

The International Comparative Legal Guide to: Gas Regulation 2009

A practical insight to cross-border Gas Regulation work



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Bangladesh

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1 Overview of Natural Gas Sector

- 1.1 A brief outline of Bangladesh's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; importation and exportation of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

Reserves: There have been various estimates of the size of the natural gas reserves of Bangladesh. In mid 2004, the Bangladesh Oil Gas and Mineral Corporation (commonly known as "Petrobangla") estimated the proven gas reserves at 15.3 TCF. The US Geological Survey in a survey conducted in 2000 had estimated that Bangladesh has a 15.3 TCF of additional "undiscovered reserves". According to the study of the Hydrocarbon Unit of the Energy and Mineral Resources Division and the Norwegian Petroleum Directorate, the (proven plus probable) gas reserve of the 22 gas fields is 28.4 trillion cubic feet ("TCF").

Production: Twenty two gas fields, ranging from 25 to 4,000 billion cubic feet ("BCF"), have been discovered in Bangladesh. Fifteen of these have been brought into production.

Importation and Exportation: Bangladesh does not export natural gas. Some private companies in Bangladesh import liquefied petroleum gas (LPG) in bottled cylinders. These companies have their own LPG storage facilities in their bottling plants. There is currently no LNG import or LNG storage facilities.

Pipeline Transportation: Bangladesh has a gas pipeline network of 1,188 kilometres of transmission lines and 8,328 kilometres of distribution lines.

- 1.2 To what extent are Bangladesh's energy requirements met using natural gas (including LNG)?

Natural gas is the principal source of energy for power, industry, commercial and domestic sectors. It is also the feedstock of all the urea fertilizer plants in the country. Recently the Government of Bangladesh has decided to use compressed natural gas (CNG) as a substitute for gasoline, petrol and diesel in the transport sector.

- 1.3 To what extent are Bangladesh's natural gas requirements met through domestic natural gas production?

Domestic natural gas is the most important indigenous energy source in Bangladesh and the country's natural gas requirements for the generation of electricity, fertiliser production, industrial, commercial and domestic uses are fully met from domestic gas production.

- 1.4 To what extent is Bangladesh's natural gas production exported (pipeline or LNG)?

Bangladesh does not export gas through any pipelines. Bangladesh also does not produce or import Liquefied Natural Gas (LNG).

2 Development of Natural Gas

- 2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

The legal and organisational framework for exploration and production of natural gas in Bangladesh is as follows:

The Bangladesh Energy Regulatory Commission Act, 2003 established the Bangladesh Energy Regulatory Commission (BERC), which has the functions of issuing licences for exploration, transmission, and distribution of natural gas.

The Bangladesh Oil Gas and Mineral Corporation Ordinance, 1985 set up Petrobangla, which is empowered and entrusted with: 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 Production Sharing Contracts (PSC) with International Oil Companies (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.

Under the Bangladesh Petroleum Act, 1974 production, processing, refining and marketing of petroleum products in the country is vested exclusively with the Government.

Other relevant legislation includes: (i) Natural Gas Safety Rules 1991; (ii) Gas Cylinder Rules 1991; (iii) Gas Pressure Vessel Rules 1995; and (iv) Liquefied Petroleum Gas (LPG) Rules 2004.

2.2 How are the State's mineral rights to develop natural gas reserves transferred to investors or companies ("participants") (e.g. license, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

No person can undertake or carry on any petroleum operation except under an agreement or license with the Government. Gas exploration, exploitation and production in Bangladesh are undertaken under terms of PSCs signed between IOCs and Petrobangla.

Under the current PSC arrangements the IOC is solely responsible for all costs related to unsuccessful drillings. In successful drilling, the output is shared. The IOC's status is that of a contractor who is paid from the output of successful drilling.

Petrobangla reserves the right to purchase any portion of the IOC's share of production.

The PSCs are structured so that the gas fields discovered eventually revert to the Government.

2.3 If different authorisations are issued in respect of different stages of development (e.g., exploration or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

The gas sector in Bangladesh is organised into four distinct segments with individual companies responsible for exploration, production, transmission and distribution. The transmission and distribution companies are all state owned. The upstream sector is made up of IOCs co-existing with state owned companies. Regulatory overview is provided by the recently formed Bangladesh Energy Regulatory Commission (BERC) which regulates the midstream/downstream oil, gas and power sectors and the Hydrocarbon Unit (HCU) which performs regulatory functions relating to upstream oil and gas.

IOCs explore, produce and sell gas under the terms of the PSCs. Bangladesh PSCs follow a Model PSC, which contains both negotiable and non-negotiable clauses.

2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?

Under Article 143 of the Constitution of Bangladesh ownership of all mineral resources vests in the State. Bangladesh Petroleum Act 1974 gives the Government absolute right to explore, develop, exploit, produce, process, refine and market petroleum products. IOCs explore, produce and sell gas under agreements (PSCs) entered with the Government.

2.5 How does the State derive value from natural gas development (e.g. royalty, share of production, taxes)?

Under the PSCs, in the case of successful drillings, the output is shared between the IOCs and the Government. Firstly, the IOC receives a share of the output, upto a stipulated maximum, to cover the cost of exploration and production. The remaining output is shared in agreed proportions between the IOC and Petrobangla. Issues of tax and royalty are dealt with in the PSCs.

2.6 Are there any restrictions on the export of production?

Bangladesh does not export any natural gas. The Government has not yet taken a decision permitting export of gas.

2.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

From 1994 onwards the Bangladesh Taka has been made fully convertible and as such there are no currency exchange restrictions. Outward remittances from Bangladesh are approved by Authorised Dealers of foreign currencies (i.e. banks) on behalf of Bangladesh Bank.

2.8 What restrictions (if any) apply to the transfer or disposal of natural gas development rights or interests?

The specific contracts would generally deal with the assignment of rights to third parties. Generally approval of the Government would be required before the rights are assigned.

2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?

Participants are generally obliged to provide security guarantees in the form of performance bonds for fulfilment of their work obligations (exploration and drilling).

2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

There are no restrictions in using the rights to develop natural gas reserves as security pledges, or being booked for accounting purposes.

2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

It is mandatory for all gas projects to conduct environmental impact assessment. Environmental Clearance certificates are to be obtained from the Department of Environment.

2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?

There is no specific regulation on the abandonment or

decommissioning of physical structures used in natural gas development. However, the new model production sharing contract of Bangladesh will incorporate provisions for abandonment.

3 Importation / Exportation

- 3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

There are no cross-border sales or deliveries of natural gas.

4 Transportation

- 4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

The Ministry of Energy and Mineral Resources, through Petrobangla and its companies, generally own and operate pipeline transportation of gas. Supervisory control over particular gas pipelines may also be granted to private sector companies.

- 4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?

All gas transportation has to be carried out upon entering into an agreement with the Government.

- 4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

Generally, the title to land and rights of way for the construction of transmission pipelines are acquired or requisitioned by the Government. The operators must then pay compensation to the landowners under the provisions of the Land Acquisition Act, 1894 and the Immovable Property Requisition Ordinance, 1982.

- 4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?

Gas transportation pipelines are constructed, owned and operated by Petrobangla and its associated companies, under agreements with the Government.

- 4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

Transportation pipelines are connected to distribution pipelines from which customers are served through individual pipelines constructed under the supervision of the licensee. Cooperation between pipeline systems can be established through contracts between the licensees concerned.

- 4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

All gas operations, including expansion of existing facilities, are under the control of the Government. The Government may direct any pipeline operator to expand its facilities to accommodate new customers. Normally the beneficiary would bear the cost of interconnection and expansion.

- 4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

There are no statutory regimes prescribing terms of service for transportation of gas. The transportation of natural gas is usually covered under the terms of the PSC or subsequently fixed by the Government.

5 Transmission / Distribution

- 5.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

Gas is supplied by state-owned distribution companies. Titas Gas Transmission and Distribution Company Limited (TGTDC), Bakhrabad Gas Systems Limited (BGS), Jalalabad Gas Transmission and Distribution Systems Limited (JGTDSL) are the major gas distribution companies and Paschimanchal Gas Company Limited (PGCL) has commenced CNG supply in Bangladesh. At present there is no private sector company operating gas distribution pipeline systems. IOCs supply gas to the domestic grid.

The Gas distribution companies are engaged in the marketing of gas for industrial, commercial and domestic consumers. Prior to providing any gas connections, contracts are signed between the customers and the gas company setting out, *inter alia*, the sanctioned load, flow rate, gas supply time, minimum charge, force majeure, and bill payment procedure.

- 5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

The distribution companies are currently supplying gas in franchise areas granted by the Government, Petrobangla or BERCL.

- 5.3 How is access to the natural gas distribution network organised?

Petrobangla distributes gas to various customers through its marketing companies. At present there are four marketing companies operating in their respective franchise areas.

Any interested person may apply in writing for the right to use gas from a pipeline constructed, maintained and operated by a licensee.

- 5.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

The Government may direct any distributor to grant capacity or expand its system in order to accommodate new customers.

- 5.5 What fees are charged for accessing the distribution network, and are these fees regulated?

Prices for distribution services are regulated under the gas supply contracts signed between a gas distribution company and consumer. However, the prices cannot be higher than those prescribed by the Government.

- 5.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

The government has significant control over gas utility and the distribution network.

6 Natural Gas Trading

- 6.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

Any company, firm, or individual with the required license or permission can engage in the business of supply and trading of gas.

- 6.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?

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

7 Liquefied Natural Gas

- 7.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

Petrobangla, through one of its companies (RPGCL), is engaged in the business of Liquefied Petroleum Gas (LPG); and some Natural Gas Liquid (NGL) is also extracted from some gas fields.

- 7.2 What Governmental authorisations are required to construct and operate LNG facilities?

LNG facilities are yet to be developed.

- 7.3 Is there any regulation of the price or terms of service in the LNG sector?

LNG operation is yet to commence and as such there is no regulation of the price or terms of service.

8 Competition

- 8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

The gas companies under Petrobangla operate exclusively in their respective areas. There is hardly any competitive culture in practice between such companies and therefore no requirement to regulate anti-competitive practices. There are no anti-competitive laws.

BERC, however, is required to ensure competitive attitude amongst the licensees.

- 8.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

There are no specific guidelines.

- 8.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

Specific guidelines are yet to be put in place.

- 8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

The government does not approve or disapprove mergers or other changes in the business sector or the 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.

9 Foreign Investment and International Obligations

- 9.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

There is no restriction as such on foreign companies to acquire interest in the gas sector. Indeed, the government encourages foreign investment in almost all sectors, including gas. In the case of foreign investment, registration with and permission from the Board of investment and the Bangladesh Bank are necessary.

- 9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

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

10 Dispute Resolution

- 10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.

There are no statutory regulations directly addressing the issue of dispute resolution procedures in the natural gas sector.

- 10.2 Is Bangladesh a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Bangladesh is a signatory to and has ratified both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the ICSID.

- 10.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

There is no special difficulty in litigating, or seeking to enforce judgments or awards, against Government authorities.

- 10.4 Have there been instances in the natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

No examples so far.

11 Updates

- 11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Bangladesh.

There are no new updates in Bangladesh.

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