GETTING THE DEAL THROUGH

Gas Regulation

in 33 jurisdictions worldwide

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GLOBAL COMPETITION REVIEW

Bangladesh

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Description of domestic sector

1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments.

Natural gas is Bangladesh's most important natural resource. So far, 22 gas fields of sizes ranging from 25 to 4,000 billion cubic feet (Bcf) have been discovered. Fifteen have been brought into production.

There is much uncertainty about Bangladesh's natural gas reserves. Whereas the *Oil and Gas Journal* of January 2005 estimated the country's proven gas reserve at 10.6 trillion cubic feet (Tcf), the mid-2004 estimate of Petrobangla put it at 15.3Tcf and the United States Geological Survey estimated that Bangladesh has 32.1Tcf of additional 'undiscovered reserves'.

The gas sector is vertically integrated, albeit with government involvement in all its functional segments either as a regulator, policymaker, operator or commercial participant.

Gas exploration, exploitation and production in Bangladesh cannot be undertaken without entering into agreement with the government. As such the exploration, exploitation and production activities are undertaken under the terms of production-sharing contracts (PSCs) signed between international oil companies (IOCs) and the government of Bangladesh, represented by the Bangladesh Oil, Gas and Mineral Corporation (Petrobangla).

Petrobangla is responsible for the natural gas industry in Bangladesh and works under the direction of the Ministry of Energy and Mineral Resources. Petrobangla has the following six categories of companies:

- petroleum exploration company;
- gas production company;
- gas transmission company;
- gas distribution company;
- compressed natural gas company; and
- mining company.

Generally IOCs submit an initial bid and the successful bidder enters into negotiation with Petrobangla with respect to the key elements of the PSC. The bid proposal contains critical features which include, among others:

- the maximum cost recovery by the IOC;
- the share of production between the IOC and Petrobangla;
- the price at which the IOC's share of the gas production would be sold to Petrobangla; and
- the priority or right of purchasing the IOC's store of gas.

Under a PSC, the status of an IOC is that of a contractor who is paid for costs and risks from the output of successful drilling. The IOC is responsible for all costs related to unsuccessful drilling. In successful fields, the output would be shared. First, the IOC receives a share of the output, up to a stipulated maximum, to compensate it for the cost of exploration and production specific to the field. The remaining output is shared between Petrobangla and IOC at an agreed rate. The PSCs are structured in such a way that not only ensures that the government reserves the right to purchase any portion of IOC's share of production but also that the gas fields eventually revert to the Bangladesh government.

Besides IOCs, the natural gas in Bangladesh is produced by two subsidiary companies of Petrobangla, namely Sylhet Gas Field Ltd and Bangladesh Gas Fields Company Ltd.

Bangladesh does not import or export gas other than liquefied petroleum gas (LPG). LPG is imported by private-sector companies or licensees for marketing for domestic use.

The major gas fields are located in the eastern part of the country. The transmission lines, operated by the transmission and distribution companies of Petrobangla, are also situated in that region. The present pipeline network includes 1,188km of transmission lines and 8,328km of distribution lines.

Policy and legal framework

2 What is the statutory framework for the domestic natural gas sector?

The statutory framework for domestic natural gas sector is set out in various statutes, as follows.

- The Bangladesh Energy Regulatory Commission Act 2003 (2003 Act) set up the Bangladesh Energy Regulatory Commission (BERC), which is responsible, inter alia, for effective regulating and monitoring of the energy sector (including the gas sector, as energy has been defined to mean electricity, gas and petroleum products). BERC issues licences for exploration, exploitation, transmission and distribution of natural gas and regulates the activities of the licensees.
- The Bangladesh Oil Gas and Mineral Corporation Ordinance 1985 (the 1985 Ordinance) set up Petrobangla, which is empowered and entrusted with, among others:
  - the exploration and development of oil, gas and mineral resources as per the policies of the government of Bangladesh;
  - overall control and coordination of production, transmission and marketing of gas, condensate, oil and mineral resources produced in the country;
  - conducting necessary research required in oil, gas and mineral exploration and development;
  - implementation of projects to develop the gas and mineral sector with the annual government budget and with the assistance provided by international organisations;

  - entering into PSCs with IOCs for exploration and development of oil and gas, and supervising, monitoring and coordinating the activities of IOCs under the signed PSCs;
  - coordinating, planning and supervising the activities of the subsidiary companies of Petrobangla; and
  - any other functions and responsibilities as directed by the government from time to time.
- The Bangladesh Petroleum Act 1974 (the 1974 Act) gives the government right to explore, develop, exploit, produce, process, refine and market petroleum within the territory, continental shelf and economic zone of Bangladesh. This might include any other activity supplemental, incidental or consequential thereto.

Other relevant legislation includes:
- the Natural Gas Safety Rules 1991;
- the Gas Cylinder Rules 1991;
- the Gas Pressure Vessel Rules 1995; and
- the Liquefied Petroleum Gas (LPG) Rules 2004.

3 What is the government's policy for the domestic natural gas sector and which bodies set it?

The government's policy in connection with the exploration, exploitation, production, transmission and distribution of gas is set out in the National Energy Policy 1995 (revised in 2004, yet to be approved by the Cabinet). The government's policy includes providing infrastructure facilities and fiscal incentives such as repatriation of dividends, capital, exemption of import duty and tax incentives for investment in the natural gas sector. The policy encourages private sector participation side by side with the government enterprises.

The Ministry of Energy and Mineral Resources and Petrobangla, in consultation with other government organisations, contributed to the preparation of the Policy.

Regulation of natural gas production

4 What percentage of the country's energy needs are met directly or indirectly with natural gas and LNG? What percentages of the country's natural gas needs are met through domestic production and imported production?

Bangladesh's natural gas needs for generation of electricity, fertiliser production, industrial, commercial and domestic use are fully met from domestic production of gas. Few private-sector industries import LPG.

Bangladesh does not produce or import LNG.

5 What is the ownership and organisational structure for production of natural gas (other than LNG)?

The production of natural gas is carried out by the IOCs under PSC. In addition there are two gas production companies wholly owned by the government. These companies carry out production activities under a petroleum agreement with the government.

6 Describe the regulatory framework and any material governmental or administrative authorisations applicable to natural gas exploration and production.

Natural gas exploration and production are carried out by the IOCs under PSC. Both the government companies and the IOCs work under specific authorisations. PSC terms and their operations are regulated, monitored and supervised by the Ministry, BERC and Petrobangla on a regular basis.

BERC and Petrobangla are statutory bodies. The scopes of these regulators are set out in statutes setting up the respective regulators. The decisions of the regulators may be challenged by judicial review under article 102 of the Constitution.

Gas exploration, production, transmission and distribution activities require permission from different government departments or organisations, including: the Ministry of Energy and Mineral Resources; the Ministry of Law; BERC; Petrobangla; the Board of Investment; and the Department of Environment

7 How does the government derive value from natural gas production?

The government derives value from natural gas production, either as profit under the PSC or from dividend from the companies owned by it.

Regulation of natural gas pipeline transportation and storage

8 What is the ownership and organisational structure for pipeline transportation and storage of natural gas?

The Ministry of Energy and Mineral Resources through Petrobangla and its companies generally own and operate pipeline transportation and storage of gas.

9 Describe the regulatory framework and any material governmental or administrative authorisations applicable to the construction, ownership and operation of natural gas transportation pipelines and storage facilities.

See question 6.

10 How does a company obtain the land rights to construct a natural gas transportation or storage facility?

Generally, the title to land and rights of way for the construction of transmission pipelines and storage facilities are acquired or requisitioned by the government. In case of acquisition the land owners are entitled to compensation.

11 How is access to the natural gas transportation system and storage facilities organised?

The government has the exclusive right to all types of petroleum operations including access to gas transportation and storage facilities. Any interested person may apply in writing for the right to use gas from a pipeline constructed, maintained and operated by a licensee. A licence must also be obtained from the designated government agency for any storage facilities.

12 To what degree are pipeline systems interconnected with one another and by what means is cooperation between such systems established?

Transmission pipelines are connected to distribution pipelines from which customers are served through individual pipelines constructed under the supervision of the licensee.

13 Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Gas is a natural resource belonging to the state and all gas operations, including expansion of existing facilities, are under the control of the government. The government may direct any pipeline or storage facilities operator to expand its facilities to accommodate new customers and may require the beneficiary to bear the cost of interconnection and expansion.

14 Describe any regulation of the prices or terms of service for pipeline or storage services.

There are no statutory regimes prescribing the price or terms of service for pipelines or storage services. The prices and the terms of services are generally set out in the PSC (for IOCs).

15 Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

A licence is required to process natural gas to extract liquids and to prepare it for pipeline transportation. The Ministry of Energy and Mineral Resources, BERC and Petrobangla are the licensing authorities.

16 Describe the contractual regime for transportation and storage.

There are currently no gas storage facilities.

The transportation of natural gas from offshore installation to onshore pipeline is usually covered under the PSC. Onshore transportation of gas is carried out through transmission and distribution pipelines owned and operated by government companies, mainly on the basis of administrative orders.

Regulation of natural gas distribution

17 What is the ownership and organisational structure for the local distribution of natural gas?

The distribution companies owned by Petrobangla and the government distribute and market gas to industrial, commercial and domestic consumers. The consumer applies for gas connection, the operator of distribution pipeline systems approves the design and alignment of the consumer's pipeline, which the consumer builds at his own costs by engaging a gas contractor enlisted by the operator. The operator then gives the gas connection to the consumer on being satisfied that the construction of the consumer's pipeline has been done properly in compliance with the applicable rules and regulations.

18 Describe the regulatory structure and governmental or administrative authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

Each gas distribution company has its distribution network in its area of franchise granted by the government of Bangladesh, Petrobangla or BERC. It is generally considered a public utility, but the distribution and marketing companies operate on commercial considerations which can be affected by government decisions prompted by political or public service obligations.

See also question 6.

19 How is access to the natural gas distribution grid organised?

The process commences with an application to the concerned distribution company by an individual consumer (industrial or domestic) setting out its gas requirement. Thereafter, the concerned distribution company, after reviewing the application, signs gas supply contract. At present there is no private sector company operating gas distribution pipeline systems.

20 Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

Prices for distribution services are regulated under the gas supply contracts signed between a gas distribution company and consumer. The prices, however, cannot be higher than that prescribed by the government from time to time.

21 May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

The regulator can require a distributor to expand its existing system or to limit the service to existing customers so that new customers can be served.

22 Describe the contractual regime in relation to natural gas distribution.

The contents of the gas distribution agreement between the customer and the distribution company sets out, among others: the sanctioned load, flow rate, gas supply time, minimum charge, force majeure, bill payment procedure, etc.

Regulation of natural gas sales and trading

23 What is the ownership and organisational structure for the supply and trading of natural gas?

Any person (company, firm or individual) with the required licence or permission can be engaged in the business of supply and trading of gas. The organisational structure would vary from licensee to licensee but the government may retain or exercise control over ownership or organisational structure.

24 To what extent are natural gas supply and trading activities subject to governmental oversight?

The government retains significant control over the natural gas supply and trading activities.

25 How are physical and financial trades of natural gas typically completed?

There is no standard agreement form for physical and financial trades of natural gas. For trade of gas usually a Gas Supply Agreement is concluded between the parties.

26 Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

Buyers are not restricted to purchasing a bundled product from a single provider.

Regulation of liquefied natural gas (LNG)

27 What is the ownership and organisational structure for LNG, including liquefaction and export facilities and receiving and regasification facilities?

LNG facilities are yet to be developed.

28 Describe the regulatory framework and any material governmental or administrative authorisations required to build and operate LNG facilities.

See question 27.

29 Describe any regulation of the prices and terms of service in the LNG sector.

See question 27.

Mergers and competition

30 Which governmental body may prevent or punish anti-competitive or manipulative practices in the natural gas sector?

The gas companies under Petrobangla operate exclusively in their respective areas. Between such companies there is no requirement to regulate anti-competitive practices.

Under the 2003 Act, BERC is, however, required to ensure a competitive practice among the licensees. BERC is entrusted to resolve any dispute between the licensees and between the licensee and consumer.

31 What substantive standards does that governmental body apply to determine whether conduct is anti-competitive or manipulative?

Substantive standards or guidelines to determine whether any conduct is anti-competitive or manipulative have not yet been formulated.

32 What authority does the governmental body have to preclude or remedy anti-competitive or manipulative practices?

BERC may take necessary steps under the 2003 Act to preclude or remedy anti-competitive or manipulative practices.

33 Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

The government does not approve or disapprove mergers or other changes in business sector or acquisition of production, transportation or distribution of assets, save to the extent that assignment of rights under a petroleum agreement or licence would require prior consent of the government or a government agency. Under the existing laws, however, a merger must be registered with the Registrar of Joint Stock Companies, Stock Exchange and Securities and Exchange Commission. The High Court Division of the Supreme Court of Bangladesh must approve the merger.

In the gas sector, the relevant legislation governing the exploration, production, transmission, exploitation and distribution of gas could be construed to mean that any change in ownership or control of a company engaged in gas business must be approved beforehand by the Ministry of Energy and Mineral Resources.

34 In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

There are no such restrictions.

35 Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

Shares of gas companies are currently not traded. Under the 2003 Act, a licensee shall not without prior permission in writing from BERC acquire any undertaking by purchase or otherwise. Furthermore, no licensee without the prior permission from BERC shall sell, lease, exchange or trade by any means its undertaking or any part of it.

International

36 Are there any special requirements or limitations on foreign companies acquiring interests in the natural gas sector?

There is no restriction on foreign companies acquiring interests in the gas sector. In the case of foreign investment, registration with the Board of Investment and permission from the Bangladesh Bank are needed.

Update and trends

In February 2008 Bangladesh floated its Offshore Bidding Round 2008, inviting bids for 28 offshore blocks. The government intends to conclude PSCs in relation to these blocks before Winter 2008 with a view to starting exploration during Winter.

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37 To what extent is regulatory policy affected by treaties or other multinational agreements?

Treaties and multinational agreements are not directly enforceable but have significant influence on regulatory policy framed by the government.

38 What rules apply to cross-border sales or deliveries of natural gas?

Currently Bangladesh is not selling or delivering natural gas across its borders.

Transactions between affiliates

39 What restrictions exist on transactions between a natural gas utility and its affiliates?

There are no laws directly addressing these issues in the gas sector. Depending on the nature of the transaction such issues would be governed by existing laws and/or by agreements between the government and the companies.

40 Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

See question 39.