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Global Legal Group

The International Comparative Legal Guide to: Gas Regulation 2012

A practical cross-border insight into Gas Regulation work

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Contributing Editor

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Account Managers

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Sub Editors

Suzie Kidd
Jodie Mablín

Senior Editor

Penny Smale

Managing Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
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New Zealand



David Coull



Angela Bamford

Bell Gully

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.

Natural gas is a significant component of New Zealand's domestic energy market. In 2010, gross domestic gas production was 198 PJ and total natural gas production increased by 7% from the previous year. Natural gas continues to provide approximately 21% of New Zealand's total primary energy supply and ultimate recoverable (P50) reserves are currently estimated at 7,233 billion cubic feet. While direct consumption of natural gas by consumers is low, the natural gas industry plays an important role in the New Zealand economy, providing fuel for electricity generation and primary fuel for industry. In 2010, 24% of natural gas was used in the industrial sector, 48% was used for electricity generation and 15% was used in the petrochemical sector.

The importance of natural gas to New Zealand's economy continues to be recognised by the New Zealand Government, with significant focus being placed on maximising New Zealand's petroleum potential by the Acting Minister of Energy and Resources, Hon Hekia Parata.

In particular, the Government released a Petroleum Action Plan in November 2009, with the aim of maximising the benefits of New Zealand's petroleum resources. Various workstreams to encourage investment and participation in the petroleum industry (including natural gas) by existing and potential industry participants are currently underway, including a review of the legislative and regulatory environment. This follows the repeal in 2009 of a 10-year moratorium on new fossil-fuelled electricity generation, thereby recognising the importance of natural gas in ensuring security of supply and affordable electricity.

In August 2011, the New Zealand Government released the New Zealand Energy Strategy. The New Zealand Energy Strategy sets out the strategic direction for New Zealand's energy sector, including the role that energy will play in the New Zealand economy from 2011-2021. In order to achieve secure and affordable energy in New Zealand, one of the areas of focus is the goal of seeking to improve the quality of information on gas reserves and the encouragement of gas exploration and

development. The Government also concurrently released an independently commissioned report, which developed a current valuation of the Crown's royalty cashflows from its oil and gas estate.

This follows the Government's stated commitment, from the biennial New Zealand Petroleum Conference in September 2010, to encourage and support growth in the petroleum industry. The Minister of Energy and Resources, Hon Gerry Brownlee, emphasised the potential for major oil and gas discoveries in New Zealand, given the 5.7 million square kilometres of seabed that New Zealand has sovereign rights over. In particular, attention was drawn to the fact that New Zealand has the fourth largest exclusive economic zone in the world, with 15 recognised basins which are potentially capable of producing hydrocarbons. Also emphasised was the fact that New Zealand was considered the 18th most attractive petroleum jurisdiction in 2010, and the fifth most attractive country for petroleum exploration, by the Fraser Institute survey.

New Zealand's natural gas is entirely indigenous and is sourced from the Taranaki basin. There were 15 fields that produced gas in New Zealand in 2010, with the Pohokura and Maui fields being the largest producing fields. New Zealand does not export natural gas and does not currently have any LNG facilities.

Natural gas is transported through more than 3,500 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 of New Zealand. 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.

New Zealand's first underground gas storage facility has recently been developed by Contact Energy Limited at the depleted Ahuroa reservoir in Taranaki. That facility had 5.9 PJ of gas injected into it during 2010.

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

- Oil: 274 PJ (33.5%).
- Gas: 173 PJ (21.2%).
- Coal: 58 PJ (7.1%).
- Geothermal: 153 PJ (18.7%).
- Hydro: 89 PJ (10.9%).
- Other renewables: 69 PJ (8.4%).
- Waste heat: 1.3 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.

1.3 To what extent are New Zealand 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 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 New Zealand's natural gas resource is governed primarily by the Petroleum Act 1937, the Crown Minerals Act 1991, the Minerals Programme for Petroleum 2005 (issued under the Crown Minerals Act) and associated regulations. Downstream activities are regulated by the Gas Act 1992 and various regulations and rules promulgated under that Act. The Petroleum Act and the Crown Minerals Act state the law relating to the management of Crown-owned minerals, while the Minerals Programme for Petroleum (prepared by the Minister of Energy and Resources) contains the policies and procedures governing the development of all petroleum resources (including gas). Responsibility for giving effect to both these instruments lies with New Zealand Petroleum & Minerals, an office of the Ministry of Economic Development.

The Government recently undertook a NZ\$25.4 million seismic acquisition programme over the period from 2008–2011, and has so far acquired seismic data over the Reinga Basin, the Pegasus Basin and the Bounty Trough. This follows an earlier seismic data acquisition project between 2004–2008, which involved the Government 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 led to the award of several exploration permits. The Government has also extended, 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 part of the Petroleum Action Plan released by the Government in 2009 (see question 1.1 above), the Government is currently undertaking a review of the minerals management regime in New Zealand. The Crown Minerals Act sets out the broad legislative framework for the issuing of permits to prospect, explore and mine

petroleum within New Zealand's territorial area. Initially, a discussion document was released by the Government in August 2010 as phase one of a two-part review. This discussion document focussed on proposed amendments to the Crown Minerals Act, with a review of the associated Minerals Programme and Regulations, to be released at a later point in time as phase two. However, following public consultation on the phase one discussion document, the Minister of Energy and Resources announced that the review of the Crown Minerals Act, the Regulations and Minerals Programme would be combined and a new consultation document would be issued. This document is expected to be released at the end of 2011.

The Marine and Coastal Area (Takutai Moana) Act 2011 ("MCA") was enacted in 2011. The MCA repealed the Foreshore and Seabed Act 2004 and amends other legislation, including the Crown Minerals Act and Resource Management Act. The MCA establishes a right to seek a Court determination of Maori customary title to the foreshore and seabed (now called the marine and coastal area). It provides for three levels of statutory rights in relation to the marine and coastal area: a right to participate in consultation processes; a protected customary right (a form of use right); and customary marine title (a form of customary interest). These rights may affect a natural gas development in the marine and coastal area.

In 2010, the Government released a report on its review of New Zealand's health, safety and environmental arrangements in relation to offshore petroleum operations, to ensure they are fit for purpose and compare favourably to international best practice. Submissions on the review have closed and the Government is currently considering these and how it will implement the report recommendations. In addition, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill was introduced into Parliament in New Zealand in August 2011. That Bill will, if enacted, establish an environmental management regime for New Zealand's Exclusive Economic Zone and continental shelf. Although the final form of the legislation is not yet known, it is expected that marine consents will be required for certain exploration and mining operations to be undertaken in the Exclusive Economic Zone or on the continental shelf.

The Resource Management Act 1991, the Hazardous Substances and New Organisms Act 2004, the Maritime Transport Act 1994 and the Marine Mammals Protection Act 1978 are also likely to be relevant to any natural gas development. Due to the time-consuming nature of the resource consent process under the Resource Management Act, 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.

The Gas Act 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 of Energy and Resources 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.

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 the property of the Crown. Ownership of the gas will pass to a permit holder who has obtained the gas lawfully and in the course of activities authorised by a permit issued by the Minister of Energy and Resources.

As described below (see question 2.3), 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 generally imply subsequent rights, exploration and mining rights are exclusive. Further, an exploration permit generally gives a subsequent right to apply for, and be granted (subject to satisfying certain specified criteria), a mining permit (however, this is currently under review as part of the Crown Minerals Act review noted above at question 2.1). In addition, some licences continue to exist under the Petroleum Act.

In August 2011, the Government released a proposal to change the allocation method of petroleum exploration permits. Currently, New Zealand operates a petroleum exploration permit allocation system based on cash bonus bidding, staged work programme bidding and priority in time applications. The priority in time application allocation method allows companies to apply to explore over any land in New Zealand that is available for permitting, and the applications are then processed by New Zealand Petroleum and Minerals. Under the proposed new approach, this method would not apply and the Government would instead make blocks available for competitive tender by staged work programme bidding in the international market on an annual basis.

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 and Resources: prospecting; exploration; and mining.

Prospecting permits allow for the reconnaissance of prospective gas fields, typically by the collection of geological, geophysical and geochemical data. Such permits are allocated on a non-competitive basis, may be non-exclusive when granted and are valid for up to two years. Extensions of prospecting permits are unlikely to be granted. Applications for prospecting permits may be made at any time over land available for petroleum permitting. The permit holder must undertake a specified programme of work with the primary objective of materially adding to the existing knowledge about the potential of the permit area. Conditions relating to the payment of fees and lodgement of data may also be imposed.

Exploration permits are granted for the purpose of undertaking work to identify petroleum deposits and to evaluate the feasibility of mining any discoveries made. They allow for geological, geochemical and geophysical surveying, appraisal drilling and testing of petroleum discoveries. Exploration permits are awarded by the Minister of Energy and Resources either following a competitive bid, as part of a Petroleum Exploration Permit Blocks Offer (a method of allocation by public tender) or following a priority in-time application, which may be made at any time over land that is available for exploration. However, as noted at question

2.2 above, the Government has proposed to change the allocation method of petroleum exploration permits to remove allocation by way of priority-in-time applications. The winning tenderer in the tender process (or the successful priority in-time applicant) is afforded exclusive exploration rights, as well as subsequent rights to apply for, and be granted (subject to satisfying certain specified criteria), a mining permit (however, this is currently under review as part of the Crown Minerals Act review, noted above at question 2.1). Exploration permits run for up to five years, however a renewal for five years is available over no more than 50% of the area. Appraisal extensions may be granted in some circumstances.

Mining permits are normally granted to exploration permit holders who have discovered a petroleum field in an area of their permit. A successful applicant will receive a mining permit in exchange for the surrendered exploration permit area. 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 (although it has the ability to do so under the Crown Minerals Act) and this policy is expressly recognised in the Minerals Programme for Petroleum. Nonetheless, 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 announced it is intending to scale back its upstream involvements.

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

2.6 Are there any restrictions on the export of production?

This issue has not yet arisen in the New Zealand natural gas industry. Nevertheless, section 45(2) of the Crown Minerals Act 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 under a Blocks Offer and priority in-time applications will not generally be accepted where the bidder's or applicant's intention is to trade the permit.

The Crown Minerals Act provides for the assignment or transfer of a permit interest to allow for risk-sharing and as part of commercial transactions. However, transactions are subject to the consent of the Minister of Energy and Resources (section 41 of the Crown Minerals Act for permits and section 23 of the Petroleum Act for licences granted under that act). In addition, the Crown Minerals Act provides that any agreement which deals either directly or indirectly with any interest in or which affects a permit, or any agreement which relates to the production of minerals from the land to which a permit relates, is subject to the consent of the Minister of Energy and Resources. However, the discussion document released as part of the Crown Minerals Act review (noted above at question 2.1) has indicated that dealings will likely no longer require approval if amending legislation is passed.

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

Under the Crown Minerals Act, the Minister of Energy and Resources may require a permit holder to deposit a bond with Crown Minerals as a condition of granting that permit holder a permit. In addition, participants must make commitments to the Government which are contained in the work programmes that are required to be furnished to the Minister. It is also becoming increasingly common for the Minister to require parent company guarantees or support for lowly-capitalised subsidiaries on the transfer or grant of a permit or permit interest.

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 or the Crown Minerals Act. 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 noted above at 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 natural gas resource may require resource consents, building consents, permits and compliance plans under the following acts: the Resource Management Act; the Building Act 2004; the Maritime Transport Act; the Hazardous Substances and New Organisms Act; 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.

In addition, as noted at question 2.1 above, the Exclusive Economic

Zone and Continental Shelf (Environmental Effects) Bill was recently introduced into Parliament in New Zealand. Once enacted, this legislation will increase the protection of New Zealand's Exclusive Economic Zone and continental shelf by regulating certain activities. The consenting regime will classify activities as either permitted, discretionary or prohibited. Certain activities, such as seismic data acquisition, are expected to be permitted activities, while higher impact activities, such as drilling, are expected to be discretionary activities which will require a permit. The recently established Environmental Protection Agency will have primary responsibility for regulating petroleum and other activities in the Exclusive Economic Zone and on the continental shelf once the Bill is enacted.

There are also other workstreams currently being undertaken relating to health, safety and the environment by various Governmental bodies, including a review of the decommissioning of offshore facilities, the development of marine mammal seismic guidelines by the Department of Conservation, the establishment of new marine reserves (which would effectively close such areas to mining) and the development of new Conservation Management Strategies (the regional planning documents the Department of Conservation uses for managing public conservation land and waters).

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. While the decommissioning of facilities has not been of particular significance in New Zealand to date, the Ministry of Economic Development has indicated that there will be significantly more emphasis on the decommissioning of facilities going forward and, as stated above, it is currently undertaking a review of the decommissioning of offshore facilities. It has also announced that greater requirements in relation to decommissioning will be specified in the relevant minerals programmes, regulations and permit conditions, and it is also likely that bonds will be required in respect of such activities.

In addition, the requirements of the Resource Management Act, the Health and Safety in Employment Act, the Maritime Transport Act, and the Hazardous Substances and New Organisms Act will have to be observed in respect of any decommissioning activities.

2.13 Is there any legislation or framework relating to gas storage? If so, what are the principle features/requirements of the legislation?

There is no specific legislation or framework relating to underground gas storage, however, it can be carried out under the Crown Minerals Act. In addition, the first discussion document in relation to the Crown Minerals Act review (noted above at question 2.1) indicated the Crown is considering whether to create a new permit class for underground gas storage.

As noted above at question 1.1, the first underground gas storage facility has recently been developed at the Ahuroa reservoir in Taranaki under an existing mining licence.

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 importing LNG would need to comply with the environmental and safety provisions of the Maritime Transport Act and the Hazardous Substances and New Organisms Act.

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 high-pressure 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.

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 are required under the Resource Management Act and the Building Act respectively. Consent and approval may be required under the Hazardous Substances and New Organisms Act to transport a potentially dangerous substance such as natural gas. There are also requirements relating to land access in the Crown Minerals Act.

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 who have access rights to land: companies must negotiate access arrangements with the appropriate Minister in respect of any Crown-owned land or must privately negotiate agreements to either purchase land, lease land or obtain a pipeline easement in respect of privately-owned land. However, the Crown Minerals Act contains arbitration provisions which apply in certain circumstances to address circumstances where permit holders are unable to successfully negotiate agreements to access land with private land owners.

Under the Resource Management Act, 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 pipelines; 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. For further details, see question 4.6 below.

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 agreements 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 in 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 relevant agreement.

Similarly, the VTC is designed to ensure transparency and open access to the Vector pipeline. There is a movement towards 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 (see, generally, section 8 below) and the Gas Act 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 the 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. Participants are subject to the requirements of the Gas Act (including the co-regulatory model of gas governance set out in that Act, as noted above at question 2.1) and the regulations and rules pursuant to that Act.

Despite being historically regarded as geographically-distinct natural monopolies, distribution networks are subject to effective competition in certain areas: Nova Energy has launched networks bypassing the incumbent distributors in Auckland, Wellington, the Hawkes Bay and Hawera.

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 and the regulations and rules pursuant to that Act, including obtaining Gas Operator status under that Act. Compliance by way of consents or permits may also be required under the Resource Management Act, the Building Act and the Hazardous Substances and New Organisms Act.

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).

Part 4 of the Commerce Act provides for default/customised price-quality regulations which will apply to gas pipeline services from 1 July 2012 (including replacing the authorisation noted above). Part 4 also contains information disclosure provisions, which will apply in respect of gas pipeline services once those provisions become effective (which is expected to be during 2012). Certain gas pipelines have been granted exemptions from default/customised price-quality regulation.

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 prohibits agreements or business acquisitions that substantially lessen competition (see below, question 8.2). Aside from the Commerce Act, overseas investors may be required to comply with the Overseas Investment Act 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 govern the transfer of 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.

In May 2010, the Associate Minister of Energy and Resources approved the GIC’s recommendation for a retail gas contracts oversight scheme. Under the voluntary scheme, an independent contractor assesses standard form retail gas supply contracts against a set of benchmark outcomes and objectives on an annual basis. The aim of the scheme is to provide guidance to retailers and consumers about the scope of alignment across the industry between retail gas contracts and the GIC benchmarks. Following the regular industry assessments, consumers should be able to compare retailers and make informed choices as to which gas supplier to use.

Another recent initiative has been the development of a wholesale gas market. The Government Policy Statement on Gas Governance allows for the GIC to recommend efficient arrangements for the short-term trading of gas. In 2010, governance documents relating to trading and operational aspects of a wholesale gas market were finalised by the GIC, following a recommendation by the GIC to the Minister of Energy and Resources to undertake a wholesale gas market trial. In June 2010, the GIC established the New Zealand Gas Exchange, an electronic platform on which short-term quantities of gas could be bought and sold on a bilateral basis between industry participants, to carry out this trial. However, due to a lack of interest in the trial, the Minister of Energy and Resources terminated the trial in December 2010. As an alternative, MDL, as owner of the Maui Pipeline, is extending the Balancing Gas Exchange (an online platform that facilitates the trade of balancing gas on the Maui Pipeline) for wholesale gas trades and a report is expected at the end of 2011 on the effectiveness and results of this.

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: the Resource Management Act; the Building Act; the Maritime Transport Act; and the Hazardous Substances and New Organisms Act. Overseas Investment Act 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. However, if LNG became a significant component of the New Zealand market, controls could potentially be exercised under the Commerce Act.

7.4 Outline any third-party access regime/rights in respect of LNG Facilities.

No such regime exists.

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 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; arrangements to exclude competitors; agreements (or an understanding between parties) to fix prices; taking advantage of substantial market power to prevent competition; and resale price maintenance.

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:

- NZ\$10 million; or
- either:
 - three times the value of any commercial gain or expected commercial gain resulting from the breach; or
 - if the 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 NZ\$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 Commerce Commission must grant clearances where it is satisfied that 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 Commerce 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 Commerce Commission decisions, as well as claims by third parties.

As noted at questions 5.6 and 9.1, Overseas Investment Office (“OIO”) clearance (pursuant to the Overseas Investment Act) may also be required and may take approximately 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 (or increases an existing 25% or more interest) in a company where:

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

While investors may not purchase areas on the 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 various amendments to that act.

Despite this commitment to the Kyoto Protocol, the Government has 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 energy supply.

On 30 August 2011, the Acting Minister of Energy and Resources, Hon Hekia Parata, released the New Zealand Energy Strategy and the New Zealand Energy Efficiency and Conservation Strategy. The role of the New Zealand Energy Strategy is to set out the strategic direction for New Zealand's energy sector, including the role that energy will play in the New Zealand economy from 2011-2021. There are four stated priorities on which the New Zealand Energy Strategy is based in order to support New Zealand to optimise its energy potential. They are: diverse resource development; environmental responsibility; efficient use of energy; and secure and affordable energy. Each of the four priorities has specific areas of focus in order to support the relevant priorities. The New Zealand Energy Efficiency and Conservation Strategy acts as a companion to the Government's primary statement of energy policy set out in the New Zealand Energy Strategy and outlines practical actions that encourage energy consumers to make efficient energy decisions. It is effective from 2011-2016.

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 (among others).

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 and 20 to 24, and chapters II to VII of the ICSID, have 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 New Zealand Government is attempting to increase economic growth by seeking to maximise the gains from New Zealand's oil and gas resources and has been

visibly proactive in supporting investment in, and increased development of, the upstream oil and gas industry to achieve this. The release of the Petroleum Action Plan in November 2009 and the subsequent workstreams undertaken in 2010 and 2011 arising from this (for example, the review of the Crown Minerals Act), along with the significant indications of Government support of the industry at the 2010 New Zealand Petroleum Conference, have been encouraging to existing and potential industry participants.

In conclusion, the New Zealand natural gas market is undergoing an exciting transition period, where the legislative and regulatory environment is evolving and being further developed to adapt to this dynamic and growing industry. While it is difficult at this stage to identify exactly what changes will occur, it is safe to assume that there are many to come, which will help to ensure New Zealand is a highly attractive global destination for oil and gas exploration and production investment.



David Coull

Bell Gully
171 Featherston Street
Wellington
New Zealand

Tel: +64 4 915 6863
Fax: +64 4 915 6810
Email: david.coull@bellgully.com
URL: www.bellgully.com

David specialises in corporate and energy law. He has a focus on the oil and gas and minerals sectors and regularly acts as a specialist adviser to participants in those sectors. His recent experience includes advising on the acquisition and disposition of permit interests, JVOAs and farm-outs, and permit-related obligations (including royalty and work programme obligations). He is Deputy Chairman of the Petroleum Exploration and Production Association of New Zealand.

His international experience includes a three-year period at Cravath, Swaine and Moore LLP, the leading US corporate law firm, where he acted for corporates such as Nestle S.A., ConocoPhillips, Bristol Myers Squibb and Citigroup. He also holds an LLM from Cambridge University.

David is named as one of four leading New Zealand energy and resources lawyers in the *Australasian Legal Business Guide: Energy & Resources Law 2009*, an international legal directory based on independent research, which commented that he was "knowledgeable and found robust commercial solutions".



Angela Bamford

Bell Gully
171 Featherston Street
Wellington
New Zealand

Tel: +64 4 915 6794
Fax: +64 4 915 6810
Email: angela.bamford@bellgully.com
URL: www.bellgully.com

Angela works in Bell Gully's corporate department with a particular focus on the oil and gas, minerals and electricity sectors.

She has experience advising clients on general corporate and commercial matters, including drafting and negotiating commercial contracts. Angela regularly advises on upstream and downstream oil and gas activities, including joint ventures, farm-outs, JVOAs, gas transmission and gas sales agreements. She also has experience dealing with New Zealand Petroleum & Minerals on behalf of clients in relation to permit issues.

In addition, Angela advises clients on the New Zealand electricity regulatory regime, including specific issues associated with the Electricity Industry Participation Code. Angela is Treasurer of the Law and Economics Association of New Zealand.

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Global Legal Group
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