

GETTING THE DEAL THROUGH

# Oil Regulation

in 29 jurisdictions worldwide

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# Bangladesh

**Sharif Bhuiyan and Abdullah Mahmood Hasan**

Dr Kamal Hossain and Associates

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## General

- 1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Bangladesh has proven oil reserves of 56 million barrels and produces approximately 6,725 barrels per day. To date, oil exploration has proven largely unsuccessful since exploration activities have not resulted in the discovery of any significant oil deposits other than in Hariipur, which produced a total of about 650,000 barrels of crude oil. Oil production in that area has ceased as a result of a reduction of pressure and an influx of water.

After the independence of Bangladesh in 1971, six foreign companies operated both offshore and onshore for a few years without any significant discovery and eventually all of them left. Since the early 1990s, Bangladesh has encouraged foreign oil companies to carry out business in Bangladesh. In 1993, 17 blocks were delineated for exploration of oil. At present, foreign companies control 10 blocks through eight production sharing contracts with Bangladesh Oil Gas and Mineral Corporation (Petrobangla), which has the right of first purchase from the international oil companies (IOCs).

Activities in the oil sector in Bangladesh relate to importing crude oil, importing refined products, refining crude oil through Eastern Refinery Ltd and marketing the product through different oil marketing companies. Eastern Refinery is a government-owned company and the only refinery of the country. It started operation in 1968. It had a capacity to refine 33,000 barrels of crude oil per day, approximately 1.5 million tonnes per year. Eastern Refinery currently produces kerosene, diesel, LDO, HSFO and other petroleum products as by-products. Only the government is permitted to import crude oil or crude oil products from abroad, though foreign companies are permitted under production sharing contracts and petroleum contracts with Petrobangla to carry out oil exploration and exploitation activities in Bangladesh.

There are three marketing companies, namely Jamuna Oil Company Limited, Meghna Oil Company Limited and Padma Oil Company Limited. The Bangladesh Petroleum Corporation (BPC) manages on behalf of the government the import, refining and marketing of oil. At present, BPC imports around 2.5 million tonnes of refined petroleum products every year.

- 2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Since the early 1970s, the share of oil in the total energy need has declined and, conversely, the use of natural gas has increased. From 1980 to 1981, the share of oil in the total energy consumption was approximately 56 per cent, which dropped to 36 per cent in 1994

to 1995 and further dropped to approximately 20 per cent in 2003 to 2004.

During 2005 to 2006, Bangladesh imported 1.253 million metric tonnes of crude oil, valued at US\$552 million, and 2.381 million metric tonnes of petroleum products, valued at US\$1,382 million. During 2004 to 2005, 3.768 million metric tonnes of petroleum products were consumed.

- 3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Bangladesh has an overall energy policy regarding oil and gas activities, namely the National Energy Policy of 1995. The 1995 Policy was reviewed and redrafted in 2004 and is awaiting formal approval. There is no separate policy regarding oil-related activities.

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## Regulation overview

- 4 Describe the key laws and regulations that make up the general legal framework regulating oil activities?

The statutory framework for regulating oil comprises the following:

- the Petroleum Act 1934 (the 1934 Act) deals with the import, transport, storage, refining, blending or reclaiming by recycling of petroleum and other inflammable substances;
- the Bangladesh Petroleum Act 1974 deals with the exploration, development, exploitation, production, processing, refining and marketing of petroleum;
- the Bangladesh Petroleum Corporation Ordinance 1976 established the Bangladesh Petroleum Corporation, which deals with the import, refining and processing of crude petroleum, the blending of lubricants, import, export and marketing of petroleum products including by-products and matters ancillary thereto;
- the Bangladesh Oil, Gas and Mineral Corporation Ordinance 1985 established the Bangladesh Oil, Gas and Mineral Corporation, commonly referred to as Petrobangla, which is authorised to and undertakes, among other things, research into oil, gas and minerals, preparation and implementation of programmes for the exploration and development of oil, gas and mineral resources, production and sale of oil, gas and mineral resources as well as any other function that the government from time to time assigns to it. Petrobangla also has the power to carry out, among other things, drilling and other prospecting operations, the setting up of mining industries and the execution and operation of any projects on mining and mineral development;
- the Bangladesh Energy Regulatory Commission Act 2003 has established the Bangladesh Energy Regulatory Commission (BERC), which is responsible, inter alia, for effective regulation and monitoring of the energy sector, which includes oil and gas; and

- the Petroleum Rules 1937 sets out rules regarding the importation, transport and storage of petroleum along with rules on licences.

- 5 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil activities.

The Ministry of Energy and Mineral Resources, Petrobangla, the Bangladesh Petroleum Corporation and the Bangladesh Energy Regulatory Commission (BERC) are the regulatory and oversight bodies principally responsible for regulating the oil activities in Bangladesh. In addition, the Ministry of Finance and the Ministry of Planning are also responsible for regulating aspects of oil activities.

- 6 How does your country manage appeals of government regulatory decisions?

Unless the relevant statute provides for a forum for appeal against a particular decision of the government, the government's regulatory decisions are generally subject to judicial review under article 102 of the Constitution before the Supreme Court of Bangladesh. If the statute concerned provides for a forum of appeal, judicial review procedures can be invoked after the exhaustion of the appeal process.

- 7 What standards are employed for oil measurement and oil facility equipment? Are these voluntary or involuntary? Are they established by a government body?

In Bangladesh, oil is measured in barrels and litres; these standards are mandatory.

- 8 What government body maintains oil production, export and import statistics?

The principal government bodies maintaining oil production, export and import statistics are Petrobangla and Bangladesh Petroleum Corporation.

#### Natural resources

- 9 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Title over oil reservoirs is vested in the state. Article 143 of the Constitution of Bangladesh provides:

*There shall vest in the Republic, in addition to any other land or property lawfully vested, all minerals and other things of value underlying any land of Bangladesh.*

The law does not provide for any distinction between surface rights and subsurface mineral rights.

- 10 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

The government has the right to declare any area as being off-limits to oil exploration and production activities. However, in particular, any area that the government designates as being an 'ecologically critical area' is off-limits for exploration and production activities. In deciding whether or not a particular area is an ecologically critical area, the government takes into account the following, among other factors: human inhabitants; ancient monuments; archaeological sites; forest sanctuaries; national parks; game reserves; wild animal habitats; wetlands; mangrove; and forest areas. Moreover, exploration or production activities in any area that may hamper the safe navigation of vessels may be treated as off-limits.

- 11 What government body regulates oil exploration and production in your country? What is the character of that regulation?

Petrobangla regulates oil exploration and production in the country. Usually petroleum exploration and production are carried out under production sharing contracts.

- 12 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production?

The rate of royalty is not fixed and depends on the terms set out in the production sharing contract.

- 13 What is the customary duration of oil leases, concessions or licences?

The customary duration of production sharing contracts is 25 to 30 years with provisions for renewal.

- 14 For offshore production, how far seaward does the regulatory regime extend?

The government has the exclusive right to explore, develop, exploit, produce, process, refine and market petroleum within the territory, continental shelf and exclusive economic zone of Bangladesh. The regulatory regime thus extends to the exclusive economic zone and the outer limit of the continental shelf.

- 15 Who may perform exploration and production activities? What criteria and procedures apply in selecting such entities?

The government of Bangladesh has the sole authority to carry out exploration and production activities. However, the government allows IOCs to carry out exploration and production activities, generally through a tender process considering different factors, including technical and financial capabilities.

- 16 What is the legal regime for joint ventures?

The setting up and operation of joint venture entities are subject to the Companies Act 1994; a joint venture entity must be incorporated as a company and registered with the Registrar of Joint-Stock Companies and Firms. Entrepreneurs and investors are required to apply for registration with the Board of Investment (BOI), in the prescribed form, to avail themselves of the facilities and institutional support services provided by the government.

In addition, an individual entrepreneur, either local or foreign, can set up a business with public sector corporations. Such joint venture is required to be registered with the BOI if the private sector's contribution is more than 50 per cent of the project's cost and in such a case it is treated as a private sector project. Public sector ventures, which contribute from their own funds, require approval from the concerned ministry. If the contribution of the public sector entity is 50 per cent or above, the joint venture is treated as a public sector project, which is processed by the concerned ministry for approval of the Planning Commission.

To run the joint venture, if an entrepreneur in a private industrial sector is arranging foreign credit in the form of a loan, supplier's credit or PAYE scheme, it is required to seek prior approval from the Scrutiny Committee chaired by the governor of the Bangladesh Bank. However, all necessary processes are completed at the BOI. Representatives from the Bangladesh Bank provide technical assistance to the applicant.

**17** How does reservoir unitisation apply to domestic and cross-border reservoirs?

The standard method of unitisation, internationally acceptable in the industry, also applies to Bangladesh domestic and cross-border reservoirs. Unitisation is usually carried out on the basis of the area (acreage) covered by the reservoir or the quantity of oil estimated in the reservoir, measured in terms of barrels. For cross-border reservoirs, this is usually done jointly by the bordering states and, failing an agreement between them, it may be resolved by international arbitration.

**Transportation**

**18** How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The Ministry of Energy and Mineral Resources, through BPC and its subsidiaries and the Inspectorate of Explosives, regulate the transportation of crude oil and crude oil products within the country. These bodies have overall regulatory authority over pipelines, marine vessels and tanker truck transportation. Except for the import of crude oil and crude oil products, transportation is limited to within the country and there are no oil pipelines for the transportation of oil. The transportation of crude oil and crude oil products to and from the ports is controlled by the respective port authorities, and inland water transportation is supervised by the Bangladesh Inland Water Transport Authority.

**19** What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Any person wanting to obtain a permit or licence for the transportation of crude oil or crude oil products must apply, in the prescribed form and with the statutory prescribed fees, to the chief inspector of explosives for carriage of petroleum in bulk by water and to the chief inspector or an inspector of explosives authorised by the chief inspector to transport petroleum in bulk by land.

**Health, safety and environment**

**20** What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The Petroleum Act 1934, the Petroleum Rules 1937, the Explosives Act 1884 and the rules framed thereunder, together with the existing labour legislation and rules framed thereunder, govern the health and safety requirements applicable to oil-related facility operations. The existing requirements are comparable to the applicable international standards. For instance, under the Petroleum Rules 1937, workers cannot be forced to enter into any oil tank without a proper safety helmet of a description approved by the chief inspector of explosives and unless the tank is certified by a government official, using a vapour testing instrument, that it is free from dangerous vapours. The repair of any tank or other receptacle which had petroleum by an instrument capable of causing a spark or by the use of fire is prohibited, unless the receptacle has been thoroughly cleaned and freed from petroleum and petroleum vapour or another safety precaution has been taken for carrying out such repair, or the chief inspector or an inspector of explosives has certified the use of such instrument, fire or welding as safe for repair.

Under the Environment Conservation Act 1995, oil-related facilities are required to obtain an environmental clearance certificate from the Department of Environment and the criteria for obtaining the clearance certificate are set out in the Environment Conservation

**Update and trends**

In order to meet the increasing demand in the domestic market, BPC has decided to raise its import of petroleum and petroleum products from different countries including Egypt, Kuwait, Malaysia, the Maldives, the Philippines and the United Arab Emirates.

The government has also taken the decision to raise its oil refining capacity by three times through Eastern Refinery Limited in order to reduce import costs and its reliance on foreign countries for refined petroleum products.

Rules 1997. In addition to the aforementioned, the government may, by notification in the official gazette from time to time, formulate and publish environmental guidelines relating to the control and mitigation of environmental pollution and conservation and improvement of the environment.

If any company violates the provisions of the Environment Conservation Act 1995, fails to perform its duties in accordance with the notice issued under the 1995 Act or the Environment Conservation Rules or fails to comply with any orders or directions (for instance, carries out its operations without obtaining an environmental clearance certificate) then the owner, director, manager, secretary or any other officer or agent of the company are deemed to have violated the provisions of the 1995 Act and are liable to punishment which includes rigorous imprisonment or a fine, or both.

**21** What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Please see question 20.

**Labour**

**22** What government standards apply to oil industry labour? How is foreign labour regulated? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The standards applicable under Bangladesh labour laws are comparable to internationally acceptable standards. The labour laws of Bangladesh safeguard the interest of workers concerning wages and employment, trade unions and industrial disputes, the working environment and other related matters.

For the same work, local and foreign workers are afforded the same protection.

Work permits are required for foreigners to work in Bangladesh. Permission is required from the Board of Investment by private sector industrial enterprises, branch, liaison or representative offices of foreign entities and also commercial enterprises desiring to employ foreign nationals. The following, among other guidelines, are referred to in granting permission:

- whether the employee is of a country which is recognised by Bangladesh;
- whether the employee is under 18 years; and
- whether the necessary security clearance from the Ministry of Home Affairs has been obtained.

**Taxation**

**23** What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Any private company engaged in the transportation, marketing and distribution of oil is assessed and taxed under the Income Tax

Ordinance 1984 in the same manner as any other business. A company engaged in oil production, transportation, marketing and distribution activities may, however, seek special exemption under the Income Tax Ordinance 1984.

The income tax payable by a company engaged in oil exploration and production is assessed by taking into consideration some additional allowances provided for in the Fifth Schedule of the Income Tax Ordinance 1984, namely, any expenditure for searching for, or discovering and testing a petroleum deposit, which are provided for in any agreement between such company and the government.

The National Board of Revenue wields tax authority.

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#### Commodity price controls

- 24 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

The Ministry of Energy and Mineral Resources, in consultation with BPC, regulates the price regime for crude oil and crude oil products. Sale of crude oil products by a private company at a price higher than that fixed by the government could be a valid ground for cancellation of the licence to sell the crude oil product.

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#### Competition, trade and merger control

- 25 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

There is no law in Bangladesh regarding anti-competitive practices.

- 26 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

See question 25.

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#### International

- 27 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Treaties and multinational agreements are not directly enforceable unless they are incorporated into local law. Nevertheless, treaties and multinational agreements, on their own, can influence the regulatory policy framed by the government.

- 28 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals?

There are no special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals. In the case of foreign investment, registration with and permission from the Board of Investment and the Bangladesh Bank are necessary.

- 29 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Crude oil is not sold to neighbouring countries; there are no rules regulating the cross-border sales or deliveries of crude oil or crude oil products.

## Dr Kamal Hossain and Associates

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**Sharif Bhuiyan**

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**sbhuiyan@khossain.com**

122-124 Chamber Building  
Motijheel Commercial Area  
Dhaka  
Bangladesh

Tel: +880 2 955 2946 / 956 4954  
Fax: +880 2 956 4953  
khossain@citecho.net  
www.khossain.com