

The International Comparative Legal Guide to: Gas Regulation 2010

A practical insight to cross-border Gas Regulation work



Published by Global Legal Group in association with Ashurst LLP,
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1 Overview of Natural Gas Sector

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

New Zealand's natural gas market is very small by international standards, with 155 PJ (net) produced in 2008. Nevertheless, natural gas is an important source of primary energy, providing approximately 21% of New Zealand's total primary energy supply. While direct consumption of natural gas is low, the industry plays an important role in the New Zealand economy, providing fuel for electricity generation and primary fuel for industry. In 2008, 20% of natural gas was used in the industrial sector, 54% was used for electricity generation and 19% was used in the petrochemical sector.

New Zealand's natural gas is entirely indigenous and is sourced from the Taranaki region, and in particular from the Pohokura and Maui fields.

Natural gas is transported through more than 3,400 km of high pressure pipes to feed in excess of 2,800 km of intermediate, medium and low pressure distribution networks throughout the North Island. The high pressure networks are owned by Maui Development Limited (MDL) (being the owner of the Maui Pipeline) and Vector Gas Limited (Vector) (being the owner of the Vector Pipeline). These pipelines connect the gas fields of Taranaki to the major load centres of the North Island.

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

Natural gas has traditionally played an important role in New Zealand's primary energy supply. The Ministry of Economic Development's Energy Data File 2009 breaks down the primary energy supply (gross) into seven categories:

- Oil: 281 PJ (36.7%).
- Gas: 160 PJ (20.9%).
- Coal: 83 PJ (10.1%).
- Geothermal: 113 PJ (14.8%).
- Hydro: 80 PJ (10.5%).
- Other renewables: 47 PJ (6.2%).

- Waste heat: 1 PJ (0.2%).

New Zealand does not currently import LNG. Genesis Energy (a state owned enterprise) and Contact Energy are partners in a joint venture known as Gasbridge, which had planned to make preparations for a LNG import terminal at Port Taranaki. The partners have publicly stated that the importation of LNG may not be required until mid or late next decade.

The newly elected National-led Government has stated its belief that gas is a critical aspect of New Zealand's energy mix and has expressed its commitment to support continued growth in the gas industry. It has repealed the Electricity (Renewable Preference) Amendment Act 2008 which placed a 10-year restriction on new fossil-fuelled electricity generation thereby recognising the importance of natural gas in ensuring security of supply and affordable electricity.

1.3 To what extent are New Zealand's natural gas requirements met through domestic natural gas production?

Natural gas used in New Zealand is entirely indigenous. Some LPG is imported.

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

New Zealand does not export natural gas.

2 Development of Natural Gas

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

The exploration and development of the New Zealand gas resource is governed by the Petroleum Act 1937, the Crown Minerals Act 1991 and the Minerals Programme for Petroleum 2005 (issued under the Crown Minerals Act). While those Acts state the law relating to the management of Crown owned minerals, the Minerals Programme for Petroleum is prepared by the Minister of Energy and contains the policies and procedures governing the development of all petroleum resources (including gas).

Responsibility for giving effect to both instruments lies with Crown Minerals, an office of the Ministry of Economic Development.

The Minerals Programme for Petroleum includes a range of Government exploration incentives, based around royalty concessions and the funding of seismic acquisition. Other recent Government initiatives include:

- a seismic data acquisition project, which involved purchasing seismic data over the Northland Basin, the deepwater Taranaki Basin, the Great South Basin and the East Coast and Raukumara Basins. This data was offered freely to explorers and has led to the award of several exploration permits; and
- the announcement of the Government's intention to extend, until 2014, the current tax exemption on the profits of non-resident operators of offshore rigs and seismic vessels (which was set to expire on 31 December 2009).

As noted above (question 1.2) the Government has also recently repealed the Electricity (Renewable Preference) Amendment Act 2008 which placed a restriction on new fossil-fuelled electricity generation.

The Gas Act 1992 outlines the responsibilities of gas operators and owners of gas fittings, and provides for a co-regulatory model of gas governance. Under this system, an 'industry body' may recommend regulations and rules to the Minister in the areas of wholesaling, processing, transmission and distribution of gas. The Gas Industry Company (GIC) is the industry body approved pursuant to the Gas Act and has, since its approval in late 2004, made several recommendations. The GIC is required to have regard to the objectives and outcomes set out in the Government Policy Statement on Gas Governance 2008 when making such recommendations.

Despite promoting industry-led solutions and light-handed regulation, the Government has maintained oversight of the process and has reserved the right to regulate unilaterally where industry solutions are not considered appropriate. The Government has also indicated its intention to establish a regulatory authority of its own if the GIC does not deliver the required outcomes.

The Resource Management Act 1991, the Hazardous Substances and New Organisms Act 2004, and the Maritime Transport Act 1994 also play important roles in any natural gas development. Due to the time-consuming nature of the resource consent process, the Minister for the Environment may use a 'call-in' process (on a case by case basis) to streamline the appeals process and decrease consent timeframes.

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

All gas in its natural state is property of the Crown. Property in the gas will pass to a permit holder who has obtained the gas lawfully and in the course of activities authorised by a permit.

As described below, three types of permits are available under the Crown Minerals Act: prospecting; exploration; and mining permits. While prospecting rights are non-exclusive and do not imply subsequent rights, exploration and mining rights are exclusive. Further, an exploration permit generally gives a subsequent right to apply for a mining permit.

In addition, some licences continue to exist under the Petroleum Act 1937.

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

Three types of permits are granted by the Minister of Energy: prospecting; exploration; and mining.

Prospecting permits allow for reconnaissance of prospective gas fields, typically by the collection of geological and geophysical data. Such permits are allocated on a non-competitive basis, may be non-exclusive when granted and are valid for up to one year.

Exploration permits allow for physical surveying, appraisal drilling and testing of petroleum discoveries. Many exploration permits originate with the Minister of Energy issuing a Petroleum Exploration Permit Blocks Offer (Blocks Offer). The winning tenderer in the offer process is afforded exclusive exploration rights, as well as subsequent rights to apply for a mining permit. Exploration permits run for up to five years, a renewal for five years is available over no more than 50% of the area and appraisal extensions may be granted in some circumstances.

'Priority in time' applications are also used to obtain an exploration permit where explorers wish to start an immediate and extensive effort over a certain area without waiting for a Blocks Offer. Certain criteria must be fulfilled, including a commitment to a strict minimum work programme.

Mining permits are normally granted to exploration permit holders who have discovered a petroleum field in the area of their permit. In evaluating a mining permit application, the Minister must be convinced of the viability of the field, that the applicant's work programme complies with good mining and exploration practice and of the technical and financial capability of the applicant. Mining permits allow for operations relevant to the extraction, separation, treatment and processing of petroleum. A mining permit's duration will depend on the size of the discovery and rate of production, and may be granted for up to 40 years.

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

The State does not currently seek to develop gas reserves itself. However, the State Owned Enterprise, Genesis Energy, (100% owned by the Crown) has equity interests in the natural gas sector (including a 31% interest in the Kupe Gas Project) but has recently announced it is scaling back its upstream involvements. In addition, Mighty River Power (another State Owned Enterprise) has natural gas interests, including a 30% interest in PEP 51149, one of the nine exploration permits granted in the 2008 Offshore Taranaki Blocks Offer.

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

A hybrid royalties regime applies to petroleum permits, comprising of an *ad valorem* royalty and an accounting profit royalty. For mining permits where the net sales revenue has not exceeded NZ\$1 million in one reporting period, only the *ad valorem* royalty is payable. If the net sales revenue exceeds this amount the permit holder must calculate both the *ad valorem* and accounting profit royalties and pay whichever is the higher.

As part of the Government's current incentives package, the *ad valorem* royalty has been reduced from 5% to 1% of the net sales revenue for gas discoveries made during the period 30 June 2004 -

31 December 2009; similarly, the accounting profit royalty has been reduced from 20% to 15% for the first \$750 million gross offshore sales and the first \$250 million onshore sales.

For any discoveries made after 31 December 2009, the *ad valorem* royalty will be 5% of the net sales revenue for gas discoveries and the accounting profit royalty will be 20% of accounting profits.

2.6 Are there any restrictions on the export of production?

This issue has not yet arisen in the gas industry. Nevertheless, section 45(2) of the Crown Minerals Act 1991 provides that the Minister may direct, in certain circumstances, that petroleum be refined in New Zealand.

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

There are no such restrictions.

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

Transferability of permits is limited; bids will not generally be accepted where the bidder's intention is to trade the permit. The Crown Minerals Act 1991 provides for the assignment of a permit interest to allow for risk sharing, and for the transfer of permits as part of commercial transactions. However, transactions are subject to the consent of the Minister of Energy (section 41 of the Crown Minerals Act and section 23 of the Petroleum Act 1937 for licences granted under that Act).

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

Participants must make commitments contained in the work programmes that must be furnished to the Minister. In addition, on the transfer or grant of a permit or permit interest, the Minister may require parent company guarantees or support for lowly capitalised subsidiaries.

Under the Petroleum Act 1937 licence holders were required to lodge a deposit or bond, to be returned when the licence has expired or ceased.

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

A security interest may be granted over a licence or permit granted under the Petroleum Act 1937 or the Crown Minerals Act 1991. However, the transfer restrictions in section 23 of the Petroleum Act and section 41 of the Crown Minerals Act apply upon the exercise of any such security interest (as above, question 2.8).

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

Development of the gas resource may require resource consents, building consents, permits and compliance plans under the

following Acts: the Resource Management Act 1991; the Building Act 2004; the Maritime Transport Act 1994; the Hazardous Substances and New Organisms Act 2004; and, the Overseas Investment Act 2005. Further, the Health and Safety in Employment Act 1992 (and relevant regulations under that Act) requires compliance with certain workplace safety standards.

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

Decommissioning and abandonment procedures typically constitute part of the work programme included as part of a permit granted under the Crown Minerals Act 1991. Further, the requirements of the Resource Management Act 1991, the Health and Safety in Employment Act 1992, the Maritime Transport Act 1994, and the Hazardous Substances and New Organisms Act 2004 will have to be observed.

3 Import / Export of Natural Gas (including LNG)

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

Due to the entirely indigenous supply of natural gas in New Zealand, and the absence of exports, no specific regime exists. If New Zealand were to import LNG, for example, companies would need to comply with the environmental and safety provisions of Maritime Transport Act 1994 and the Hazardous Substances and New Organisms Act 2004.

4 Transportation

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

New Zealand's high-pressure gas network is owned by two entities: Vector, which runs pipes to primary load centres; and MDL, which operates the Maui high-pressure pipeline. The Vector network is also a welded party to the Maui pipeline.

The Maui Pipeline Operating Code (MPOC) provides the regime that governs parties shipping gas through the Maui pipeline. The Vector Transmission Code (VTC) provides for non-discriminatory access to the Vector network for users, as well as minimum standards of conduct and disclosure on behalf of the pipeline owner. There are also specific regulatory requirements for gas pipelines and gas processing facilities under the Commerce Act 1986 and the Gas Act 1992.

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

Resource and building consents will be required under the Resource Management Act 1991 and Building Act 2004 respectively. Consent and approval may be required under the Hazardous

Substances and New Organisms Act 2004 to transport a potentially dangerous substance such as natural gas. There are also requirements relating to land access in the Crown Minerals Act 1991.

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

There is no longer any presumption in favour of permit holders having access rights to land: companies must privately negotiate agreements to either purchase land, lease land or obtain a pipeline easement.

Under the Resource Management Act 1991 a network utility operator may apply to be deemed a “requiring authority”. If such application is granted, the operator may be able to designate land for laying pipeline, a status which suspends the normal provisions of the district plan over the designated route.

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

Both Vector and MDL operate under “open access” regimes as outlined in question 4.1 above. See further, below, question 4.6.

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

Injection points along the high-pressure network introduce gas from producers, whilst delivery points distribute gas to facilities and local distribution networks. Access is governed by the MPOC (for the Maui Pipeline) and the VTC (for the Vector pipeline). Aside from the open access agreements, co-operation is governed by private contracts.

Three major types of agreement operate: Transmission Services Agreements between the pipeline owner and the shipper (a retailer or direct purchaser of gas) (TSAs); Interconnection Agreements between the pipeline owner and welded parties (parties who have physical assets connected to the transmission pipelines) (ICAs); and Gas Supply Agreements between the producer (seller of gas) and the shipper (GSAs).

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

As noted above at questions 4.1 and 4.5, two regimes govern third party access to the high-pressure transportation system in New Zealand, the MPOC and the VTC.

The MPOC provides third parties with non-discriminatory, transparent access to the Maui pipeline. As part of this regime MDL publishes the MPOC on its website. Further, all ICAs and TSAs that MDL enters into incorporate the MPOC into the agreement.

Similarly, the VTC is designed to ensure transparency and open access to the Vector pipeline. There is a movement toward all the shippers on the Vector network falling under TSAs that incorporate

the VTC, however, it is unclear whether all of the relevant shippers have adopted these standard TSAs at this stage.

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

Generally parties are free to agree the price of transport of gas within the confines of the MPOC and VTC. In addition, the provisions of the Commerce Act 1986 (see, generally, section 8 below) and the Gas Act 1992 are potentially relevant.

5 Transmission / Distribution

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

GSAs operate between the producer and retailer, and the retailer and end-user. Further, the retailer will contract with the distributor in the area under a Distribution Services Agreement (DSA). The main distribution networks are operated by Vector and Powerco.

Despite being historically regarded as geographically distinct natural monopolies, distribution networks are subject to effective competition in certain areas: in Auckland, Wellington and the Hawke’s Bay, Nova Gas has launched networks by-passing the incumbent distributors.

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

Distributors must comply with the requirements of the Gas Act 1992 and the Regulations pursuant to that Act. Compliance by way of consents or permits may also be required under the Resource Management Act 1991, the Building Act 2004 and the Hazardous Substances and New Organisms Act 2004.

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

The owner of the local distribution network will contract with the retailer by way of a DSA. Although there are significant emerging pockets of competition, many local distribution networks are discrete to each area and unchallenged in their location.

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

Generally no.

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

Until recently, parties have been free to agree fees for accessing the distribution network, subject only to generic competition laws. However, in October 2008, the Commerce Commission released the Authorisation for the Control of Supply of Natural Gas Distribution Services by Vector and Powerco Ltd, requiring average price reductions for both companies (due to last until July 2012).

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

Generally, the Commerce Act 1986 prohibits agreements or business acquisitions that substantially lessen competition (see below, question 8.2). Aside from the Commerce Act, investors may be required to comply with the Overseas Investment Act 2005 if the transaction involves sensitive land or a significant business asset under that Act (see below, question 9.1).

6 Natural Gas Trading

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

In the wholesale market, GSAs are used to transfer gas from producers to wholesale market participants such as retailers, electricity generators and wholesale end-users. TSAs are also required with the pipeline owner for the purposes of delivery.

Retailers enter into DSAs with local distribution network owners and supply gas to end-users of all types (industrial, commercial, and residential) under gas supply agreements.

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

Although there is typically only one distributor in any given area (and therefore options are limited), and bundled products do exist, there are no requirements to purchase bundled products in New Zealand.

7 Liquefied Natural Gas

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

No LNG facilities currently exist in New Zealand.

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

Although no such facilities currently exist, development of LNG facilities would require resource consents, building consents, permits and compliance plans under the following Acts respectively: the Resource Management Act 1991, the Building Act 2004, the Maritime Transport Act 1994, and the Hazardous Substances and New Organisms Act 2004. Overseas Investment Act 2005 clearance may also be required (see, below, question 9.1).

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

No LNG facilities exist in New Zealand (see question 7.1, above). However, if LNG became a significant component of the New Zealand market, controls could potentially be exercised under the Commerce Act 1986.

8 Competition

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

The Commerce Act 1986 prohibits anti-competitive practices and allows for goods and services to be subject to price control. The Commerce Commission is responsible for administering the Commerce Act.

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

Under the Commerce Act the following are prohibited: any agreement containing a provision that substantially lessens competition in a market (section 27); arrangements to exclude competitors (section 29); agreements to fix prices (section 30); taking advantage of substantial market power to prevent competition (section 36); and resale price maintenance (sections 37 and 38).

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

The Commerce Commission may:

- seek a Cease and Desist Order from a Cease and Desist Commissioner;
- seek an injunction from the High Court under section 81 of the Commerce Act; or
- take a private civil prosecution to seek a pecuniary penalty and damages for breach.

If the Court finds that a person has breached the Commerce Act, it may impose pecuniary penalties on businesses that must not exceed the greater of:

- \$10 million; or
- either:
 - three times the value of any commercial gain or expected commercial gain resulting from the breach; or
 - if commercial gain is not known, 10% of the turnover of the business and all of its interconnected businesses (if any).

The Commerce Act also creates personal liability for anti-competitive conduct. While pecuniary penalties may not exceed \$500,000 for an individual, the Court may also order that the individual concerned be excluded from the management of a body corporate for up to five years. Moreover, companies may not indemnify individuals involved in price-fixing.

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

The Commerce Act prohibits mergers and acquisitions that have the effect or likely effect of substantially lessening competition in a market. This Act provides a voluntary pre-acquisition notification

regime whereby companies may apply for either clearance or authorisation of proposed mergers or acquisitions. The Commission must grant clearances where it is satisfied a transaction is unlikely to substantially lessen competition, and authorisations for transactions that, although lessening competition, would provide public benefits outweighing the detriment caused.

While the Commission might apply to a Cease and Desist Commissioner for an order to stop a transaction, ultimate authority lies with the courts and their jurisdiction to hear judicial review and appeals of Commission decisions as well as claims by third parties.

As noted at questions 5.6 and 9.1, Overseas Investment Office (OIO) clearance may also be required and may take from three to four months to obtain. A similar timeframe can be expected for gaining approval for the transfer of permits under the Crown Minerals Act (as noted at question 2.8, above).

9 Foreign Investment and International Obligations

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

In broad terms, potential overseas investors must obtain the consent of the OIO in two situations: when making a significant investment in a New Zealand business or asset, and when purchasing, directly or indirectly, “sensitive land”.

Consent of the OIO will be required when the overseas person (together with its associates) wishes to invest more than NZ\$100 million in an asset or business or where the overseas person (together with its associates) acquires a 25% or more interest in a company where:

- the consideration provided exceeds \$100 million; or
- the assets of the company and certain subsidiaries exceed \$100 million; or
- the company holds or controls sensitive land.

While investors may not purchase seabed, it is possible that an onshore area might, in certain cases, constitute sensitive land (by virtue of size and rural location, or proximity to features such as conservation areas, waterways or parks). Applications relating to land assets are assessed by the Minister of Finance and the Minister of Land Information. The potential investor must demonstrate business experience and acumen relevant to the investment, financial commitment to the investment and their good character.

In addition, in the case of sensitive land, the OIO must be satisfied the overseas person is ordinarily resident in New Zealand or is intending to reside in New Zealand, or, the overseas investment will, or is likely to, benefit New Zealand.

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

The Government’s energy policy is influenced by the Kyoto Protocol and New Zealand’s obligations under that Protocol have been implemented through the Climate Change Response Act 2002 and the Climate Change Response (Emissions Trading) Amendment Act 2008. The Climate Change Response Act is currently under review and it is possible the Government may introduce measures to provide greater financial protection for business under the Emissions Trading Scheme created by the Act.

Despite this commitment to the Kyoto Protocol, the Government recently repealed the Electricity (Renewable Preference) Amendment Act 2008, which, among other things, imposed a ten-year moratorium on new thermal generation of electricity. Nonetheless, the Government has indicated that it intends to retain a target to reach 90% of electricity from renewable sources by 2025 provided this goal does not impact security of supply.

The Government is also currently reviewing the New Zealand Energy Strategy and the New Zealand Energy Efficiency and Conservation Strategy. The redraft is likely to refocus the emphasis from the energy sector’s response to climate change to climate change being a source of New Zealand’s competitive advantage.

New Zealand has ratified the United Nations Convention on the Law of the Sea. Although this treaty mentions the development of gas reserves, it does not directly affect regulatory policy in respect of natural gas.

10 Dispute Resolution

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

No compulsory dispute resolution procedures are mandated between supply-side participants such as regulators, producers and retailers.

However, the Electricity and Gas Complaints Commission provides a binding disputes resolution service for consumers who have had disputes with their retail provider. Companies signed up to the Complaints Commission include Contact Energy, Vector, Genesis Energy and Meridian Energy.

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

The Arbitration Act 1996 ratifies the New York Convention in New Zealand; the Arbitration (International Investment Disputes) Act 1979 provides that articles 18, 20 to 24, and chapters II to VII of the ICSID have the force of law in New Zealand.

In addition, the GIC has certain dispute resolution functions under the VTC and the MPOC in respect of the pipelines covered by those codes.

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

No difficulty in taking legal action has been experienced.

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

Yes. Foreign corporations have used the normal litigation process to seek to enforce certain rights in relation to petroleum permits against the Crown.

11 Updates

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

As previously indicated the newly elected Government has expressed its belief that gas has an important part to play in New Zealand's energy environment, and it is committed to support and encourage the continued growth of the gas industry.



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Angela works in Bell Gully's corporate department with a particular focus on the oil and gas and electricity sectors. She has experience in advising clients regarding general corporate and commercial matters, including drafting and negotiating commercial contracts, and regularly advises on upstream and downstream oil and gas activities, including in relation to joint ventures, farm-ins, JVOAs, gas transmission and gas sales agreements. Angela holds an LL.B (Hons) and B.Com (Economics) and is an executive committee member of the Law and Economics Association of New Zealand.

BELL GULLY

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We assist business and government achieve successful outcomes in challenging market conditions. Our lawyers consistently deliver practical solutions to everyday and unique problems with a constant focus on achieving the best result possible.

Our 10-partner energy practice has been actively involved in advising clients in every aspect of the industry for over two decades. During this time we have worked on many of the most significant transactions and projects within the oil and gas industry and broader energy sector in New Zealand.

The team has leading upstream expertise in: permitting activities; M&A transactions; drafting and negotiation of JVOAs and farm-out agreements; operatorship issues; operator contracts and arrangements; regulatory matters; transmission and interconnection contracts; land acquisition and land access arrangements; petroleum sales and marketing arrangements; and litigation and dispute resolution.