**Indian Government Opens 15 CBM Blocks For International Competitive Bidding**

1. On September 22, 2021, the Government of India (Indian Government) has announced that it has opened for International Competitive Bidding (ICB) 15 Coal Bed Methane (CBM) Blocks (Special CBM Bid Round-2021). The successful bidder will be entitled to exploration, development and monetisation of CBM Block under Hydrocarbon Exploration and Licensing Policy (HELP) and Open Acreage Licensing Policy (OALP).
2. One hundred (100) participation is permitted by foreign companies either singly or in a joint venture. However, such participation will be subject to Foreign Investment Regulations (i.e. Indian Government’s Foreign Direct Investment (FDI) Policy and the Indian Exchange Control Laws i.e. Foreign Exchange Management Act, 1999 and applicable rules and regulations).
3. The program of Special CBM Bid Round-2021 as announced by the Indian Government is as under:
	1. On September 22, 2021, the Indian Government had published the Notice Inviting Offer (NIO) and Model Revenue Sharing Contract (MRSC).
	2. On October 17, 2021, by 12:00hrs Indian Standard Time (IST) the pre-bid queries could be sent. *Only those parties who submit pre-bid queries within this date are allowed to participate in the pre-bid conference*.
	3. On October 22, 2021, a pre-Bid conference is scheduled.
	4. On January 20, 2022, the Bid Submission will start.
	5. On February 20, 2022, the Bid Submission will end.
4. The NIO and MRSC are available at the link https://online.dghindia.org/cbm#. The bids are to be submitted through the e-bidding portal https://ebidding.dghindia.gov.in.
5. Bidders are provided with the tutorial at the e-bidding portal. Potential bidders must carefully go over the NIO and the MRSC and data provided for by the Indian Government to every potential bidder to study and submit the Bid.
6. A bidder is required to pay the required minimum data purchase fee for minimum mandatory data purchase in respect of each block. Bidders can purchase additional data for an additional fee at the rates prescribed by National Data Respiratory (NDR). All the data, including the data gathered during the contract, is the Indian Government's property and is required to be submitted to NDR.
7. Bidders are required to pay a technical fee of (INR 75,000) (Indian National Rupee Seventy Five Thousand).
8. Additionally, a bidder is required to submit a Bid Bond (favouring the Indian Government as the beneficiary) of the requisite amount is required to be submitted along with the Bid as security for adherence to the terms and conditions set out in the NIO. Note that the value of the Bid Bond as provided in the NIO differs for each CBM Block.
9. The CBM Blocks are offered to augment the domestic need. This implies that the gas so produced from CBM Blocks cannot be exported outside India. The NIO also expressly provides so.
10. A company or a consortium of companies to be able to bid must fulfil technical and financial criteria as outlined in the NIO. Bids must strictly comply with the NIO, else the non-compliant bids are liable to be rejected.
11. A bidder is required to fulfil the requisite net worth criteria commensurate to the value of their bid for a Committed Work Programme as specified at the time of the bidding. If a bidder is unable to meet the net worth criteria, then instead of net worth criteria such bidder is required to furnish a bank guarantee favouring the Indian Government as the beneficiary (BG) in the form and the requirements prescribed in the bid documents.
12. A potential bidder is permitted to make a bid for a particular CBM Block either singly or in consortium either as an Operator or a Non-Operator. In other words, a bidder cannot make more than one bid for a single block in any of the above permutations and combinations.
13. If the Bid Bond and or the BG is submitted in foreign currency, then the bidder must ensure that the amount of each of the Bid Bond and the BG is equivalent to INR by applying the foreign exchange rate published by Financial Benchmarks India (P) Ltd either of the same day or the previous workday to the date of the Bid Bond and the BG.
14. The Bid Bond and the BG will be governed by Indian Laws and resolution of disputes concerning the Bid Bond will be subject to Courts at New Delhi.
15. The Bids would be evaluated based on Bid Evaluation Criteria (BEC) outlined in Chapter 6 of the NIO.
16. The successful bidder will be awarded the CBM Block and the awardee is required to enter into a Revenue Sharing Contract (RSC) with the Indian Government along the lines of Model Revenue Sharing Contract (MRSC) for Special CBM Bid Round-2021.
17. In addition to the Bid Bond, the BG furnished by the successful bidder in place of net worth criteria, the Revenue Sharing Contract (RSC) as well Gas Supply Agreement will be governed by Indian law and the disputes will have to be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996.
18. Following is the summary of the Commercial and Property Laws
	1. The Indian Contract Act, 1872, the Indian Sale of Goods Act, 1930, the Indian Partnership Act, 1932, the Indian Trust Act, 1882, and the Negotiable Instruments Act, 1881 are the basic pre-independence British era commercial law statutes that are still in effect and although substantially based on English law principles, vary in some respect as enacted by the British to suit Indian conditions.
	2. The Indian Contract Act, 1872, is largely based on English common law, but in certain respects the Indian Contract Act, 1872 but deviates from the English common law of contract in some respects as mentioned above. The Revenue Sharing Contract apart from statutory aspects under the Petroleum Laws will be governed by the Indian Contract Act, 1872. The Bank Guarantees and Indemnities will be governed mostly by the Indian Contract Act, 1872.
	3. The Indian Sale of Goods Act, 1930, is based on the English Sale of Goods Act, 1893. The equipment purchase will be mostly governed by the Indian Sale of Goods Act, 1930 and the Indian Contract Act, 1872. Moreover, these statutes may not have fully caught up with the statutory and common law developments under English Law. Having said so English Court rulings have a great persuasive value before the Indian Courts.
	4. However, the law of torts (i.e. law of civil wrongs), particularly negligence is mostly the same as the English law of torts. Although Indian Conflict of Laws largely draws from the English Conflict of Law rules, the Indian Conflict of Law rules is not the same as the English Conflict of Law rules.
	5. The Transfer of Property Act, 1882 and the Indian Easements Act, 1881 relating to the sale and purchase, mortgage, lease and license of land and real estate. These statutes will most apply to the surface rights. Petroleum Exploration License (PEL) and Petroleum Mining Lease (PML) are granted under and governed by the Petroleum Laws indicated below.
	6. The Law of Evidence is codified into three statutes. The Indian Evidence Act, 1872 consolidates, defines, and amends the law of evidence and applies both criminal and civil trials. Apart from the Indian Evidence Act, 1872, the Bankers’ Books Evidence Act, 1891, the Commercial Documents Evidence Act, 1939 are also other statutes that deal with the matter of other aspects of law evidence.
	7. Dispute resolution by arbitration is not unknown to India. The method of resolution of a dispute by arbitration was made possible in the latter part of the eighteenth century during the British rule in some parts of India. The current Indian Arbitration & Conciliation Act, 1996 is the arbitration statute that is substantially based on UNCITRAL Model Arbitration Law. India is a signatory to and has ratified the Geneva Convention and the New York Convention relating to the enforcement of foreign awards.
19. Following is a summary of the Exploration and Production related laws of India.
	1. The Petroleum Act, 1934 is consolidating and amending statute relating to the import, transport, storage, production, refining and blending of petroleum.
	2. Apart from the Petroleum Act, 1934 and the Oilfields (Regulation and Development) Act, 1948 is a statute that regulates oilfields and provides for the development of mineral oil resources. The Petroleum Exploration License (PEL) is normally granted for 3 years and Petroleum Mining Lease (PML) is normally awarded for 20 years for producing hydrocarbons as per The Oilfields Regulation & Development Act, 1948 and Petroleum and Natural Gas Rules, 1959.
	3. The Petroleum and Natural Gas Regulatory Board Act, 2006 is a statute that provides for the establishment of the Petroleum and Natural Gas Regulatory Board (PNGRB) to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected or incidental thereto.
	4. The Oil Industry (Development) Act, 1974 is a statute enacted to provide for the establishment of the Oil Industry Development Board (OIDB) for the development of the oil industry and for that purpose to levy a duty of excise on crude oil and natural gas and for connected matters.
	5. OIDB provides the financial and other assistance for the promotion of activities that are conducive to the development of the oil industry, which under the act includes all activities by way of prospecting or exploring for or production of mineral oil, refining, processing, transportation, storage, handling and marketing, of mineral oil production and marketing of all products, down-stream of an oil refinery and all activities directly or indirectly connected therewith.
	6. Section 15 of the Oil Industry (Development) Act, 1974 provides for the collection of cess as a duty of excise on indigenous crude oil and natural gas. Note that the NIO provides that cess shall not be levied on crude oil production from the CBM Blocks.
20. The salient features of the Special CBM Bid Round-2021 as announced by the Indian Government are:
	1. All Blocks are in the Category-III basin, which means that there will be NO revenue sharing till Windfall Gain. The term “Windfall Gain” is defined in the MRSC. However, there is an obligation on the successful bidder (Contractor) to share revenue once the Windfall Gain accrues to the Contractor.
	2. If Revenue in a Financial Year is up to US$ 2.5 billion, then no Revenue is required to be shared with Indian Government.
	3. If the Revenue in a Financial Year exceeds the aforesaid threshold of US$ 2.5 billion, then the Contractor will be under obligation to share incremental Revenue in each Financial Year as under:
21. 10% of Revenue if Revenue is between US$ 2.5 billion and US$ 5.0 billion;
22. 30% of Revenue if the Revenue is between US$ 5 billion and US$ 10 billion in addition to Revenue in (I) above; and
23. 50% of Revenue if the Revenue exceeds US$ 10 billion in addition to Revenue in (I) and (II) above.
24. Note that Article 15.1 of MRSC defines Revenue. Moreover, Appendix C of MRSC provides as to how the Revenue will be computed. Also, note that the Financial Year will commence on April 1st and end on March 31st of the following Calendar Year.
	1. Single License for Conventional & Un-conventional Hydrocarbons.
	2. Full Marketing and Pricing Freedom for Gas produced.
	3. Exploration is allowed during the entire Contract Period. The Contract Period is defined in MRSC.
	4. No overlap of CBM Blocks with existing proposed Coal Blocks/mines.
	5. Each block falls within one State (Province) only.
	6. One hundred per cent (100%) participation from foreign companies/Joint ventures.
	7. Availability of infrastructure through GAIL under Pradhan Mantri Urja Ganga Project in different states of India.
25. GAIL (India) Limited (GAIL) (formerly known as Gas Authority of India Limited) is a public sector undertaking (PSU) and is listed on Indian stock exchanges. GAIL, among other business, is engaged in constructing and operating natural gas pipelines in India, including under Pradhan Mantri Urja Ganga Project. GAIL currently owns and operates about 12,500 Kilometres of natural gas pipeline network with approximately 75% of the market share in Natural Gas Transmission within the country, connecting multiple gas sources to various customers. Under Pradhan Mantri Urja Ganga, GAIL is constructing natural gas pipelines in different states of India with a total length of approximately 3,384 kilometres.
26. This article is for informational purposes only and may not be relied upon as a legal advice. It is recommended that an independent legal advice be sought. All liabilities are hereby disclaimed.
27. If you have any queries, please write to Hugh Fraser at hugh.fraser@hfi-consulting.com and Mukund Puranik at Mukund.Puranik@metwand.com.

\*\*\*