortium should be allowed to sell the Gas in the market at the market determined price. Government may think of selling their share of Gas at a subsidized rate based on the end user i.e. Fertilizer/ Power Sector etc.
- One of the most attractive features of India's NELP and CBM regime as notified to interested bidders is -"Freedom to the contractor for marketing of oil and gas in the domestic market". As regards gas pricing from the KG-D6 field the Government has finally established the price and the pricing mechanism for such Natural Gas produced. However, the price of gas is capped and eventually the gas has now been directed to be sold to designated priority sectors. The idea behind Freedom for Marketing of Oil and Gas in domestic Market is still not clearly understood by the investors.
- While the underlying principle in the PSC should be 'Freedom to Market', in case the Government decide the sectors where the gas should be sold, the same should be exclusively mentioned in the form of 'Gas Utilisation Policy' so that the contractor is aware of the priority sector(s) and accordingly plan (at the time of bid and while carrying out petroleum operations).
- Any Gas Utilisation Policy should apply only after the market price has been fairly determined

## **6.3 Option of taking Profit Gas in kind by GoI (Refer Article 21 of MPSC)**

- The right of the Government to vary its option to take its entitlement either in cash or in kind every year in case of crude oil/condensate and every 5 years in case of natural gas may prevent the Contractor from realizing best value by sale of the Petroleum, as the available quantities may be undeterminable for long-term sale and purchase contracts. Particularly in case of natural gas, such flexible option may not be workable. Therefore, the Government should exercise its option to take Profit Petroleum either in cash or in kind by giving a written notice to the Contractor not later than 30 days after the approval of the Development Plan by the Management Committee or the Government, as the case may be, and once the Government exercises its option, the same should continue for the entire period of the Contract. (Reference Articles 16.4.1. and 16.4.2 of the PSC for NELP-IX)

- This option has not been exercised by the Government till date in any of the PSCs as it is not practically possible to implement this due to problems related to gas marketing, gas lifting agreements, gas transportations etc. Therefore, this option may be deleted from the PSC.

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## **7 Other issues relating to PSCs**

### **7.1 Definitions (Refer Article 1 of MPSC)**

- Well Head Value: Well Head value for calculation of Royalty should be clearly defined in the PSC in order to avoid any doubts relating to calculation of royalty to be paid to government.
- ‘Mineral oil’ must be defined to include crude oil, dry gas, condensate etc.

### **7.2 Petroleum Exploration License & Mining Lease (Refer Article 11 of MPSC)**

- Before inviting bids for the block, the Government should identify whether a significant part of the block lies in Reserve Forest, Sanctuary, Coastal or otherwise restricted / disputed area. Such area should be excluded from the block.
- Before issuance of PEL, GoI should ensure that all necessary statutory approval with respect to licensed area are in place so as to avoid delay in execution of MWP.
- Blocks should be offered only after all regulatory/statutory approvals from multiple ministries and/or departments (such as Defence, Space, Environment etc) are in place, after which MoPNG should function as „Single-point Nodal agency“ for all Operators. There should not be any reversal of any government decisions after a block has been awarded to an operator
- The PEL should be granted by the State Government in a time bound manner.
- Quick resolution should be arrived for existing blocks under force majeure due to denial of clearance from Defence or other Ministries. Appropriate mechanisms should be designed to arrive at a fair resolution within reasonable time period (say within 6 months)
- Government should ensure that PEL is issued (time bound) to the consortium without any difficulties, once the application is submitted. The application of PEL should be made within 30days instead of 15 days, from the signing of the Contract. PEL should be granted on single window clearance basis by the State Government instead of sending the same to Dist. level with proper time guidelines. All the NOC/approvals from MOD/ Army/ Space Agency etc. except Environment clearance, shall be obtained by DGH/MOP&NG and provided to Consortium along with PEL.

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- As per Article 11.5 (b), extension beyond initial period (for production) for the wells producing excess ANG has not mentioned. It is suggested that if the well is capable of producing ANG beyond the initial period of 10 years the same may be extended for another 10 years in line with the terms & conditions mentioned for Non Associated Natural Gas.
  - It is suggested that the Government of India support the State Governments in the process of issue of PEL. Many a times the state governments are inadequately equipped to award the PEL / ML leading to huge delays.
  - Currently there is a huge delay in issue of PEL in states such as Jharkhand / Orissa due to the lack of knowledge of PEL issuance. In such a scenario the issue of PEL alone takes more than a year. Hence an apex body should be formed which can provide support the state governments in providing the PEL in order to expedite the process. In essence better coordination between Central and State Governments is required.
  - Alternately, DGH / Central Government should have an in-principle approval for issuance of PEL in respect of blocks on offer from State Government and the PEL should be issued by the relevant state government as soon as the block is awarded and the contract is signed.

### **7.3 License & Exploration period (Refer Article 3 of MPSC)**

- PSC should have provisions for approving the necessary extensions of exploration phases in logistically difficult terrains basis recommendations of MC.
- The exploration phase I should be divided into two sub phases of 2 years each wherein 1st sub-phase should be dedicated to seismic and the second for well(s). Contractor should have the option to exit the block at the end of sub-phase 1 if the seismic data does not establishes any prospectivity.
- This will save the Contractor to unnecessarily drill wells as part of the commitment or pay Liquidated damages for not completing the committed.
- The provisions for Extension of Exploration Phase should be made a part of the PSC.
- If at the end of Exploration Period or any extension thereof, drilling of well has already started, the exploration period shall be automatically extended till the completion of drilling and no penalty for non completion of the same shall be levied to the contractor.

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#### **7.4 Relinquishment (Refer Article 4 of MPSC)**

- Relinquishment should be Optional. The Contractor should have the option to relinquish any part of the original Contract Area prior to commencement of each Contract Year during Initial Exploration Period. (Reference Article 4.1 of the PSC for NELP-IX)
- The suggested provision will save the Contractor from paying the License fee for that part of the Contract Area, which, in his opinion, is not of hydrocarbon interest, and at the same time, such relinquished part of the area would be back with the Government at the end of every Contract Year.
- MPSC provides “At the end of the Exploration Period, the Contractor shall retain only Development Areas and Discovery”. This should not be mandatory and Contractor should have the option that whether he wants to relinquish any area or not.
- The reason behind this is that Contract areas under the PSCs runs from few hundred square km to several thousand sq km which and it is difficult to access the whole potential of the Contract Area in 7-8 years. Sometimes it so happens that with further appraisal of a discovered area, it is found that the reservoirs extend to already relinquished area.

#### **7.5 Work Programme (Refer Article 5 of MPSC)**

- Work programme should be limited to “programme quantities” that is production profile
- Work Program should be reviewed after seismic data interpretation. If, there are no sufficient prospects, contractor should not be forced to complete MWP and a nominal penalty may be imposed for the incomplete portion of the MWP.
- Substitutability of Minimum Work Program (MWP): Flexibility of choosing the optimum MWP once an Operator actually start exploring the block should be provided and the Operator should not be tied down by the MWP commitment made at the time of bid submission. Since, decisions relating to the MWP commitments are made based on very limited data made available to bidders by DGH. Additional data obtained during actual operations may warrant a change in those MWP commitments. Therefore, it is suggested that the substitutability of MWP, both seismic and well commitments, should be incorporated. In fact where an Operator has more than one block, work in excess of the

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MWP in one block may allowed to be set off in another block where there is a deficiency in the MWP.

- Alternatively, the phase I of the MWP should be divided into two sub phases of 2 years each wherein 1st sub-phase should be dedicated to seismic and the second for well(s). Contractor should have the option to exit the block at the end of sub-phase 1 if the seismic data does not establishes any prospectivity. This will save the Contractor to unnecessarily drill wells as part of the commitment or pay Liquidated damages for not completing the committed.
- Cap on maximum number of wells under MWP: As part of the bidding process certain weight-age is given to MWP commitment by the bidders in each category of blocks. This sometimes leads to unexpected commitments made by bidders in terms of number of wells a bidder bids for a particular block, which cannot be justified. In last three NELP rounds a number of such cases have evolved specially in on-land blocks. Most of the players are not serious about the business and even after winning the blocks by committing huge work programme, does not fulfill the obligations later on. It is therefore recommended that the no of wells to be bid under each block should be capped depending upon the basin type and block area.
- Liquidated Damages: Article 5.6 of PSC states that the contractor is liable to pay Liquidated Damages (LD) in an event of failure to complete the MWP or the Mandatory Work Programme or additional Work Programme committed during the Initial Exploration Period or Subsequent Exploration Period or early termination of the Contract by the Government. Fixation of Liquidated Damages to be levied in case of unfinished committed work programme is a welcome move.
- However, LD for wells are fixed as per well cost for onland, shallow water and deep water. As a result an unfinished onland well of 5000m and another of 750 m would end up paying the same LD of 1,000,000 US\$. It is therefore suggested that LD should be decided at a rate per meter of un-drilled Meterage in place of the existing fixed LD charges specified in PSC.
- Secondly, 2D and 3D acquisition charges for shallow water and deep water are fixed at the same rate. As it is known in the Industry, seismic acquisition in shallow water is more difficult than in deep water considering fishing and shipping activities. Suitable considerations may be given to this aspect in the PSC.

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- The LD for the well which has not been drilled to the depth specified in the MWP, shall be levied in proportion to the shortage in actual vs committed depth.

#### **7.6 Operatorship, Joint Operating Agreement and Operating Committee (Refer Article 7 of MPSC)**

- No comments

#### **7.7 General Rights & Obligations of the parties (Refer Article 8 of MPSC)**

- In the Contract area, if the contractor encounters unconventional hydrocarbons (CBM, Shale Gas, Shale Oil, Gas Hydrates), they should have first Rights for development and production of Gas or Oil.

#### **7.8 Government Assistance (Refer Article 9 of MPSC)**

- Government should ensure that PEL is issued (time bound) to the consortium without any difficulties, once the application is submitted. All the NOC/approvals from MOD/ Army/ Space Agency, Environment clearance etc., shall be obtained by DGH/MOP&NG and provided to Contractor along with PEL.
- Time lines should be defined for all the statutory/Government approvals such as MoD, Forest clearance, Environment etc.
- Single Window Clearance - Only blocks with maximum possible clearances should go on offer
  - It is observed that obtaining clearances from relevant authorities is a time consuming and tedious process which distracts companies from their core activity of exploration and production. Adding to their woes is lack of coordination between the Central and the State level Governments.
  - Requisite clearances (including Environment Clearance, Forest Clearance, Defense Clearance etc.) from all concerned ministries of Government of India and concerned State Governments should be made available prior to offer of blocks. Single window methodology is suggested. It is also suggested that the concerned stake-holders could be

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made signatories to the PSC with addition of suitable addendums defining explicitly terms of reference/ requirements and stipulated time lines for grant of clearances. Various Ministries of the Government of India appear not to feel bound by the terms of the PSC, and impose other terms upon the Contractors (or complete denial) which were not referred to during bidding and finalizing contract terms.

- Also, one of the most common issues faced by the companies is land acquisition which is required for production facilities. State Government should provide full support or it can acquire land on behalf of the Contractor to make the process simple and transparent.
- All the clearances required from the Government / statutory authority should be on the Single Window Clearance basis and should be time bound. Automatic extension of time would be granted in case of any delay in grant of approvals beyond the prescribed time.

## **7.9 Discovery Development & Production (Refer Article 10 of MPSC)**

- In order to shorten the turnaround times of Management Committee decisions, deemed approval clauses should be made effective in areas such as approvals for FDP, commerciality approvals and budget expenditures
- The date for declaring a discovery as Commercial / appraisal period should be reckoned from the date of approval of appraisal plan and not from the date of declaring whether the discovery is of potential commercial interest.
- The Appraisal period may be reworked differently for the onland blocks, offshore shallow water blocks, deepwater blocks, blocks in difficult operating regions etc.
- The number of times, the information may be requested by the Government (para 10.6) be limited to 2 times. There should an overall time limit for approval of discovery as Commercial (DoC).
- The period of 200 days for submission of development plan should be reckoned from the date of approval of DoC.
- There should an overall time limit for approval of development plan (FDP) or the plan should be deemed approved.

**7.10 Unit Development (Refer Article 12 of MPSC)**

- The guidelines in the PSC about sharing of products with other Contractor should be mentioned clearly.

**7.11 Measurement of Petroleum (Refer Article 13 of MPSC)**

- Article 13.1 of the MPSC states that “Petroleum used for internal consumption for Petroleum Operations, flared, saved and sold from the Contract Area shall be measured by methods and appliances generally accepted and customarily used in modern oilfield and petroleum industry practices and approved by the Management Committee and the Government”.
- Since the measurement of petroleum is a highly technical subject hence the approval for this should rest with Management Committee only and the requirement for approval of Government should be removed which will also shorten the process of obtaining such approval.

**7.12 Domestic Supply, Sale, Disposal and Export of Crude Oil and Condensate (Refer Article 18 of MPSC)**

- Enabling provisions should be there in the PSC which would allow the Contractor to export the crude oil and natural gas even if the country is not self sufficient provided that no domestic buyer is interested in taking the product.

**7.13 Valuation of Crude Oil and Condensate (Refer Article 19 of MPSC)**

- No comments

**7.14 Protection of the Environment (Refer Article 14 of MPSC)**

- The Government shall support the contractor during debris (waste) disposal. Moreover, the environment rules may be suitably modified to consider water based drilling mud as non

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Hazardous waste and plan of Operator to dispose off the same be approved by the Government.

- The time in which the State Government would grant Consent to Establish, Consent to Operate should also be defined in the PSC. In case of delays, time extension under excusable delays would be allowed (without payment of penalty and without set off from the next exploration period).

#### **7.15 Currency and Exchange Control Provisions (Refer Article 20 of MPSC)**

- Foreign Company, comprising the contractor, has been allowed to make payments outside of India for purchases, services and loans obtained abroad without the requirement that funds used in making such payments must come from or originate in India. The same clause should be extended to Indian companies too.
- Most of the Indian companies operating in oil and gas sector earn some revenue in foreign currency. Extending the said clause to them will enable them to make payment directly from their foreign currency revenue without exposing themselves to currency conversion and fluctuation.

#### **7.16 Employment, Training and Transfer of Technology (Refer Article 22 of MPSC)**

- No comments.

#### **7.17 Local Goods and Services (Refer Article 23 of MPSC)**

- The provisions should be more explicit that no price preference would be given to goods manufactured, produced or supplied in India and / or services provided by Indian contractors / subcontractors.

#### **7.18 Insurance and Indemnification (Refer Article 24 of MPSC)**

- Article 24.2 can be reworded as “The Contractor shall indemnify, defend and hold the Government harmless against all claims for loss or damage to property or injury or death to persons caused by or resulting from the willful misconduct or gross negligence of the

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Operator, but so that this indemnity shall not extent to loss of Petroleum, underproduction of Petroleum or to loss of tax or other income from the production of Petroleum.”

### **7.19 Records, Reports, Accounts and Audit (Refer Article 25 of MPSC)**

- Clause 25.4.2 should specify that scope of the audit as specified under the Companies Act 1956 will apply mutatis mutandis to annual audit of accounts maintained under the contract.
- Most of the contractors to PSC are incorporated companies. They are required to maintain their books and get them audited as per the provisions of the Companies Act. Such provisions will enable contractors to incorporate their share of accounting figures in their individual books of accounts which have been audited as per the scope defined in Companies Act.
- At present, appointment of auditor and its scope requires prior approval of Management Committee (MC) and audited accounts need to be submitted to MC for approval within 60 days from the end of year. There are many cases wherein MC has not approved the appointment of auditor and its scope within the 60 days from the end of year and thereby Operator can not submit the audited accounts within the PSC timelines. To avoid this situation, there has to be a provision of deemed MC approval by year end or the due date of submission of audited accounts should be 60 days from the end of year or 60 days from the MC approval of appointment of auditors, whichever is later.
- The approval of appointment of auditors and scope of audit shall be granted by the Management Committee within a period of 15 days from the date of submission of proposal to the MC. In case of delay in approval, the time allowed for submission of audited accounts shall be automatically extended to the number of days of delay.
- The Government’s right to audit must be exercised within a particular number of years after the completion of the financial year (say 3 years).

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**7.20 Information, Data, Confidentiality, Inspection and Security (Refer Article 26 of MPSC)**

- No permission should be required to be obtained from the Government for sending the information, data outside India for the purpose of petroleum operations viz. Processing and Interpretation of data. In case such a provision is not possible, clear provisions must be incorporated in PSC as to when such a permission is required and permission for sending the data be granted by the Government in a time bound manner. All such clearances should be by a Single Window Clearance.
- It has been observed that the Government is requiring the contractor to keep original core and cuttings. While this may be feasible when the petroleum operations is in progress, it results in additional cost to the Contractor while the contractor has decided to relinquish the block and there is no definite time for storage of cores and cuttings.

**7.21 Title to Petroleum, Data and Assets (Refer Article 27 of MPSC)**

- The existing PSC is well defined.
- The Government may consider incorporating suitable provisions so that the data comes to public domain after a defined period of time (say after 2 years). The infrastructure for the same shall be managed by the Government.

**7.22 Assignment of Participating Interest (Refer Article 28 of MPSC)**

- Transfer of PI should be time bound and deemed approved after expiry of 3 months from the date of submission of application along with the requisite documents (PSC should mention the list of documents required). PSC should have the clear guidelines to declare a party as defaulter on non adherence to the PSC norms and should not require separate case to case approval from Government The assignment of PI transfer should be approved by MC.

**7.23 Guarantees (Refer Article 29 of MPSC)**

- According to Article 29.3 of the PSC, the amount of the guarantee shall be 7.5% of the Company's PI share of the total estimated expenditure in respect of the MWP. This one-

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time BG is for the entire MWP for 4 years which is based on the estimated budget. The budget has to be prepared annually which might change due to various reasons such as change in costs, etc.

- It is therefore recommended that BG may be allowed to be submitted annually based on the budget which is prepared and submitted to MC annually as was practiced before in previous NELP rounds.

#### **7.24 Term and Termination of the Contract (Refer Article 30 of MPSC)**

- No comments.

#### **7.25 Force Majeure (Refer Article 31 of MPSC)**

- If any matter is under *subjudice*, the same has to be included under Force Majeure.
- The term Force Majeure to include non permission by any statutory authority whose permission is essentially required for petroleum operations, non availability of land for drilling (whether owned by the Government or privately owned), non availability of resources including drilling rig and other services etc.
- Adequate provisions to be built in so that the contractor may decide to relinquish the block (without payment of penalty for unfinished work program) in case the Force Majeure period continues for more than 6 months.

#### **7.26 Applicable Law and Language of the Contract (Refer Article 32 of MPSC)**

- No comments.

#### **7.27 Sole Expert, Conciliation and Arbitration (Refer Article 33 of MPSC)**

- No comments.

#### **7.28 Change of Status of Companies (Refer Article 34 of MPSC)**

- No comments.

**7.29 Entire Agreement, Amendments and Waiver and miscellaneous (Refer Article 35 of MPSC)**

- No comments.

**7.30 Certificates (Refer Article 36 of MPSC)**

- No comments.

**7.31 Notices (Refer Article 37 of MPSC)**

- Notice shared through e-mail can be also included as a proper notice served if a confirmation is received from the other party regarding receipt of the e-mail

**7.32 Any other comments – Related to MPSC**

- The license holders should be allowed to continue exploration throughout the tenure when it holds acreage, with a view to continually maximise domestic production
- Design, develop and implement a policy on PSC extension to infuse new investments in existing and ageing blocks, thereby resulting in additional exploration and production
- Blocks should be offered for exploration only after all the regulatory / statutory approvals from multiple ministries and / or departments (such as Defence, Space, Environment etc) are received
- Continued and added exploration should be permitted in approved Development Areas, to maintain the process of oil & gas reserve accretions on a continuous basis. This would be beneficial to all the parties
- Urgent and immediate need to design, develop and implement a policy on PSC extension to infuse new investments in existing and ageing blocks, thereby resulting in additional exploration and production

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- Focus of the Government of India should shift from maximising government take to maximising exploration efforts and investment, which would result in greater hydrocarbon production in the country. This will lead to reduction in import-dependency
  - Simultaneous exploitation of conventional and unconventional resources
    - Due to the exclusivity clause, resulting in different contractual implications, the concept of simultaneous exploitation of a conventional and unconventional (CBM in this case) resource has not been possible. Simultaneous exploitation is technologically possible with no lateral effects in the subsurface as is evident through several reports on this by the DGH/MoPNG and actual site visits to USA. Keeping in view the increasing demand-supply of gas in the country, this issue is to be taken up and a policy needs to be put in place. The management/monitoring could be through the respective resources' contract whilst the award of acreages could be through (a) award to the same operator with MWP/Payments to be matched with a current suitable similar prospect OR (b) Separate bid mechanism be carried out with an option by current conventional field operator to match the highest realistic bid. Similarly, in a CBM field the operator will have the first preference to exploit any other hydrocarbon resources like UCG, Shale Gas, and conventional O&G as per the existing policy framework for that resource.
  - The functions of the upstream regulator and that of the agency monitoring the PSC should be independent of each other as these functions are conflicting with one another.
  - Quick resolution should be arrived for existing blocks under force majeure. Appropriate mechanisms should be designed to arrive at a fair resolution within reasonable time period, say within 6 months. If no resolution is reached within this period, the operator should be reimbursed the exploration expense incurred

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## **8 Contracting issues relating to CBM & Shale Gas**

### **8.1 Issues related to CBM Contracting**

- The provision that all assets and equipment in the contract area or outside for purposes of CBM operations shall vest in the government at the expiry or earlier termination of the contract at the option of the government should be deleted. CBM has no cost recovery, and such a provision is applicable where the PSC is on cost recovery basis.
- As per Relinquishment at the end of Development phase, the contractor can only retain Producing Area. However, practically it is not possible to drill the entire area by the end of Development Phase to ascertain whether the entire area can become gas producing or not. The intent in the contract is to retain producing and producible area and relinquish only the areas which cannot produce. Ideally, the word “Producing Area” should be replaced with “Producing and Producing Area”.
- Important Project clearances like PEL, Environment Clearance, Clearance from Pollution Control Board of State Government and Mining Lease should be in place before the signing of the Contract with the Government of India. Alternatively, all these clearances should be considered as “Deemed Approved” by the respective Ministry(s)/State Government at the time of signing of the Contract. CBM operations should immediately start after the signing of the Contract and there should be no delay in getting the other clearances required for starting the work.

#### **Gas Marketing & pooling**

- There should be free market pricing and no priority allocation. Priority allocation to some sectors is against free market principles and will automatically depress prices as priority sectors already are aware of their allocation.
- Any allocation earmarked for any buyers / sectors is a clear violation of marketing freedom as provided in the PSC. Such an arrangement goes against the basic premise of the PSC which gives operators’ freedom to sell at arm’s length market driven prices.
- CBM operators have / will built up a user industry base diligently over the years. Existing users of CBM in its area of operation are small and medium scale units which have converted to using CBM from other fuels like coal or furnace oil. While operator has

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invested substantially in raising its production capacity, the user industries have equally invested in their fixed production capacity and built up production conditional on supply of CBM.

- If the entire field production has to be supplied to priority sector users even then the supply will be inadequate as their requirement is huge. Again, in case of a shut down by a priority sector user, entire field production will have to be flared and wasted.
- CBM production builds up slowly over a period of 10 years and its not possible to supply to a large priority sector industry. First, as the production increases gradually more and more customers are added on. CBM customers on consume anywhere from 0.001 mmcmd to 0.05 mmcmd. Such customers will continue to be supplied as the production rises gradually and a similar profile of new customers will be added. If this is not done, it will simply lead to flaring a natural resource.
- Any system of pooling can turn into a mechanism for subsidising imported gas over domestic gas, and hence incentivising overseas gas producers to increase prices.
- Secondly, in case of CBM, the markets close to CBM blocks are generally coal consuming where it is difficult for the Contractor to sell gas as per the priority sectors. Secondly, there are no developed gas markets in terms of pipelines and other infrastructure and each Contractor has to invest a large chunk of capital to create such infrastructure. Therefore, the contractor in a CBM block should not be bound to follow the directions of the priority sector policy for marketing of gas and should have full marketing freedom to sell gas.

#### **Free Market Price Discovery in a restricted Market & interference with discovered prices**

- The contracts entered into with various E&P companies should be adhered to and there cannot be any deviation. Prices are determined by the market and to be decided by the buyer and seller and not by the Government. This is normal functioning of a market based economy and arms' length market based pricing.
- Pricing should be free as per the contract, i.e. free market arms' length pricing. Current policies are encouraging Indian companies to invest outside the country and produce, which is subsequently imported by paying foreign exchange. It encourages companies to invest

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overseas, generate employment overseas, develop foreign economies rather than doing all this is India!

- Gas should get import price parity as already extended to oil. Currently, the rules are such that if the same well produces oil and gas, the former gets import parity price whereas gas does not get import parity price.

#### **Violation of Contract Sanctity**

- The contract provides Arms' Length pricing and marketing freedom. Introducing of the Gas Utilisation Policy and any kind of pooling or restriction are a clear violation of the contracts.
- Simultaneous mining of CBM and coal is against the Contract, as they are exclusively for CBM. Any policy for simultaneous operations should only be for future blocks. There are several blocks where Coal India / Ministry of Coal are trying to encroach for coal mining in violation of the contract and hence should be restricted.

#### **Requirement of Budget approval and approval for Pledge for loans**

- Since the Contracts for Coal Bed Methane (CBM) are not based on Cost Recovery Method, therefore, the requirement of approval of budgets including annual budgets and approval of annual accounts should be done away with.
- Similarly, there should be no provisions regarding appointment of Statutory Auditors.
- To raise loans there is lengthy procedure to procure approval for pledging the license. As long as the loans are being utilised for the block itself no approvals should be required and a certificate to this extent should be given by the Operator as an undertaking.

#### **Issue of licenses for alternate mining by different authorities:**

- Simultaneous mining of coal and CBM, cannot be allowed because it is totally against the Contract conditions. Simultaneous mining in CBM blocks cannot be done as it is a safety hazard. CBM will have to be extracted first, and then coal mining can be done. CBM industry was developed to extract the methane prior to mining so that mining becomes safer.

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- Any policy for Simultaneous operations should only be for future blocks and also done by the same operator to address safety concerns and improve efficiency.
  - Additionally, coal mining before methane extraction will result in the methane escaping from the underground seams into atmosphere. This is ecologically harmful, as methane is 21 times more damaging to the environment than carbon dioxide.

## **8.2 Issues related to Shale Gas Policy**

- Like CBM blocks, Shale gas blocks should also be on royalty / PLP basis and not cost recovery.
- Secondly, these blocks should be handled by SPVs and all environmental and other clearances should be obtained by the SPV before the blocks are handed over.
- As the production of Shale Gas is at peak initially and majority of the production comes within the first year itself, therefore, in order to utilize the Shale Gas to its full potential, the blocks should be identified only at those places where the pipeline already exists or the Government should build the pipelines in advance.

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## 9 Annexure I – Terms of Reference

The Government of India has constituted a committee under the chairpersonship of Dr. C. Rangarajan, Chairman, Economic Advisory Council to the Prime Minister, to look into the design of future Production Sharing Contracts (PSCs) in hydrocarbon exploration, so as to enhance production of oil & gas and the Government's share, while minimizing procedures for monitoring the expenditure of producers.

The Terms of Reference ('TOR') of the Committee are:

- i) Review of the existing PSCs, including in respect of the current profit-sharing mechanism with the Pre-Tax Investment Multiple (PTIM) as the base parameter;
- ii) Exploring various contract models with a view to minimize the monitoring of expenditure of the contractor without compromising, firstly, on the hydrocarbons output across time and, secondly, on the Government's take;
- iii) A suitable mechanism for managing the contract implementation of PSCs which is being handled at present by the representation of Regulator/Government nominee appointed to the Managing Committee;
- iv) Suitable governmental mechanisms to monitor and to audit GOI share of profit petroleum;
- v) Structure and elements of the Guidelines for determining the basis or formula for the price of domestically produced gas, and for monitoring actual price fixation;
- vi) Any other issues relating to PSCs.

The Committee has invited views on the issues being looked into by the committee.