



F. No. 3/9/2020-DIPAM-II-B/VOI.III
Government of India
Ministry of Finance
Department of Investment and Public Asset Management

Dated: 04/09/2020

Amendments in the Preliminary Information Memorandum (PIM) issued on 7th March, 2020 for inviting expression of interest for strategic disinvestment of 1,14,91,83,592 equity shares (52.98%) held by Government of India in Bharat Petroleum Corporation Limited (“Company”) [Except BPCL’s 61.65%, stake in Numaligarh Refinery Ltd.]

The Preliminary Information Memorandum (PIM) for inviting expression of interest for strategic disinvestment of 1,14,91,83,592 equity shares (52.98%) held by Government of India in Bharat Petroleum Corporation Limited (“Company”) [Except BPCL’s 61.65%, stake in Numaligarh Refinery Ltd.] was issued on 7th March, 2020, which was further modified on 31.3.2020, 26.5.2020 and 29.7.2020.

Further, in continuation of this, the following amendments are made in the Preliminary Information Memorandum (PIM) document:

- 1. Substitution of the existing Clause 5.2.2 (6) of the PIM with the revised Clause:**

Existing Clause:

“In case a Consortium is shortlisted in EoI process and subsequently selected as the strategic investor, it shall be required to incorporate an entity (Investment Vehicle). The shareholding of the consortium members in the Investment Vehicle shall be same as the shareholding of the consortium members in the consortium. The Lead Member shall be the largest shareholder of such Investment Vehicle with a minimum 40% shareholding.”

Revised Clause:

*"In case a Consortium is shortlisted in Eol process, it shall be required to incorporate an entity (Investment Vehicle) **at any time after submission of EOI but prior to signing of the SPA.** The shareholding of the consortium members in the Investment Vehicle shall be same as the shareholding of the consortium members in the consortium. The Lead Member shall be the largest shareholder of such Investment Vehicle with a minimum 40% shareholding."*

2. Substitution of the existing Clause 4 of the Annexure IX- (Format For Consortium Agreement) with the revised Clause:

Existing Clause:

"In the event the Consortium is notified by the Gol as the successful bidder to acquire the Gol's stake in the Strategic Disinvestment, we shall within 7 (seven) days incorporate a special purpose vehicle ("Investment Vehicle") to enter into the definitive agreements, including the share purchase agreement, in connection therewith."

Revised Clause:

"We understand and acknowledge that if the Consortium is the successful bidder it will have to do the acquisition of the Gol's stake in the Strategic Disinvestment through a special purpose vehicle ("Investment Vehicle"). We undertake to incorporate the Investment Vehicle after the submission of our Eol and prior to entering into the definitive agreements, including the share purchase agreement, in connection therewith."

3. Insertion of the new Clause 5.2.3 (Formation of SPV/subsidiary by the IP post-Bid submission):

"5.2.3. Formation of SPV/ subsidiary by IP

(a) An IP, which is a sole bidder, can form a 100% subsidiary as a SPV for the acquisition of Gol's Stake in BPCL. The SPV can be formed **at any time after submission of EOI but prior to signing of the SPA**. Both the IP and the SPV will have to sign the SPA in case IP is selected as the strategic investor. The eligibility criteria will need to be satisfied by the IP, and each of the IP and the SPV will have to ensure that it is not disqualified as per the criteria listed for disqualification.

(b) If an IP satisfies the Net Worth criteria on the basis of the Net Worth of its Parent, then the IP and the Parent both will have to sign the SPA. In case if such IP forms a SPV as specified in Clause 5.2.3 (a) for the Transaction, then the IP, its Parent and the SPV all three will have to sign the SPA. The Net Worth eligibility criteria shall be met by the entity into which the accounts of the IP are consolidated ("**Parent**") while all the other eligibility criteria should be satisfied by the IP. Each of these entities i.e. the Parent, IP and the SPV will have to ensure that it is not disqualified as per the criteria listed for disqualification.

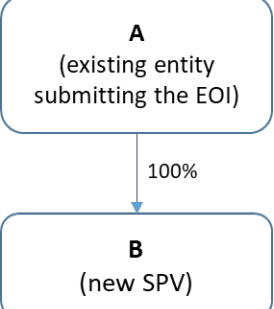
(c) An IP submitting the Eoi cannot be replaced by another subsidiary of its Parent or a SPV created by its Parent at any stage of the Proposed Transaction.

Some illustrative examples of the above are as follows:

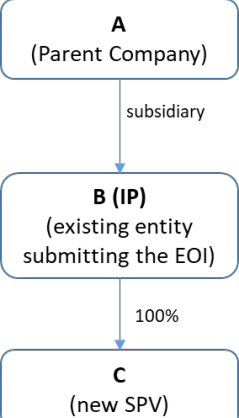
Scenario I

An IP, say A, which has submitted the Eoi and has qualified as a QIP, can form a wholly owned subsidiary "B" post submission of Eoi but prior to signing the SPA, as the SPV for the purpose of acquiring Gol's Stake in BPCL. In such case, both A and B will have to sign the SPA.

Structure	Permissibility	SPA
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 <p>A (existing entity submitting the EOI)</p> <p>100%</p> <p>B (new SPV)</p>	Permissible	SPA to be signed by both A and B
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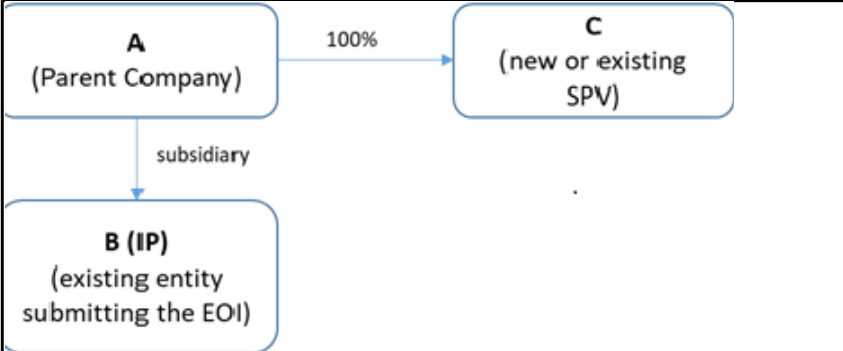
In case a company A has an existing subsidiary B, which qualifies on the basis of the net worth of A and submits the EoI as the IP, then B can incorporate a wholly owned subsidiary- C post submission of EoI but prior to signing the SPA, as the investment vehicle for acquiring Gol's Stake in BPCL. In such case, all the three entities A, B and C will have to sign the SPA.

Structure	Permissibility	SPA
 <p>A (Parent Company)</p> <p>subsidiary</p> <p>B (IP) (existing entity submitting the EOI)</p> <p>100%</p> <p>C (new SPV)</p>	Permissible	SPA to be signed by A, B and C

Scenario III

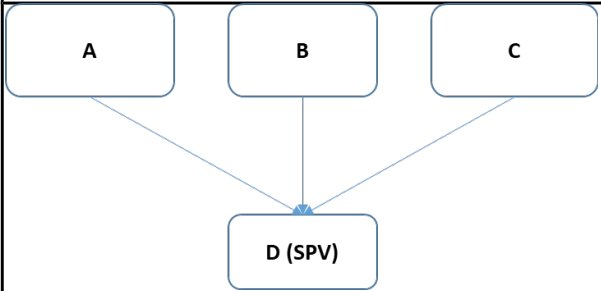
In case a Parent company A has a subsidiary B, which submits the EoI as an IP, and A wishes to replace B with another Subsidiary C (whether existing or newly incorporated) post submission of EoI but prior to signing the SPA as the SPV for acquisition of Gol's Stake in BPCL, the same is not permissible.

Structure	Permissibility	SPA
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 <pre> graph TD A["A (Parent Company)"] -- 100% --> C["C (new or existing SPV)"] A -- subsidiary --> B["B (IP) (existing entity submitting the EOI)"] </pre>	Not permissible	NA
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Scenario IV

In case of bid by a Consortium, the Consortium members must form an SPV after the submission of the Eoi but prior to signing of SPA. The share-holding of the members in SPV shall be same as the proportion of share in the Consortium.

Structure	Permissibility	SPA
 <pre> graph TD A --> D["D (SPV)"] B --> D C --> D </pre>	Allowed	A, B, C and D shall have to sign the SPA.

4. Substitution of the existing Item number 5 of the Clause 4.1 (Security Clearance):

Existing Item number 5 of the Clause 4.1

"Security Clearance – Necessary security clearance, if required, shall be taken as per extant instructions of the Government of India. Each QIP will need to apply for security clearance at the time of submission of Financial Bids. "

Revised Item number 5 of the Clause 4.1:

"Security Clearance – Necessary security clearance shall be taken as per the details and requirements communicated to the QIP at the time of RFP."

5. Substitution of the existing Clause 5.14 with the revised Clause 5.14:

Existing Clause:

"Necessary security clearance, if required, shall be taken as per extant instructions of the Government of India".

Revised Clause:

"Necessary Security clearance shall be taken as per the details and requirements communicated to the QIP at the time of RFP."

6. Insertion of a new Clause 5.13 (k)

"The fact that the Gol may entertain bids by entities (including SPVs) from a jurisdiction outside of India should not be construed as approval from the Government of India on any tax issues relating to foreign investments in India that may arise in relation to the Proposed Transaction. IP has to comply with relevant tax laws and procedure."

7. Substitution of the existing Clause 5.2.1 with the revised Clause:

Existing Clause:

"Definitions

**Net Worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation. For Limited Liability Partnerships (LLPs), Net Worth shall mean aggregate value of the partner contribution and all reserves created out of the profits, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation. In case of a fund, the net worth shall be considered as 0.25 times of assets under management or committed capital."*

Revised Clause:

"For avoidance of doubt, it is clarified that the net worth of an IP will be considered on a consolidated basis. And if an IP is found to be satisfying net worth criteria on the basis of its parent's net worth, the consolidated net worth of its parent will be considered.

Definitions

**Net Worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.*

In case of consolidated financials, non-controlling interest ("NCI") shall be included in the aforesaid definition of "Net Worth" for determining Consolidated Net Worth based on the consolidated financial statements. However, to the extent the non-controlling interest includes any reserves created out of revaluation of assets, write back of depreciation and amalgamation, the same shall be excluded.

For Limited Liability Partnerships (LLPs), Net Worth shall mean aggregate value of the partner contribution and all reserves created out of the profits, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation. In case of a fund, the net worth shall be considered as 0.25 times of assets under management or committed capital."