Petroleum Federation of India

Submission

on

Draft Model Revenue Sharing Contract (MRSC)

of the

Ministry of Petroleum & Natural Gas

Government of India

September 19, 2014

Contents

1 Background

- Exploration Division of Ministry of Petroleum & Natural Gas (MoPNG), Government of India (GoI) has invited views/comments on the Draft Model Revenue Sharing Contract (MRSC) between the Government of India and Contractor(s) with respect to Contract Area for award of hydrocarbon acreages with new contractual system and fiscal model.
- Views/comments received will be considered for MRSC finalization.
- PetroFed is a Registered Society of Indian and International Companies / Associations in the hydrocarbon sector to promote the interests of members in line with Public / National Policies through a self regulatory environment with consumer interest in sight. It acts as an oil industry interface with Government, regulatory authorities, public and representative bodies of traders. It helps in resolution of issues and facilitates evolution of hydrocarbons related policies and regulations and their implementation. It represents the industry on Government bodies, committees & task forces.
- PetroFed is making this submission with the involvement of its member companies.
- PetroFed's submission for consideration of MoPNG is based on a review of the draft so as to provide inputs within the required timeframe. Some of the issues require clarification of what is intended, especially the provisions that are not normally seen in contracts of this nature, and some other specific areas (e.g. protection of Intellectual Property and Assignment of Participating Interest).
- The views are collated in a manner so as to achieve the objective, as with any contract, to best represent the interests of both parties and achieving the balance of protecting the assets of the country whilst creating an attractive investment climate for Private & International Companies.

2 Overall comments: Draft MRSC

- The main purpose of legislative framework is to:
  - provide the basic context for and the rules governing petroleum operations in the host country;
  - regulate petroleum operations as they are carried out by domestic, foreign and international enterprises; and
  - 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 host 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[1].
- The Draft Model Revenue Sharing Contract (MRSC) is a Contract which is subservient to the legislative framework provided by the Oilfields Regulation and Development Act and other laws under which rules and policies are framed. The Contract must give shape to those policies. The problem with the MRSC is that it has been drafted in the absence of an approved policy like Uniform Licensing Policy, Gas pricing Policy, etc. <u>It is like putting the cart before the horse.</u>
- It appears that MRSC seems to have been made on the basis of certain recommendations made by the Rangarajan Committee on the need for having a new oil and gas contracting model. The Government is yet to decide on the new regime.
- It should be noted that the impact of contractual terms can vary greatly depending on a specific opportunity and a more detailed review would be required per contract area once more details are known.
- Certain elements of the MRSC seem to address the concerns raised by Controller and Auditor General of India (CAG), Central Vigilance Commission (CVC) and Central

[1] World Bank Policy Research Paper 1420, Legislative framework used to foster petroleum development

Bureau of Investigations (CBI) in the past. MRSC, therefore, distances Government officials from functional responsibility regarding Contract administration and instead attempts to create for them the role of policing, monitoring, grant of permission and approval. This approach results in cumbersome and complex MRSC as opposed to simple and easy to operate contracting regime which is the need of hour.

Learning from NELP contracting

- 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 highlights of Production Sharing Contract (PSC) mechanism:
    - Investments and risk are borne by the contractor. Government receives Royalty and tax contribution right from first day. Typically, contractor recovers all costs before giving government its share of revenue. In some PSCs, a portion of revenue is also reserved for Profit Petroleum right from the start.
    - Upon recovery of cost, the contractor shares part of the profit with the government as per the Investment Multiple for each year defined in the PSC.
    - The PSC, therefore, is already a hybrid model which incorporates revenue sharing as a central theme.
    - It leads to a requirement of a close scrutiny of costs to protect the Government's share of interest with a view to ensure that cost/ expenses incurred are a true reflection of actual cost. The cost petroleum is synonymous to depreciation in any other business but without any cost of financing. The only difference is that contractor is allowed upfront depreciation for taking the risk. The profit petroleum is like variable taxation which only increases for Government as the profitability of the Contractor increases. The PSC has in place a system of audits and approvals that allows close scrutiny of the Contractor at all times unlike any other industry.

Implications for Contractor

- An incentive for risk-reward trade off for making investments in Indian exploration blocks, which are often characterized by limited geological & geophysical data/information.

Implications for the Government

- Greater rights and control.
- Enhanced participation through a Management Committee (MC) in routine E&P activities, which gives the government a say and control on operational activities and costing.

Shortcomings of PSC Mechanism in India

- Despite the benefits that seem to be there for both the Contractor and the Government, the implementation of PSC regime has led to many challenges and disputes, with net impact of these shortcomings being immense:
  - Administrative burden on the government agencies and regulating bodies.
  - Time over-runs due to delays in decision making and approvals
  - Hindrance in the routine operations and decision making of the contractor due to excessive intervention of the government. In other industry, the authorities do not go into performance aspects and hence there is smoothness in decision making. The unfortunate part is that in E&P sector, the GoI agencies intervene in performance aspects, thus, resulting in delays in routine decision making.
  - Ambiguity in interpretation of contractual provisions
  - Lack of clarity on tax and cost implications
- The objective of MRSC appears to be to suggest contracting model with a view to minimizing the monitoring of expenditure without compromising on
  (i) the hydrocarbons output across time, and
  (ii) the Government's take.
- By its very nature, tax/ royalty regime requires lesser administration as compared to PSCs. However, experience reflects 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
- Discourages exploration in basins with lower prospectivity or frontier basins

Highlights of Revenue Sharing Mechanism

- Revenue share is a function of production and the selling price. A MRSC uses this very parameter to create a variable revenue share model for the Parties on the basis of Investment Multiple (IM) or Post Tax rate of Return (PTRR). The key difference between the MRSC and the PSC is that the former eliminates the need to assess the cost incurred, since the share of government is not affected by costs incurred by the contractor but varies on the basis of production and price alone.
- Low intensity of auditing and routine intervention (yet the MRSC completely does not do away with review functions where the Government is only supposed to have an advisory role and instead details a whole host of monitoring roles which speak of greater rather then lesser intervention in the proposed MRSC compared to the PSC).
- Revenue Sharing brings more transparency in operations and expenses as it creates a self optimization at Contractor's end. (A PSC is also a Revenue Sharing model. By the simple mechanism of setting the GoI share of profit petroleum at Zero level the existing PSC converts into a no cost recovery revenue share model reducing the need for Government scrutiny and associated litigation. However, the uncertainty about being able to predict the commerciality of an undiscovered resource clouds the process of bidding and makes for a regime where the bids submitted become largely speculative. The only way to eliminate this uncertainty and speculation is by collecting sufficient data so that in effect the Government invites bids for discovered fields rather than exploration blocks)

Shortcomings of Revenue Sharing Mechanism

- Oil and gas projects are long term contracts. Moreover they are highly technology dependent and technologies in the sector change drastically over the years. It is, therefore, impossible to predict and bid on the basis of future costs of exploration and development. The government, therefore, loses the option of earning greater revenues arising with falling costs of new technology as the only parameters covered to bid for are production and price, neither of which are guaranteed.

- As evident from the MRSC draft even with the Revenue Sharing Mechanism, there would be need for a lot of Government monitoring, intervention and approval. Production levels would need to be constantly monitored and contractors will be held responsible for causing possible shortfall.
- For the Contractor the biggest disincentive is the 100 percent risk in terms of costs incurred because of the uncertainty of commercial hydrocarbon discovery. Since costs are not recoverable, exploration strategies will tend to be extremely conservative and conventional and there will be little incentive to try out new technologies or take risks.
- The pricing provisions do not reflect either the problems or realities of pricing energy in the country. They repeat existing provisions which are currently being litigated between Government and Contractors. Given these provisions, actual revenue being subject to pricing policy, uncertainty regarding pricing will result into potential scrutiny by Auditors and Regulators to analyse loss of revenue to the Government.
- Provisions about production shortfall ignore risks arising out of geological uncertainty in a high risk industry.
- Impact on contractor's IRR due to government share of revenue from the very first day.
- In case of higher discovered reserves/production or prices, the resultant windfall gains would be disproportionately shared by the government.

Summary comments

- It is a welcome anticipated move by the GoI to move into the Uniform Licencing Policy (ULP) with a view to give operator access to exploration and exploitation of all hydrocarbon resources in a given area. It is also suggested that for new ULP round blocks offered, choice of the second resource (other than the one the block was bid for) should be a choice of the operator with proper justifications.
- In addition, it is suggested that present operated blocks (irrespective of its award regime) be also allowed to migrate to the Uniform Licencing Policy with agreed adoption of the PSC/RSC model suitably. This will ensure that the valuable hydrocarbon resources locked in these existing blocks can be utilized and would also avoid the complexities of multiple operators in a single area if these block resources are separately auctioned.

- One major issue with fiscal/contractual terms tied to price is that they are rarely, if ever, index linked to some measure of inflation and, therefore, have the potential to quickly lose their relevance. As it is impossible to predict price trends in this business, it may turn out that the bids submitted on the basis of certain assumptions become irrelevant by the time production begins. The omission of indexing for any price-linked variable is a fundamental flaw as the contract will be expected to last 20 or more years and no one can forecast whether the prices selected today will make sense in years to come. This kind of ambiguity simply opens up the contract to potentially lengthy (and costly) renegotiation(s).

- The proposed Revenue Sharing Mechanism will be less attractive to international oil companies, particularly if the developments are thought to be technically challenging and may incur greater unforeseen costs. This is likely to be the case with deepwater & ultra-deepwater areas where the expertise of international oil and gas companies will be most required.

- It is noted that the Fiscal Stability concept is missing in the MRSC. Fiscal Stability is crucial for any long term contract. In this case rate of royalty needs to be kept constant throughout particularly since the GoI. will, as per this RSC model benefit potentially from both rises in petroleum prices and production levels.

- The vision of our country is to move towards self-sufficiency in energy. This requires maximizing recovery and production from existing old hydrocarbon fields by efficient reservoir management, and discovering new fields by intensified and accelerated exploration activities. In India, based on the present knowledge and ideas, the prognosticated hydrocarbon reserves base is less attractive when compared to the Middle-East, Russia, and USA. In order to encourage new entrants into the sector who can bring in breakthrough ideas and technologies, the proposed revenue sharing contracts (or a mix of PSC and revenue sharing) must be attractive in comparison to those on offer worldwide to attract global capital in competition.

- Since Liquidated Damages (LD) is provided for 2D, 3D and wells, correspondingly it would be imperative to provide for cost recovery. It is widely accepted that in Indian context the 'Production Sharing Contract' (PSC) is still the best suited model. The PSC's cost recovery concept is a big assurance to upstream operators in view of the inherent risks they undertake. There could be a situation where the Revenue Sharing Contract

(RSC) model would be more skewed to the GoI benefit and negate all the investment risks taken by the operator in the block's exploration to development cycle, which in turn will further deteriorate the investor confidence in Indian E&P.

- Hence, Government of India may consider providing for cost recovery for exploration (in line with LD) to contractors which are successful in making commercial discoveries as a reward. This would make the prospect of exploration more attractive for world-class contractors and hence raise the likelihood of exploratory success.

3 Specific comments to Articles of MRSC

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

3.1 Preamble

- Para 1 - Add Exclusive Economic Zone ("EEZ") as this has been added vide 40th Constitutional Amendment, eg. Bay of Bengal is EEZ and not part of common continental shelf.
- Para 7 - Include reference to "EEZ" or "continental shelf" to make it in sync with Para 1.
- Para 8:

- Government should list out all the applicable policies and their contents
- The policies should provide stability so that benefits as promised to the Contractor at the time of bidding are protected throughout the life of the Contract.

3.2 Article 1: Scope and Definitions

- Article 1.1.1 - Since under the same Contract all operations like conventional E&P, CBM, shale gas, shale oil and gas hydrates can be done, further details to be provided to differentiate between Work Programme and Exploration Period for shale gas, shale oil and gas hydrates.
- Article 1.1.2 (a): There should be no provision for a Lead Member to communicate and liaise with Government. This role should be assumed by the Operator of the block. Multiple points of contact would lead to delay in project execution
- Article 1.1.2 (d): In the past there were no provisions for joint and several liabilities. Both joint and several liabilities of Members would dissuade investments.
- Article 1.1.2 (e) & (f) - There is a general lack of clarity on the objective. Article seems onerous and should be governed by respective law. For example, Article (f) suggests that liability may be assigned to Contractor based on "belief" that damage is caused by any Petroleum Operations. This article needs to be clarified to ensure the Contractors liability is based on specified criteria.
- Article 1.1.2(e) - 'regardless of fault' context is not clear. Probably more apt for 1.1.2(f). The liability on the Contractor is unlimited regardless of the fault. If loss occurs due to a third party not engaged by the Contractor, then how can the liability be passed on to the Contractor. Here liability is more punitive compared to the Nuclear Liability Bill. (*Recommendation:* Since Environmental Laws and Public Liability Act deal with this

subject and that this Contract is subject to all laws of India, this provision should be deleted.)

- Article 1.1.2 (f): There should be no provision for "jointly and severally liable".
- Article 1.2.5:
  - Definition of "Appraisal" should be widened as Contractor might have an exploration prospect which he might like to consider as part of "Appraisal Programme".
  - Option for extended Well Test (EWT) as given in "Appraisal" should be provided at the time of testing of Discovery itself as it has no impact on the Government revenue.
- Article 1.2.8 - Following needs to be considered in the definition of Arms Length Sales
  - What is the objective of defining Arms Length Sales unless there is also a definition of "Marketing Freedom"?
  - Concept of "Arms Length Sales' is redundant as long as there is a Gas Utilisation Policy (GUP) in place
  - Does it exclude participation by Affiliates or Contractor parties against the open bidding process? With limited potential domestic off-takers, such wide exclusions as defined in Arms Length Sales would severely restrict the competition and hence against the interest of the parties to the Contract.
  - Does Arm Length Sales result in "Arms Length Price" or "market price"?
  - Where discovery of price through Arms Length Sales is not possible, what is the alternate option?
  - If the sale is at a price higher than Arms Length Sales price, does it automatically qualify Arms Length Sales criteria?
- Article 1.1.12 - It is suggested that the 'Igneous or Metamorphic rock' terminology may be removed from the definition of basement as these rocks also occasionally have chances of petroleum accumulations
- Article 1.2.20 - Definition does not seem to be proper in CBM context. Definition needs to be made in sync with Commercial Assessment definition from CBM IV Contract.
- Article 1.2.28 - "….coring is carried out up to the final depth…". More relevant for CBM based document. Needs to be technically vetted.
- After Article 1.29, definition of "Data" should be inserted as stated in Article 25.1. Definition of "Data" is missing.
- Article 1.2.32 - Who will approve the Delivery Point? As per current CBM contract, Steering Committee approves the same.

- Article 1.2.36 - As compared to current CBM contract, dewatering and gas storage facility are deleted. It should be included. Rather than "purchase" it should be "procurement" given the lead times associated in particular with offshore and deep water projects. The definition should also include "conceptual engineering, development studies and front end engineering". These all are significant "Development Operations" which for large projects (especially offshore) take substantial time to complete.
- Article 1.2.38:
  - Note the usage of 'demonstrated' and 'adherence'.
    'Demonstrated as recoverable at the surface': should this be at the time of Discovery or at any time prior to the start of Commercial Production as under the proposed regime, Government does not carry any financial risk?
  - Government may put on auction blocks with marginal discoveries which in future may become viable due to higher commodity price. Will the Contractor not be allowed to appraise and then develop these discoveries in future? (Suggestion: Define existing discoveries to avoid confusion and indication of that should be provided in the bid document/data package.)
- Article 1.2.40 - To avoid confusion, it may also be mentioned that in case of blocks falling in more than one State, the effective date would be the date on which exploration licences are issued by all such concerned States. Award of license will anyway be after Contract execution and hence, no need to mention this.
- Article 1.2.42, 43 and 44 - There is no precedence of creating an Escrow Account for all revenues to be credited and then divided amongst parties. This will delay parties receiving the payment, will add administrative complexities, result in taxation issues and can be reason for potential disputes. This will also deter investors to bid. There is no need for Escrow Account.
- Article 1.2.46:
  - The definition should clearly state that Exploration operations can be carried out throughout the contract period
  - It is suggested to include core/bore holes in the definition of 'Exploration Operations'
- Article 1.2.55 - It has been a long stand by the Unconventional (CBM) operators in India that Unconventional particularly CBM now and Shale Gas-Oil/National Gas Hydrates (NGH) in days to come may also be considered as Frontier areas as often these blocks are found to be located in areas with extreme logistic and technical difficulties and lacks

infrastructural and/or marketing facilities, etc. altogether. The same will hold for shale gas-oil areas also which will also be likely in hitherto unchartered terrains.

- Clause 1.2.61 - Undefined term "Exploration Phases" used. Should be corrected.
- Clause 1.2.75 - Cannot be left open and to only bring GoI. notifications in the ambit. Has to be anchored to some thoughts. Hence, such guidelines/Standard Operating Procedures (SOP) are to be announced upfront for the benefit of the Contractor. Any changes later on should not affect the Operator flexibility. (Suggestion: It is in the interest for all parties to define this term in accordance with reasonable international petroleum practices. Consider defining as *"those practices, methods, standards and procedures generally accepted and followed internationally by prudent, diligent, skilled and experienced operators in petroleum exploration, development and production operations and which, at the particular time in question, in the exercise of reasonable judgment and in light of facts then known at the time a decision was made, would be expected to accomplish the desired results and goals.")*
- Article 1.2.77 - Include CBM / Shale / Gas Hydrate wells also alongside Oil and gas wells in the broader definition of Natural Gas for clarity and avoiding future potential litigation.
- Article 1.2.84 - Structuring of control in terms of Affiliates is widely understood and accepted because of limited usage in Arms Length & Assignments. However, Parent Company as defined is a bit of overstretch (direct - indirect – through Affiliates, control management or operations by influencing or electing). It should be purely holding – subsidiary relationship based on equity stake and stretching to Ultimate Parent Company, if required.
- Article 1.2.87 - The Petroleum definition is inconsistent with PNG Rules 1959 and needs to be brought in harmony.
- Article 1.2.91 - Will prefer to use the defined "Commercial Production" as against "after commencement of production".
- Article 1.2.96:
  - This definition is absolutely unprecedented in the industry anywhere in the world. The intent of the clause as it exists extends to putting restrictions on assignment by any of the Contractor Party. This is a retrograde step and will deter investors as it places restrictions on their ability to monetize and exit from a block to which they have added value by their efforts.

- In the oil and gas business there are several specialized pure exploration companies who take exploration risks, add value to their share and transfer the stake to companies better equipped to develop and produce discovered acreages. This is a global industry practice. Such draconian restrictions on assignment will definitely deter interest of such companies in the Indian E & P Sector.
- Revenue as a "consequence of monetisation of Petroleum in the Reservoir" is in fact so overarching that it can even be misused for participating Interest (PI) assignments even to an Affiliate.
- If a Contractor has raised funding by VPP (forward sale) or securitisation of future revenues or even reserve based lending, will this raised liability be offset by the proceeds of Revenue from sale of PI to a third party?

- Article 1.2.90 - Definition of Pilot Assessment well should rather mention Unconventional well type rather than only CBM.
- Article 1.2.98 - Royalty as applicable from 'time to time'. *Note: Fiscal stability clause is not provided in this Contract as provided in earlier NELP rounds and will again be a major deterrent as it gives little confidence to investors about future changes in policy.(Also refer Section 4 of this Recommendation Paper for details)*
- Article 1.2.102/103 - Further elaborate and add wording of 'mobile state hydrocarbons at subsurface temperature and pressure conditions' to rule out confusion of oil shale and oil sand which are different category altogether. Also include 'shale formation and lithology' wording to encompass both.
- Article 1.2.104 - It should include 'decommissioning' also as 'site restoration' mainly covers onland.
- Article 1.2.109 - Replace CBM with 'unconventional' in the definition of Test Well.
- Article 1.2.110 - Definition is vague and needs to be specific. (Suggestion: Please specify the permeability of the reservoir rock)
- Article 1.2.111 - Contract should also clarify about deep water discovery in shallow water and ultra deep water discovery in deep water blocks.

3.3 Article 2: Participating Interests

- Rights and obligation mentioned in Article 2.2 of earlier NELP Model PSC have been deleted and confined and curtailed to what is mentioned in Article 3.1. It should be reinstated.

- The Contract (though Revenue sharing) does not specifically deal with the right of the Government to take Royalty & Revenue Share in cash only.
- In this Article, please include *"the Contractor's right to take its PI share of Revenue in accordance with the Article 15 and Appendix D and the obligations to contribute its PI share of costs and expenses including the contract costs".*
- Inclusion of Contractor's right is critical (as was included in earlier NELP PSCs) as it will impact Reserve booking issue and potential ability to raise funds. Article 18.4 does touch upon the same but is vaguely worded.

3.4 Article 3: License and Exploration Period

- Article 3.2:
  - This describes fixed Exploration periods, the duration of which may be insufficient for technically challenging and/or frontier areas. It is suggested that this Article to include flexibility to incentivise exploration in frontier or technically challenging areas (including unconventional plays). For example, the fixed period could be applicable as a "sliding window" within a wider timeframe. (This may be addressed as part of a wider discussion with the Ministry on (i) Exploration Title, (ii) Commitment for each period, (iii) Certainty of Contractor rights. This may be done jointly with Article 11.)
  - Table is provided only for CBM, conventional oil, gas and condensate. Nothing is provided for Petroleum resources like shale gas, shale oil, tight gas and gas hydrates.
  - Appears to be inconsistent with the term of Licence granted under the Petroleum and Natural Gas Rules 1959 (as amended) in relation to the duration of PEL period, the PNG Rules should be amended to make it consistent with MRSC.
- Article 3.3:
  - Whether Extension of Phase-II is permitted, as there is no succeeding phase for adjustment of the period.
  - Timelines for filing extension request not mentioned. Time period should be provided within which Government must revert to the extension request. Else provision to be made for extension on account of delays arising out of time taken in regard to statutory approvals.

- Rationale for extension should be based on 'technical reasons'. While Article 5.9 (substitution of work program), various other rationale are also allowed. The same should be pulled in into Article 3.3
- Exploration period should be extended by an appropriate period in case of delays due to statutory/regulatory approvals. The contract should clearly outline the policy which will govern these extensions.

- Article 3.4:
  - Timeline for filing extension request not mentioned.
  - Prevalent GOI Extension policy should be made part of the Contract and procedure for its modification specified in Contract to avoid discretion.
  - Since all forms of Petroleum have been combined in a single Contract, the time required to completely explore all form of hydrocarbons would be more with attached uncertainty. There should not be any Liquidated Damages (LD) under Extension Policy for granting extension for such exploration.

3.5 Article 4: Relinquishment

- It is suggested to suitably insert the word 'Optional' in relinquishment. This is very important for un-conventional where the concept of fairway is dynamic and boundary moves with data confidence outside initial development area. Further, it is noted that there are large scale infrastructures required for un-conventional exploitation and extra area is required.
- Article 4.1 & 4.2:
  - In some parts of the Contract term 'entire Contract Area' is used and in some parts term 'original Contract Area' is used (Article 10.16 and Article 4). Consistency to be maintained.
  - As long as Discovery Area is not converted into a Mining Lease (ML) and ML granted, the PEL for entire Discovery Area should continue to be valid and in force. Similarly for Development Areas PEL should continue to be valid and in force till a ML is granted for such Development Area.
  - Under the 'Force Majeure' situation or in situations wherein the contractors are not able to access the area due to numerous regulatory impediments, the contractor should also be allowed to relinquish the block without being liable to pay liquidated Damages (LD), even if the contractor has not finished the Minimum Work Programme (MWP) of a particular phase.

- Article 4.3 should cover decommissioning alongwith site restoration.
- Article 4.4 - In case termination has been challenged, then such Termination shall be subject to the outcome of the legal process.
- Article 4.7:
  - Please further explain the context of the words "either individually or jointly".
  - Is the idea to qualify Discovery as in "one or more Discovery" or "joint development with other blocks".
  - If the Contractor fails to submit FDP for reasons beyond its control, then suitable Excusable Delays should be provided for in the Contract.

3.6 Article 5: Work Programme

This may be addressed as part of a wider discussion with the Ministry, as Articles 3, 4 and 5 cover the full suite of rights and commitments of Contractor during the commitment phase; currently not clear exactly what the Contractor is signing up to.

- For bidding purpose, will each block be designated for a specific type of hydrocarbon to ensure fair evaluation? Government should provide clarity on bid evaluation criteria. If a block is designated at the time of bidding, is the bidder required to bid MWP only for a designated hydrocarbon.
- Article 5.1:
  - The period of 6 months seems to be insufficient bearing in mind the challenges associated with technically challenging or frontier areas. This should be minimum one year with option to extend the same in case of technically challenging or frontier basins or where the data is very scanty. It is suggested that flexible/alternative time frames should be introduced for more challenging areas.
  - Starting of exploration work needs to be clearly defined.
- Article 5.2:
  - Contractor should be allowed to enlarge the minimum work programme as per their technical assessments. Additional work programme should not be construed as a deviation from signed Contract.
- Article 5.3:
  - For Petroleum Operations other than CBM, the MWP for Phase II is prescribed in the Contract. This Phase II commitment of the number of wells should be removed as DGH is pre judging the geology. How can the contract freeze MWP requirements for Phase II? As in the previous NELP rounds, Work Programme for Phase II should

either be biddable (as in NELP VIII PSC) or fixed with reasonable Phase II Work Programme (as in NELP IX PSC). NELP IX PSC prescribed one Exploration Well per year for onland and shallow water block; and one Exploration Well for deep water/ ultra deep water and frontier block.

- While the Contractor will inform MC the depth of well for Phase II at the time of exercising their option to enter Phase II, such drilling depth will be subject to changes based on the additional work undertaken before drilling such wells.

- Article 5.5:
  - When a Contractor is required to undertake and complete the 2D seismic API in the Contract Area (Mandatory Work Programme), it is fairly evident that block has been offered to the Contractor with no or minimal vintage data. In such circumstances with Mandatory Work Programme, an additional Reconnaissance Phase should be added in the Contract before Phase I to allow the Contractor to exit after completion of the Work Programme for Reconnaissance Phase if Contractor believes that the block has no prospects for further exploration without being penalized.
  - What is the formula for 3D to 2D set-off?
  - While 2D commitment refers to Contract Area the deemed discharge through 3D refers to 'in that part of the Contract Area". This is not in sync.
  - Is mandatory work programme in Phase I part of Minimum Work Programme that will be tested for

    a) completion of Minimum Work Program, and

    b) proceeding to Phase II.

    If yes, it is suggested to specifically incorporate the same in MRSC.
  - Assuming that the Government does not want to reinstate the provisions of NELP IX PSC (i.e. one Exploration Well for onland and shallow water blocks and one Exploration Well in Phase II for deepwater blocks) and if Contractor drills more than Exploration Wells in Phase I compared to the commitment made in the bid, then there should be a provision to set-off excess work in Phase I against Phase II MWP.
  - Doesn't specify the amount of 2D seismic required to be undertaken by the Contractor. This will create significant uncertainties. In addition, it is also not clear what is meant by "where applicable means".
- Article 5.6 - Should be elaborated to define how Government proposes to set off to avoid future ambiguity.

- Article 5.7:
  - If the initial Exploration Phases I & II suggest that any other type of hydrocarbon resource is more prospective than the one for which the block is awarded, development priority for the other type is allowed and in view of energy needed for the country i.e. contractor should have freedom to decide the priority of hydrocarbon exploitation and development.
  - More clarity is required on the concept of designation of Blocks for type of Petroleum. In case the Contractor has given additional Work Programme for any other type of hydrocarbon (other than designated), will Contractor be allowed additional time to undertake this programme and how will such bids be evaluated? It is also not clear which provisions will govern the conduct of these other petroleum Operations i.e. mode and manner for the exploration and development of hydrocarbons other than the one for which the contract was designated.
- Article 5.8:
  - Liquidated Damages are linked to the entire work programme (i.e. rather than remaining programme post-termination). Accordingly, it is suggested that Liquidated Damages should be linked to the remaining programme (post-termination).
  - Apart from Article 30, this Article should also provide for the delays/non availability in regulatory approvals (on account of environmental, etc. reasons) beyond the control of the Contractor.
  - If the contractor is not able to complete committed work programme (minimum and mandatory) due to statutory/inter-ministerial delays, no LD should be applicable.
  - Appraisal Plan period to be defined.
  - There should be a provision for extension of Phase II if MWP is not completed in Phase I
  - The liquidation charge pursuant to Article 30 of force majeure needs to be softened bearing in mind the challenges faced by operators. Liquidation damages less than 25 percent of the Phase 2 Mandatory work commitment will be welcome. It is discouraging to fix mandatory drilling of wells in the second phase and then asking for 100 percent of liquidation damages. This may discourage operators to opt for 2nd phase of exploration. Need to reconsider.
  - Article 5.8 spells out the amounts for Liquidity Damages (LD) i.e.US$ 8 MN for ultra-deep water well. The amounts appear too high especially if the area has low prospectivity.

- LD could be reduced if block is not prospective, which is proved after carrying out seismic work. If committed seismic work is not done, full LD should be applicable.
- There should be provision of adjustment of executed 3D against 2D which has been bid for, if the entire block has been covered with 3D seismic.

- Article 5.9:
  - Strictly speaking there is no 'period stipulated in Article 3'. By inference it can be thought of as the period for each Phase.
  - Contractor cannot be forced to comply if failure is due to extraneous reasons, for instance delays occurring due to delays in statutory clearances. The exceptions must be specified and should not be left to any one's discretion.
  - Does not take care of the contingency when PEL/PML may be given but operations not allowed to be carried out by other agencies such as MOEF, MOD, local revenue and mining authorities, etc.
- Article 5.10 –
  - If the contract area is less than the block size, then "for any reason" the contract area and the block may become different. Accordingly, it is suggested that the block size and the contract areas should be fixed (i.e. no un-agreed surprises for the contractor).
  - If the Hydrocarbon accumulation is not accessible, the restricted location of accumulation can render the block uneconomical. The Contractor therefore should have the right to relinquish the entire Block

3.7 Article 6: Management Committee

- In a Revenue sharing model the powers and the hierarchy within the MC (vis-a-vis the Contractor and the Government) cannot be the same as in a PSC. The MSRC in fact does little to limit Government intrusion, control and monitoring over routine petroleum operations.
- In the current MRSC, the review and approval process of NELP PSC has been replaced by monitor and approval process. While review process in PSC was a pure advisory function, the monitoring process as prescribed in MRSC is far more than the advisory function contemplated under the existing PSCs. It may be noted that unanimity/voting is required for monitoring function. Crucially, despite the fact that Contractor may incur further costs due to a decision made by GOI in such scenario, such petroleum costs are now not recoverable.

- There is no requirement of prior OC approval before bringing in matters for MC approval.
- If there are issues requiring specific Government approval under the Contract over and above the MC approval they should be specified. Since Government representatives are anyway part of the MC then it is to be considered what purpose would be served by reserving some issue for approval separately by the Government. In fact the same purpose would be served far more efficiently if the Government were to clarify through internal orders the level at which MC representatives need to take approval within the Government for specific matters.
- The following clause in existing CBM contracts may also be considered to be inserted separately:

  Any member shall be entitled, if either he or his alternate is unable to attend a meeting to cast his vote, by telex or facsimile transmission received by the Chairman prior to the date on which the vote is taken in the course of the meeting. Such vote shall have the same effect as if that member had been present and so voted at the meeting.

- Clause 6.5 (a) and (b):
  - Clause 6.5 (a) talks about initial production profile for the entire project life while Clause 6.5 (b) talks about annual projected profile for immediately following three years. How are conflicts (if any) between (a) and (b) to be resolved?
  - Technical Assessment Report (TAR) is not specified. <u>It cannot be left vague as it gives DGH /GOI uninhibited powers to arbitrarily determine requirements for TAR from time to time.</u>
  - It seems from the clauses that it is Part C of the TAR and not the FDP that is approved. Therefore, all the more necessary that the requirements as to what is to be part of TAR are clearly laid down and the requirements of Part C spelt out in greater detail. Add ‘projected’ to ‘initial production profile’ in (a)(ii)
- Clause 6.5 (c):
  - Why the determination of area within the Contract Area to be relinquished is required?
  - This clause should not be included because Article 4 does not allow part relinquishment. Even if it did, (c) i.e. ‘determination’ should not be an MC approval item.

- Also for operational clarity and effectiveness it is desirable to devolve many of the functions upon the Operator rather than Contractor
- Methodology for measurement of Petroleum needs to be specified

- Clause 6.6:
  - The Contract should clearly state that none of the monitoring function of the MC will be construed and treated as an approval function. In addition, minutes of monitoring meetings, if at all, should not be a necessary condition for Contractors to progress further.
- Clause 6.7:
  - Time period for circulation of the agenda for meeting is specified as 30 days prior to such meeting. Field operations do not always give the luxury of time. Decisions have to be taken far more expeditiously for which:
    (i) either latitude needs to be given to the Operator to take operational decisions
    (ii) time limit reduced to 7 days rather than one month
  - Moreover, submission of Agenda 30 days prior to the meeting and that too after finalisation in consultation with the MC members complicates the process whereby MC meetings can be called. <u>This is going to affect operations severely</u>.
    Suggestion: Probably once in 6 months is more appropriate in the context of Revenue Sharing.
- Article 6.9:
  - For the Management Committee a 120 day decision period is too long. Furthermore, regarding ultimate referral to government for decision-making, this should be by unanimity. Accordingly, Decision period should be shortened since ultimate referral to government for decision-making is not appropriate (in view of Contractor taking the risk).
  - While Government intervention to resolve issues is a welcome inclusion, its decision being binding is not investor friendly at all and also contradicts Contract provision about sole expert and arbitration in Article 32.
  - Government cannot both be on the MC and the authority to which disputes are sent for resolution. If Government is to be the reviewing authority then it should not be part of the MC since it would not be appropriate for the Government to review its own decisions. Alternatively, <u>the Government as a final approval authority should be deleted</u> and in case of disagreement, matter should be resolved through sole

expert/arbitration process. Experience shows that if a matter could not be decided in the MC, the Government decision is binding irrespective of contract sanctity. Therefore, all the greater need to institute mechanism whereby neutral third party expert can give final direction.

- Timelines prescribed for MC approval and monitoring of numerous proposals are uniform. Moreover, MC timelines are without deemed approval provisions. If MC decisions are not forthcoming within the stipulated timelines, approval and monitoring decisions should be considered as deemed approved.

3.8 Article 7: Operatorship, Joint Operating Committee and Operating Committee

- Article 7.2 - Number of 'Extra Days' should be defined as it leaves ambiguity in case an Operator wants to farm-out its stake along with 'Operatorship' to a new incoming party who satisfies all condition of Article 33 as well as terms of JOA on Operatorship subject.
- Article 7.4 - The term 'Companies', 'Parties' and 'Members' have been used interchangeably. Consistency should be maintained.
- Article 7.4: Operator should be allowed to submit proposals directly to the MC for approval and monitoring. Unlike PSCs, there should no requirement to first seek OC approval and then submit to MC for review and approval

3.9 Article 8: General Rights and Obligations of the Parties

- Article 8.1(d):
  - 'block' should be used as defined term.
  - 180 days from execution of Contract should be made '180 days from Effective Date'.
- Article 8.2:
  - For any concurrent operations in a license area, both parties are to use "best efforts" to avoid conflict. The way it is currently stated raises possibility for limitations of rights being imposed upon the original Contractor. Accordingly, any co-use of contract area should be subject to the original Contractor agreement.
  - It has been seen in many instances that such overlaps of non-petroleum operations has been done without any information to the petroleum operator and thus occurring in best prospect areas of petroleum operator which led to delays to both the parties. It is suggested that such allocations or explorations for non-petroleum resources be

informed to the existing petroleum operator and avoid immediate award in fairway areas during the development period.

Note:

Addition of a new clause in Article 8 is advisable regarding permission of simultaneous exploitation particularly in case of CBM blocks whereby they can approach/partner with adjacent coal mine operator(s) for Coal Mine Methane (CMM), Abandoned Mine Methane (AMM) etc. under same terms of the contract terms. Alternatively, expeditious approval for such cases may be required.

Also rights to operator to involve and if viable, commercial implementation of newer technologies like Underground Coal Gasification (UCG), Coal to Liquids (CTL), etc. in the shallow prospects not suitable for CBM.

3.10 Article 9: Government Assistance

- There is need for a 'single window' clearance model to avoid unnecessary delays of resource exploitations. Nothing is mentioned on the GoI initiative on this aspect and needs to be addressed.
- Government should also ensure that its nominee in the MC work to ensure timely approval. Government should also provide price clarity/ price approval of Contractor's proposal immediately (within one year) upon FDP (TAR) approval else provide for Force Majeure for execution of FDP implementation.
- GOI will use its 'good offices' to assist the Contractor to be able to carry out its obligations. 'Good offices' is undefined and in any event an inadequate standard of conduct in such critical areas as access/ingress to the Contract Area and the issuance of permits, contracts and the like. GOI should assist through best endeavour and in some circumstances there should be an unqualified obligation to procure.

3.11 Article 10: Discovery, Development and Production

- This Article requires a number of clarifications e.g. in Article 10.12, it needs to be clear on what does "produce or pay" obligation means and how it works?
- The Appraisal Programme as currently contemplated should be only 'for information' to MC. This point should be explicitly brought out in the Contract.
- No timeline provided for the approval of TAR/FDP by MC. Looking at the emphasis attached to timelines in the Contract this period needs to be specified.

- Article 10.1:
  - "establishment of the Discovery…..": Is this decided by the Contractor?
  - "potential commercial interest" is not a defined term.
  - Generally, a Contractor drills and undertakes any test as part of same drilling campaign (in case there is a discovery). The timelines of the notification of Discovery to MC, undertaking the tests and potential commercial interest in Clause 10.1 are not coherent with actual physical work undertaken by the Contractor.
- Article 10.2 - Need to clarify whether six months/one year from discovery or PCI for submission of appraisal programme.
- Article 10.3:
  - Not placed correctly. It is still a Discovery which is being appraised and with no mention of intention to submit Field Development Plan. How can the GoI be required to collaborate and agree on joint development at this stage? Can understand if it was 'joint appraisal' in 10.3.
  - Collaboration with other operators for development of discovery can lead to delays due to economic considerations and also varying risk appetite of the parties. No Contractor would like to hold his development plan hostage to the pace and decisions of third parties having no stake in the block. The clause is liable to be misused in its present form.

- Article 10.4 - It gives uniform time limit for deep waters, shallow and onland blocks. Deep water blocks must be given extra time of 6 months. Further, there is a need to clarify that MC does not have any role in approval of an Appraisal Programme.
- Article 10.5: In addition, the model contract should also include situations wherein "excess ANG is not required for reservoir pressure maintenance (without which the loss of recoverable oil and the value thereof will be significantly greater than the cost to re-inject the ANG into the reservoir)".
- Article 10.6:
  - It is most important to note that the Contractor shall be deemed to have taken into account Gas utilisation policy and pricing, and propose options, if any, for use or consumption of Natural Gas. This is at the stage of 'intention to submit a Field Development Plan'.

- Article 10.6 is inconsistent with Article 10.10 which gives Contractor time to tie up the market in 24 months from the date of approval of TAR (date of approval of TAR is itself not mentioned).
- Contract is subject to Government policy like GUP, Pricing, etc. But Article 20.5.3 indicates that if the contractor makes sales at higher price, it would be taken into consideration for computing Government Take. These are conflicting and confusing statements.
- There is clear contradiction between the intent stated in the terms "marketing freedom", "arms-length sales", and "GUP" in the context of gas pricing. Until these contradictions are resolved there can be no clarity on expected revenue streams under the Contract. With these ambiguities in place bidders will not be in a position to submit appropriate bids for revenue sharing. The bids submitted for revenue sharing would have to be negotiable depending on the Government's GUP and its stance on arms-length sales and marketing freedom at the time of sale. This would in effect vitiate the process of bidding.

- Article 10.7 - Five year timeline for development of technology is too short period and this should be increased to 10 years. Further it is literally impossible for the Contractor to clearly give a time bound milestone for acquiring such technologies. Also technology acquisition should be linked to Article 10.9. This does not cover marginal and small discoveries that may be developed in cluster at a later date. These need to be included.
- Article 10.8 (ii) - Monitoring cannot be open ended. The parameters for monitoring need to be specified. In effect the clauses on monitoring introduced in place of many of the review provisions in the earlier PSC make for a more intrusive Contract.
- Article 10.8 (iii) - TAR thus basically comprises (i) and (ii) as well so what is the point of excluding (iii) and (iv). TAR itself is not specified as to what it contains
- Article 10.9 - Article clearly outlines the requirement for FDP submission and for TAR approval.
- Article 10.10:
  - Obligation to tie-up the market for sale of Non Associated natural Gas (NANG) within 24 months of approval of TAR by MC
  - There must be a parallel provision to make it mandatory for the Contractor to submit and the Government to approve the pricing formula before the approval of TAR so that marketing tie ups can be firmed up. Again the Contract needs to specify what

kind of marketing tie up is the Contractor expected to undertake if allocation of gas is to be done by the Government under GUP. In fact, in such cases, the obligation to complete a marketing tie up within two years of approval of TAR should be upon the Government/authority allocating the gas and not on the Contractor. Further, Contractor cannot be held liable for any delays arising out of the failure of the Government to complete allocation of gas and approve pricing formula within this time period.

- Article 10.11 - Time period for approval of TAR to be specified.
- Article 10.12:
  - Oil and Gas industry is subject to surprises, hence it would be difficult to agree for upfront production target at FDP stage. This may result in non-development of marginal and small discoveries as the risk of development is to be borne by the Contractor. Further, it only stipulates levy of LD in case of under performance. It does not talk about incentive in case of over achievement.
  - Knowing the uncertainty in the oil and gas business the LD mechanism is unprecedented and does not appear to be in vogue in any international regime.
  - LD is solely based on average Crude Oil prices. There seems no parallel provision for natural gas which may lead to unintended litigation.
  - In case of over achievement of approved program, what will be the points of reference for MC decision? Cut-back, approval or LD? Clarity should be provided upfront.
  - It cannot be called the 'maximum' quantity and then be enforced as a commitment. Commitment can only be for a minimum quantity.
  - While Programme Quantity refers to Petroleum. The valuation clause refers only to crude oil. How is LD for gas to be valued?
  - There should be provision for revising the field development plan on the consideration of new knowledge gained through the production or integrating the development plan with development of another discovery.
- Article 10.13 - Commencement of development operation needs to be clearly defined and should not be open for interpretation. It can be linked to Contractor proving start of procurement and contractual activities.
- Article 10.14:

- Timelines provided are pretty stringent and project development can be influenced by several factors beyond the control of the Contractor (eg. Non-availability/tight supply of special services and materials; non availability of approvals and clearances; non availability of evacuation infrastructure including markets, etc.)
- It speaks about commencement of Commercial production within some stipulated time frame and if not achieved relinquishment of the discoveries. What will happen to the investment made by the Contractor in that case when development is in progress?
- In case of termination of the Contract, Contractor should be duly compensated.
- Timeline should run from approval of TAR or grant of Lease or tie-up of market for sale of NANG (whichever is later)
- This clause needs some form of MC sanctioned excusable delay that takes into account the potential need to develop a new technology or to discover additional fields in proximity to the Discovery in the event that the Discovery is marginal but might be developed if it can be jointly developed with another field(s) by sharing infrastructure.

- Article 10.15 - Since this is about test production shouldn't this be operationalized with a 'written notice to GoI, through DGH rather than 'with approval of GoI." Since this refers to a test production, production marketing should not be restricted to Government's approval. Test productions at a developed facility have to be treated as commercial productions subjected to revenue share. Contractors as a best practice would inform MC/DGH.

3.12 Article 11: Petroleum Exploration License and Lease

- There should be another Clause clarifying that Exploration Operation can continue at all times during the life of the Contract.
- Article 11.1.1 - May consider raising 15 days to 30 days as it may be difficult for new entrant.
- Article 11.1.2 - The License shall automatically stand extended.
- Article 11.1.3(a):
  - Offshore Blocks is not a defined term.
  - Upon submission of FDP should be replaced with a timeline post approval of TAR.
- Article 11.1.4 - Based on industry experience it is seen that such contiguous areas applied or asked for take inordinately long time for a decision. With the thrust on energy security, it is expected that such issues will be even higher in the coming days. Hence, it is

suggested that such decisions are handled ideally by forming a special team with inter-ministerial/departmental members for fast track resolutions.

- Article 11.1.6:
  - As this Contract is based on Revenue Sharing concept, the Contract should automatically be extended till economic life of the Contract as determined by the Contractor. This provision is required as the Contractor might also require additional time to explore Petroleum other than the type of Petroleum for which the Block has been designated. This is to ensure expeditious exploration of all types of potential Petroleum in the Block.
- Article 11.2:
  - This should rather mention exploration and exploitation also of other hydrocarbons as decided economic by the operator suitably justified with Development Plan and approved by the MC.
  - Word 'mining' is redundant. Processes and procedures with respect to Operation regarding other "types" of Petroleum not clear.

3.13 Article 12: Unit Development

- Clearly what is intended by this Article is that there be a Joint Development Plan Agreed (by Block Parties) & if consistent with Modern Production Practices there will be no need for GOI certification But importantly, a Unit is only one of many solutions & is not mandatory.
- In case Unitization is between a government owned entity (one in which the Government has a stake of over 51%) and private entity, then matter should be decided by a third party expert instead of Government (to avoid conflict of interest). Necessary consequential changes to be made in remaining sub-Articles.
- Article 12.2 - Outcome is either you agree or surrender rights to the Discovery which is unreasonable. The terms described to address disagreement on joint development plans (i.e. introduction a binding 3rd party plan) are not attractive for a potential contractor. This would place Contractor at risk of being forced into a certain development, under penalty of an enforced relinquishment. Accordingly, GoI should consider other methods to break deadlock, while stimulating Contractor progress. This may include the introduction of transparent (independent) deadlock breaking mechanisms, such as experts for Unitisation agreements. Also consider that the time to develop and agree a

development plan will differ for oil and gas developments. (The principle is to avoid the situation where a Contractor is forced into a 3rd party development / investment, under the threat of forfeiting exploration investment through forced relinquishment).

- Article 12.3:
  - Does adopted by parties mean approved by MC of both blocks?
  - This seems to be over-simplified in the given context of Unitisation. Issues like Unitisation agreement, Operatorship, fiscal regimes/terms (as Contracts of both Blocks can have different fiscal terms), MC approvals, other procedures like lifting etc. do not seem to be on the radar.
- Article 12.4:
  - This Clause is absolutely unprecedented and puts all the risks on the Contractor who is developing first. This will not only delay expeditious development of discoveries which could be against the national interest, but put efficient Contractors at the mercy of the inefficient ones. This is, therefore, a provision which can also be misused to prevent or delay progress in certain blocks.
  - This needs further elaboration on various timelines for application and submission to the Government.
  - What happens if one Contractor has started production and second Contractor realised about the unitisation issue at a much later date?
  - If a Contractor is already in a development phase and has already committed resources, can his development be unilaterally stopped, thus resulting in severe damages/financial losses to such Contractor/vendors? How Government proposes to reimburse the aggrieved parties (Contractor/vendors)?

3.14 Article 13: Measurement of Petroleum

- CBM gas measurements methodology should be standardized for operators.

3.15 Article 14: Protection of Environment

- The members should just be allowed to follow Environmental laws and the GOI should develop clear Terms of Reference.
- The unconventional (mostly shale) development in future days will be highly advanced with long length horizontal wells. It is thus suggested, that this aspect be taken into

account in clearances involving drilling below the forest areas in a block from off-forest locations.

- In addition there is also need to revise certain clauses of the current environmental guidelines to accommodate special needs of unconventional hydrocarbon sector based on learning from successful unconventional industry countries.
- This Article requires a number of clarifications before further suggestions e.g. Article 14.1 "compliance with notifications" and "adequate compensation", Article 14.8 Abandonment fund needs to be clearly described.
- Article 14.4 - What if no remedial measures are possible due to subsequent changes in the law? Whether the government will reimburse the Contractor as is the practice in the US?
- Article 14.5 - Timelines for approval is not clearly specified. Though the Contractor is compensated by extension it may delay monetisation of the discovered resources leading to monetary loss as well as uncertainty to the Contractor. In cost recovery regime, financial losses to the Contractor in such situations could be recovered. But under present proposed revenue sharing regime, Contractor will have adverse financial implications for potential cost escalations and time values of money for the delayed period. Hence it is suggested that Government should cap the Approval Period or provide suitable incentives/compensation to the Contractor. Alternatively the Government would have to provide for re-adjustment of revenue sharing in case of such delays to mitigate adverse effects on the Contractor. The parameters for such adjustment should be spelt out in advance.
- Article 14.5: Environmental footprint of Oil & Gas sector is very distinct from Mining activities. Moreover, within the Oil & Gas sector, Exploration phase footprint is different vis-à-vis Production phase. Exploration phase has minimal footprint. To expedite project execution with minimal environmental impact, Environmental Clearance should be required only for Production phase of the Oil & Gas development. Adopting this approach would enable Contractors to expedite commencement of hydrocarbon production.
- Article 14.10: Location of Contract Area should have received environmental clearance. MoPNG should offer only those blocks for exploration bidding, which have received all operational clearances from the Ministry of Environment & Forests, Ministry of Defence and Ministry of Home Affairs among others.

- Article 14.11 - Government should indemnify the Contractor for any environmental damage of any nature caused due to any activity undertaken in the Contract Area before the Effective Date of the Contract but which is only observed/realised after the Effective Date. Contractor should be only held responsible for Petroleum Operations undertaken in the Contract Area between the Effective Date and the Contract Termination/expiry.

3.16 Article 15: Revenue Share

(Article in current form is not acceptable as the provision of escrow account is investor unfriendly and exposes Contractor to risk. Definition of Revenue should limited to Clause 15.1 (i) and (ii). The remaining Clauses are not acceptable and absolutely unprecedented in E&P operations.)

- Article 15.1:
  - As per Article 15.1, calculation of Revenue is to be on accrual basis. This could be very tough on the contractor, as he may be required to share with government even before receipt of cash. Revenue should be calculated on cash basis.
  - Royalty could be removed/reduced since government anyway gets income by way of revenue sharing & taxes.
  - Article 15.1 (iii) - Marketing margin should not form part of the Contractor revenue.
  - There is a lack of clarity in Article 15.1 (iv). Any revenue linked to farm out of the entire PI or partial PI by any constituent of the Contractor should not and cannot be part of the Contract revenue. Hence, this article should be deleted.
  - Currently, the draft model contract considers only Royalty. In addition to royalty, revenue should be net of sales tax, surcharges, statutory levies – extant and future, internal consumption, marketing margin, any change in participant interest and consideration from farm-our agreements. Revenue has to be defined net of all levies linked to production quantity.
  - Accounting for Revenue should be on the basis of collection and not accrual to cover issues pertaining to delayed and / or non-payments by debtors. The risk of bad debt, though remote, would be eliminated if collection rather than accrual basis is adopted for accounting revenue.
  - Definition of Revenue should be based on petroleum sold after adjustment of losses during transportation and treatment for flared gas
  -

- Clause 15.4 - This is a discriminatory provision. For equity and fairness, Revenue should be shared between Government and Contractor concurrently. There should not be any provisions of Escrow.
- Article 15.5 - The revenue to Government should be managed as per the existing Contractual system. The provisional of 'Escrow Account' is very investor unfriendly and exposes Contractor to risk. Escrow Account provision needs to be deleted.

3.17 Article 16: Escrow Account

(The concept of Escrow will be unacceptable to private participants as this is unprecedented in the industry anywhere in the world and will only serve to deter investors.)

3.18 Article 17: Taxes, Royalties, Rentals, Duties, etc.

Please refer section 4 for recommendation.

3.19 Article 18: Domestic Supply, Sale, Disposal and Export of Natural Gas, Crude Oil and Condensate

- Marketing restricted to local area until Government advises otherwise – this has a material impact on the revenue potential of the project. Accordingly, need to ensure that restrictions will not impact the valuation of opportunities and interest in opportunities under this contract.
- Article 18.4 and 18.5 - These Articles should be revised in line with Article 16. Even for Escrow Account concept, these Articles may not be relevant as the revenue needs to be credited into escrow account.
- Article 18.4 - Not appropriately worded 'all its share from its Participating Interest'.
- Article 18.5 - Why 'prior to commencement of production in a Field"? Crude Oil Sale Agreement (COSA) is normally short term and there can be many at different points in time and with different procedures. MRSC is silent on Gas Sale Purchase Agreement (GSPA)? Even if so, 'Commercial Production' (defined term) should be utilised. There cannot be a standard COSA for all times to come as all these need to be negotiated from time to time based on market conditions and circumstances.

3.20 Article 19: Joint Development of Common Infrastructure

- It should incorporate mandatory terms for optimization and increase accountability.
- In case of disagreement between both Contractors, clear procedures for resolution of the differences in order to expedite the project must be laid down.
- Clause 19.1 (ii) - repetitive 'mutually agreed'.
- Clause 19.2 - For information or approval?
- Clause 19.3:
  - This provision talks about reopening of the existing PSC.
  - Good to have but doesn't work only based on 'equalisation of terms'. We are assuming that GoI will not interfere in finalisation of other terms such as ratio of sharing cost, development operator, tolling agreements, third party usage terms etc. If that be so, then no harm if 'equalisation of terms' enabling provision is available. Any toll extracted should not be included in Revenue.
  - Government needs to clarify the decision process and timelines for the same.
  - In such cases, if one of the Party is National Oil Company (NOC), then any disagreement should be addressed to independent third party expert.

3.21 Article 20: Principles determining value of Petroleum

- The intent of the phrases 'Policy for utilisation of gas' and "Valuation" provisions, freedom to market is contradictory and is likely to lead to disputes. It will cloud and vitiate the bidding process. See 10.6 also.
- This Article requires a number of clarifications, e.g Article 20.2 suggests a lack of stability in the government policy for gas marketing, Article 20.4.1 introduces ambiguity in crude oil pricing. Uses such terminology as "where the Government is of the view" that pricing is not as per Arm's Length.
- Also not specified whether valuation of gas to be done on Net Calorific Value (NCV) or Gross Calorific Value (GCV) basis.
- Article 20.2:
  - What does "freedom to market" mean? Does this mean within a sector the Contractor has freedom to choose the Customer?
  - 'Sell its entitlement'. Given Revenue Sharing model, 'entitlement' aspect needs to be covered elaborately (rather than left to interpretation) as mentioned previously.

- Article 20.4.1 - Does it mean the valuation is done based on import parity when sales take place between affiliates.
- Article 20.4.2 - Note that this Article refers to "weighted average" while 20.4.4 refers to "arithmetic average". Clause 20.4.4 should be made consistent with 20.4.2.
- Article 20.4.3 - For Operator to have such information for accounting procedure related obligations, this type of information needs to flow to Operator as well. Else, all such information needs to be made to flow to Operator though JOA.
- Article 20.5.2 (b) - The explanation inserted adds to the confusion.
- Article 20.5.2 (c) - may note 'in the region for similar sales under similar conditions'…..this is a further 'subject to' to the Arms Length Sales condition and a subjective and debatable case. A very cautious approach even after retaining 'formula approval' rights.
- Article 20.5.3:
  - By creating two limbs "to ensure Arms Length" or "where Arms Length Sales price is impossible to arrive", the GoI has ensured that in all practical cases the 'formula' needs to be pre-approved. Will this be on a case-to-case basis (for contracts, for Members) or one formula? Also, this seems to happen way ahead of the start of actual Commercial Production (tie-up market obligation).
  - Price will be applied uniformly to all consuming sectors indicated under Article 20.2 (which only refers to gas utilisation policy for different sectors). So, there is a sector and there is a region as well.
  - Last sentence ends with "Government take'…which is normally not used in contracts. Better to link it to Revenue Share.

3.22 Article 24: Records, Reports, Accounts and Audit

- Article 24.2 - Need to cover this up in JOA as Operator is the one responsible. Issue is around 'take in kind' the obligation in 24.1 (which applies to Contractor) refers to 'income and statutory levies / taxes'. If take-in-kind is used, the income statements etc (most of the Accounting Procedure related obligations) can be fulfilled only on receipt of reports from non-Operators.
- Article 24.4 - Appointment of auditor approving authority not spelt out. Further, when monthly audit certificate is sought under Article 15.5, then why a separate annual audit?

- Article 24.5 - Escrow Account to be dropped. Time period for such audit should be specified. GoI right to audit is limited to Escrow & Revenue. There should be more clarity on this limited right.
- Article 24.6 - Need to be more specific as the ToR for such Audit should be limited to revenue to the Government, which is linked to production and price.

3.23 Article 25: Information, Data, Confidentiality, Inspection and Security

- Article 25.2 - Rationale for requirement of GoI approval to retain original Data is not understood. Generally, it is for export of data.
- Article 25.6 - Surprising to see the 'prompt notice' requirement. This applies for disclosures to all & everyone (including employees) listed in 25.5.

3.24 Article 26: Title to Petroleum Data and Assets

- The article talks of entitlement but what is entitlement is not stated in the Contract. See earlier points.
- Article 26.2 - It is not specified where and when the title to petroleum will pass to the Contractor from the Government for the purpose of sale.
- Article 26.4 - Assets owned by Parties comprising the Contractor in proportion to their Also refer comments on Article 26.6 listed below.
- Article 26.6:
  - When the Assets are owned by the Contractor as per Article 26.4, then why this clause is incorporated?
  - Since there is no cost recovery mechanism, what happens to assets after the Contract term? Ideally, since the Contractor is taking the risk and there is no passing of title to GoI, Contractor Parties right to assets post Contract term and deal with assets in whatever is mutually agreed between them, should be stated. Without which it would mean that assets would revert to GoI.

3.25 Article 27: Assignment of Participating Interest

- Article 27.2 - Condition (e) should not be incorporated for affiliate transfer.
- Article 27.4 - Does not specify the Article with reference to the unconditional undertaking. Should refer to Article 27.1

- Article 27.7 - It is also suggested that in this case the GoI should also promptly approve and execute such assignment agreements to avoid further delays.
- Article 27.9 (ii) - Should state 'original Party creating the encumbrance'.
- Article 27.10.1: Article 27.8.(iii) is incorrect reference. Should be 27.9.(iii)

3.26 Article 28: Guarantees

- This Article requires a number of clarifications before further suggestions, e.g. Article 28.1 (b) Parent Company Financial and performance guarantee is in favour of Government (Exhibit F appears to suggest guarantee which is not capped in amount and is unlimited in time), e.g. 28.3(b) Article makes reference to completion and due performance of the minimum work programme before release of bank guarantee. This introduces ambiguity (lack of clarity around meaning of "due performance").
- Accordingly, it is suggested to introduce alternative forms of security, as the current replenishment statement makes the guarantee appear to be limitless since it is difficult to furnish uncapped/unlimited Parent company guarantees. A bank guarantee will be in place to cover work obligations under the contract. Alternative mechanisms should be considered to replace uncapped/unlimited Parent Company Guarantees.
- Article 28.1 (a):
  - Bank Guarantee (BG) for 4 years flat should instead be as per time lines in Exploration Phase I i.e. 5 years for onland and 6 years for frontier.
  - Contractor should provide clear timeline for return of Guarantee on completion of MWP and should not be linked to any other activities.
- Article 28.1 (c) - the guarantor in BG is the bank. How can Contractor's legal advisor's vouch for due authority, legal validity, enforceable and binding nature (it can only happen based on a counterpart advice from banks' legal advisors). Also legal opinion should be sought only for Performance Guarantee and should not be sought for the BG as it is issued by a third party.
- Article 28.3(a) - Better to have upfront clarity on 'total estimated expenditure' in respect of MWP (given there is no Annual WPB exercise).
- Article 28.2(b):
  - While it can be inferred, this Article should be made specifically applicable to the BG.

- May note the 'fulfilment if obligations under the Contract to the satisfaction of the Government' in the last sentence. This seems to be a hanging obligation. Also, in the context of the format of BG.

3.27 Article 29: Term and Termination of the Contract

- This Article requires a number of clarifications before further suggestions, e.g. Article 29.4 (a), (b), (i) a number of events can cause Major Default resulting in termination by Government; some of which are difficult to define or clarify.
- Accordingly it is suggested for rationalising/removing certain conditions, e.g. triggers for Major Default (reduce the list), the production obligation post-termination and clarity around penalties for Minor Defaults
- Article 29.1 - Duration of this Contract should commence from the Effective Date.
- Article 29.2(a) - Right to terminate this Contract with respect to any part of the Contract Area is subject to the provisions of Articles 5, 14 and 29.6.
- Specifically given the wordings in Articles 4.1 & 4.2 which refer to the entire Contract Area in both sections, it is not clear whether relinquishment of part of the Contract Area is contemplated or not. Also, Article 28.2 refers to 'entire Contract Area'.
- Article 29.3 - BG is given for MWP, how can it be enchased for any other reason other than what it was given for?
- Events that constitute 'Major Default' under Article 29.4 are wide enough to cover any breach. In this context, it appears that the insertion of Article 29.3 is just an additional remedy to the Government giving itself the option to either terminate the contract or solely determine the costs/damages resulting from breach and adjusting the same from the bank guarantee furnished. Further, the contract also does not provide for a cure period in the event of a "Minor Default" giving the Government the direct option of levying damages on Contractor. This imposes unknown liability and risk on the Contractor. <u>This Clause should be deleted as it will deter investors.</u>
- Article 29.4 - <u>Very wide and stringent. Moreover, non-submission of FDP should not be categorized as a "Major Default" for termination of Contract.</u>
- Article 29.4(g) - Some 'materiality' language should be inserted as the Major Default is by itself defined by this list.
- Article 29.4(i) - Note specific reference to 'failure to submit FDP' in light of market tie up obligations, price formula approval probably coming after FDP submission.

- Article 29.7 - This needs further clarity as it mentions about the rights of the Contractor after the termination. Further if a dispute is under Arbitration whether the Government can terminate the Contract for the same reason? This needs to be clarified.

3.28 Article 30: Force Majeure

- Article 30.2 - Delay in Government approvals, Global factors affecting operations may be included as force majeure event.
- Contract period should be extended by Force majeure period (Industry Practice).

3.29 Article 32: Sole Expert, Conciliation and Arbitration

- No stay pending dispute resolution vitiates the purpose of having a dispute resolution.
- System of Arbitration and power of Government to settle disputes (Article 32.14) may not provide sufficient assurance to Investor/contractor that there would be a transparent and fair treatment for all parties. Accordingly, it is suggested to consider international arbitration.
- Clause 32.1 – The words "concerning the interpretation or" is essential to matters that can be arbitrated. More often disputes arise from each Party's interpretation of a provision. This should not be deleted. This was part of earlier NELP PSCs. The inclusion of these words is reasonable and essential to the functioning of a contract.
- Clause 32.9 - Arbitration Act is not defined.
- Clause 32.14 - Government Company is not defined.

3.30 Article 33: Change of Status of Companies

(The level of detail sought is unprecedented.)

- This clause could be considered as a part article 27.
- Points need to be clarified, e.g. Government satisfaction with Composition of Board of Directors.

3.31 Appendix C (Accounting Procedure)

- Para 1.4.2 - The word "etc" to be removed and it has to be conclusive on what to give in the memorandum joint venture accounts

- Para 1.4.5 - Operator to maintain on behalf of Contractor. To be covered in Joint Operating Agreement (JOA).
- Para 1.5 - Accounts maintained in US$ whereas Escrow Account is denominated in INR. Since the Accounting Procedure does not deal with a foreign currency translation procedure, treatment of foreign exchange fluctuations becomes unclear. Accordingly, it is suggested that treatment of foreign exchange fluctuations should be upfront clarified.
- Para 1.6.1 - Payment by Indian company in Indian Rupees to be brought out.
- Para 1.7.6 - This is visualised as a one sided adjustment in favour of the GoI. But in real life can be either way.
- Para 1.7.7 - It brings in second escrow account for depositing disputed amounts.
- Para 3.1 - Since this is an ongoing regular reporting obligation, best is to commence this from Commercial Production rather than date of first production. Also, these details should probably move to Section 4 which deals with production statement.
- Para 3.2 - When there is no cost recovery mechanism under the contract, this may be deleted.
- Para 4.2 - Production reporting on Development Area basis needs to be clarified.
- Para 6.1 - Note the reference to "Petroleum Produced and Saved to be shared between the GoI and the Contractor".
- Para 7.1.3 - The word "etc" to be removed and it has to be conclusive on what to give in the memorandum joint venture accounts
- Para 7.2 (b) relevance of Internal Control, reporting of fixed assets as the contract is not based on cost recovery mechanism
- Para 7.3:
  - Purpose of calculating "Net Income" as Government take is based on production and price. Provision for Net Income statement should not be necessary in Revenue sharing regime as they relate to cost of production / relevant in cost recovery regime
  - End of Year Statement also includes deductions on account of all expenditure. For all practical purposes this then would become subject to Audit. Need clarity on the purpose of this.

3.32 Appendix D (Production Price Matrix)

- Onland fields can be viable at even 500 Barrels of Oil Per Day (BOPD) or less so clubbing all under Tranche 1 is not justified. The lower tranche therefore needs to be further subdivided for any meaningful bids to emerge.
- Similarly for gas both the Upper and lower Tranche need amplification
- It is not clear why production levels are given upto two decimal places?
- Like production, oil price bands too should be on sliding scale – in the current format, contractor can have lower revenues at higher price if bidding is done incorrectly.
- Oil price bands do capture the upside in Crude price in the $ 100/bbl. - > 150/bbl. range. But in case, actual oil price are in $ 60 -80/bbl. range, contractor will have much lower profitability and accordingly there should be a separate band for bidding to cover low oil price scenarios.

3.33 Appendix E (Escrow Account Agreement)

- Recital (d) - The reference to "expenditures" is not relevant & adds unnecessary confusion. Also, the reference to "sub-accounts" is not supported by any operational provisions. It should be deleted.
- Definition "Payment Date": Hard to infer what is this Date as 3.2 does not have any date mechanism
- Para 2.1 - As stated earlier, the Escrow Account shall be denominated in Rupees. There are no procedures laid out in the Contract for foreign currency translation.
- Para 3.2 (i) - Direct payments by Contractor should be only for balance amounts that are not available in Escrow.
- Para 3.2.(ii):
  - The reference to Taxes (not defined) is not understood. Also, the 'in favour of (details)…" should be included here as well.
  - Does this mean in the event of dispute pending either with Sole Expert or Arbitration, the Contractor will not have freedom to draw the money from Escrow account till it is settled?
  - Para below 3.2.(ii): Dispute should be a specific dispute (payment or valuation)
- Para 3.4 - The reference to Article 3.3 is incorrect.

- Para 4.1(i) - Reference to 'other property' is not understood.
- Para 4.1 (ii) - It means the Contractor has to wait at least for 7 business days to draw the undisputed amounts.
- Para 4.2- Please specify the party which will incur the fees and expenses? Expectedly it will be the Contractor but not stated as such.
- Para 4.3 - Is there a need to specify that interest in the account (post fees & expenses) accrues to the benefit of the Contractor.
- Para 5 - Events of Default are only for Contractor. What if GoI commits a breach of this agreement e.g. Event of Default notice is served without proper cause?
- Para 5.1 (b) - 'in which such transfer should have been made' appears irrelevant.
- Para 6.1 - 'any of its obligations to the Government remain to be discharged'….should be only outstanding financial / monetary obligations. See also 6.3 which is only about outstanding amounts.
-
- Para 10.1- Clause references are incorrect. Should be 6.2 & 10.1
  - In the 2nd sentence, GoI assignment, novation or transfer of rights should be restricted to GoI entity (as compared to any entity as currently worded).
- Para 10.2 - Business Day is a defined term.
- Para 10.4 - Applicable Law is not a defined term.
- Para 10.8 - Article 10.7 should also survive.
- Event of Default - The term 'Event of Default' is not defined. See comments under Article 16 – Escrow Account.

3.34 Appendix H (Proforma of Bank Guarantee to be provided pursuant to Article 28)

- Para 5 - The term of the BG is linked to the period taken for performance of the Contract and all dues of the Government under or virtue of this Contract have been fully paid and its claim satisfied etc.
- Para 28.1 (a) construes the BG as one for non-fulfilment of MWP. Period is limited and so is the amount. For continuing obligations there is a PCG.
- In the current form and manner, it seems there is confusion as the Escrow, PCG and BG all seem to cover everything. So we have 3 sub-sets all guaranteeing or standing for the same obligations.

4 Comment on Article 17 on Taxes, Royalties, Duties, etc.

- Tax and levies form an important part of the fiscal aspects of Revenue-Sharing Contracts. They have a direct impact on the split of 'take' between the participants (Contractor) and the Government of India (GoI) (assuming that all other aspects remain unchanged).
- However, during the implementation of earlier rounds of the New Exploration Licensing Policy (NELP), it was observed that the tax controversies in respect to the availability of some important benefits have led to litigation. There have been instances where changes to laws have been effected to provide for retrospective amendments/clarification to restrict/limit the tax benefits otherwise available to Exploration and Production (E&P) activities, and new levies have also been introduced on PSC service providers.
- In order to boost investment in domestic E&P activities, MRSC participants should be provided with a clear and stable tax regime and should also be incentivized to undertake exploration risk. Tax incentives play a very important role in achieving this objective.
- Keeping in view the above objective, outlined below are the key tax issues and recommendations in Article 17 of the MRSC. It is pertinent to note that the below mentioned suggestions need to be enabled through specific amendments/clarifications required in Direct & Indirect tax laws (wherever applicable).

4.1 Change in Law & Tax Stability

- Companies, their employees, persons providing any materials, supplies, services or facilities or supplying any ship, aircraft, machinery, equipment or plant (whether by way of sale or hire) for Petroleum Operations or for any other purpose and the employees of such persons shall be subject to all fiscal legislation in India except where, pursuant to any authority granted under any applicable law, they are exempted wholly or partly from the application of the provisions of a particular law or as otherwise provided herein.
- The beneficial provisions specified herein shall apply in computing income tax payable by a Company, their employees, contractors, sub-contractors of contractors, etc. on the profits and gains from the business of Petroleum Operations in lieu of (and not in addition to) corresponding allowances provided for under the respective heads of income in the Income-tax Act, 1961 (IT Act). Other provisions, which are not specified herein, shall be treated in accordance with the provisions of Income-tax Act, 1961.

- Any change in or to any Indian law, rules or regulations dealing with income tax or other corporate tax, export / import tax, excise, custom duty or any other levies, service tax, goods and service tax, cess, entry tax, duties or revised rates taxes imposed on petroleum or dependent upon the value of petroleum after the date of bidding the MRSC shall not adversely impact the MRSC Participant, their employees, service providers providing any materials, supplies, services or facilities or supplying any ship, aircraft, machinery, equipment or plant (whether by way of sale or hire) to the MRSC participants in connection with petroleum operations or the employees of such persons.
- It is also recommended that a corresponding amendment be made under the laws (including IT Act) mentioned above, wherein it should be clearly specified that law prevalent on the date of bidding the MRSC shall prevail for the duration of the MRSC. Further, with regard to the IT Act it is important to highlight that section 293A of the IT Act empowers the Central Government to make these exemptions in relation to E&P business. Thus, the provision of fiscal stability for the purposes of direct taxes can be achieved under the IT Act by way of issuing notifications under section 293A of the IT Act, in consultation with the MoF.
- It should be provided that the Government Revenue share, and/or other terms of the agreement, can be adjusted should additional tax/Royalty be levied.

Rationale

In order to ensure fiscal stability to MRSC Participants, it is imperative that the law applicable at the time of bidding should be clear and stable for the entire duration of the MRSC. By implication, any subsequent amendment /modification in the law and change in levies from the date of bidding would not be applicable to the MRSC participants, service providers or their employees. This will ensure stability and certainty of tax matters as applicable to petroleum operations undertaken in MRSC.

Specific comments listed below:

- Article 17.1: "…operations under this Contract…" It should be Petroleum Operations.
- Article 17.2.4 - Probably defined term "Commercial Production" can be used.
- Article 17.2.5 - 'produced and saved and sold' used but only with reference to Crude Oil. For ANG / NANG, 'revenue realised' is used. It should have been consistent. Note that Article 15 is based on 'amounts accruing for Petroleum Produced and Saved'.
- Article 17.2.6 - To be clarified in respect of Natural Gas/CBM/Shale gas.

- Article 17.4: This provision is in stark contrast to all existing Contracts which provides for explicit fiscal stability. Provisions of completely open-ended statutory levies would expose investors to significant investments risks and uncertainties throughout the Contract life.
- Article 17.5:
  - Royalty amount is subject to the law, which means can be changed during the contract period. In earlier NELP contracts, fiscal stability clause was provided by way of assurance to investors. In case rules related to royalty change during the currency of a Contract, the revenue share should be adjusted accordingly.
  - Further Royalty cannot be same for all types of Petroleum.
  - 'Pay' could have various connotations. Should insist on clarity of 'pay in cash'. Refer comments in Article 2 as well.
  - No provisions for exemptions of Customs duty unlike PSC regime.

Additionally, to attract investments in high risk exploration business Government of India may consider extending following incentives for the MRSC participants

4.2 Tax Holiday

- A deduction of 100% of the profits is available when calculating total income for any undertaking which begins commercial production of petroleum. The deduction is available for a period of ten consecutive assessment years in case of deepwater areas and seven years for other areas, including the initial assessment year of commercial production. The tax holiday should be made available within a 15 year period from the commencement of production.
  - For the purposes of claiming tax holiday "wells/cluster of wells/field" will be regarded as "undertaking".
  - 'Petroleum' is as defined under MRSC
- Further, for the above duration for which assessee is claiming tax holiday, it will be exempt for Minimum Alternate Tax under IT Act

4.3 Taxability of MRSC Consortium members

- GoI has issued Notification No. GSR 117(E) dated 8-3-1996 under section 293A of the IT Act, wherein constituent members of MRSC are not taxed as AOP and are instead taxed in their individual capacity. The provisions of notification should be extended to participants of MRSC including their service providers/contractors.

  Further, the necessary notification should also be issued by the Central Board of Direct Taxes under section 293A to protect service providers to MRSC from constituting an AOP and to ensure that service providers are taxed in their individual capacity.
- The respective indirect tax legislations such as excise, customs, service tax, CST should not recognize participants of MRSC including their service providers/contractors as an unincorporated association or a body of persons.

4.4 Oilfield service provider to be taxed under presumptive tax

- A non-resident engaged in the business of providing services or facilities, or supplying plant and machinery on hire, to be used in the business of exploration or production of Petroleum is liable to be taxed on a presumptive basis, and 10% of receipts are deemed as profits chargeable to tax. The non-resident also has the option to claim lower taxable profits subject to maintenance of books and furnishing of audited accounts.
- A non-exhaustive illustrative list enumerating services which will be covered under the presumptive tax regime and not treated as fees for technical services under the Income Tax Act is provided in *Annexure 1*.

4.5 Expatriate employees – Short stay exemption

- Remuneration received by an employee of a foreign enterprise employed by participants of MRSC or by non-resident engaged in the business of providing services or facilities, or supplying plant and machinery on hire, to be used in the business of exploration or production of Petroleum in connection with MRSC will be exempt for income tax in India provided his stay does not exceed in the aggregate a period of ninety days in such previous year.

4.6 Exemption from Service tax

- For execution of MRSC, normally one of the participants is designated as the operator and the other participants provide resources to the operator for carrying out the petroleum operations. In this case the transactions should not be considered as 'service' for the purpose of levy of service tax

4.7 Exemption from CST on goods supplied to E&P companies

- Since the import of goods required for petroleum operations is exempt from customs duties and local taxes, levy of CST on the sale of goods by indigenous suppliers would render the local industry uncompetitive. Therefore, GoI under CST law should issue a notification granting exemption to goods required for petroleum operations.

4.8 Extending the list of duty-free items

- Lists 13 and 14 to the customs Notification no. 12/2012 should be illustrative lists, granting specific exemption to all goods/equipment imported in relation to E&P activities of petroleum products. This can be done by way of inserting a residuary clause in the list '*all goods other than those mentioned above, but imported for use in relation to E&P of petroleum products*'

5 Annexure

Relevant annexure listed in above-mentioned recommendations are listed below:

5.1 Annexure 1 – Illustrative list of services/activities eligible for the presumptive tax regime

We have provided below the non-exhaustive illustrative list of services/activities related to petroleum operations which will qualify for the presumptive tax regime under the Income Tax Act:

1 Seismic services like land acquisition, data processing services, borehole seismic, seismic consulting transit zone surveys

2 Geophysical hardware and software services and geological services;

3 Drilling services like Cementing, engineering and modeling, mud well drilling and land well drilling, surveying, mud logging, mud engineering services, solid control and waste management services etc.

4 Well intervention like slickline services, decommissioning services

5 Provision of drilling bits, fluid systems and products, drilling tools along with the personnel,

6 Provision of all types of equipment along with the personnel on hire like drilling rigs, jackup rigs, submersible rigs, semi-submersible rigs, drill ships, drilling barges, short-hole drilling rigs, mobile rigs, workover rigs consisting of various equipment and other drilling equipment required for drilling operations, snubbing units, hydraulic workover units, self-elevating workover platforms, Remote Operated Vessel (ROV)

7 Providing all types of marine vessels to support petroleum operations including work boats, barges, crew boats, tugs, anchor-handling vessels, lay barges and supply boats;

8 Providing subsea operations like subsea processing, subsea intervention services

9 Providing services like perforating, permanent monitoring services, sand control, stimulation services.

10 Works Contract for construction of onshore and offshore platforms, pipeline, facilities for petroleum operation

11 Revenue from mobilization and de-mobilzation of equipments or vessels