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ENERGIZING THE INDIAN ECONOMY: OBSTACLES TO GROWTH IN THE INDIAN OIL AND GAS SECTOR AND STRATEGIES FOR REFORM

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Abstract: India is rapidly becoming one of the largest consumers of energy in the world. At the same time, India continues to be hindered by bureaucratic delays, an archaic tax system, security problems and prohibitive investment regulations that have made expansion and consolidation in the petroleum sector difficult. This Note explores underlying structural problems in India's investment, tax, and regulatory climate that have worked to the detriment of Indian oil and gas companies. This Note argues that corruption, problems associated with contractual stability, a restrictive investment climate, and security concerns have prevented meaningful mergers and acquisitions by Indian companies, prevented them from exploring oil and gas opportunities abroad, and have disadvantaged them with respect to their competitors in other countries. This Note further argues that despite India's progress in liberalizing its economy, its government must work to address these core underlying problems in order to secure a stable and secure supply of energy to meet its growing demands.

INTRODUCTION

As India comes of age in the world economy its oil and natural gas needs continue to grow.¹ Like China, which is becoming increasingly dependent on the importation of oil to meet surging demand, India, which currently imports seventy percent of its oil, will continue to seek access in foreign markets for its energy needs, particularly from its neighbors in the Near East, as well as from Russia.² At the

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¹ Jay Solomon, *Rice Airls Concern Over Gas Pipeline from Iran to India*, WALL ST. J., Mar. 17, 2005, at A14.

² Reliance Bucks India Petrol Trend, BBC NEWS, May 12, 2006, <http://news.bbc.co.uk/2/hi/business/4764607.stm>; see Sanjay Dutta, *Bold Oil Diplomacy Pays Off*, TIMES OF INDIA, Oct. 3, 2005, available at 2005 WLNR 16026188; *A Rage for Oil*, ECON. TIMES OF INDIA, Sept. 18, 2005, available at 2005 WLNR 14685169; Solomon, *supra* note 1, at A14.

same time, Indian petroleum companies will need to develop oil and gas fields off the coast of India so as not to become too dependent on these foreign sources of oil.³ As Indian energy companies seek to grow, they will invariably benefit from foreign capital and will also benefit from internal consolidation of the energy sector, much like companies from other countries that are better capitalized and that are winning bidding wars.⁴ Indian companies, however, face formidable obstacles to procuring foreign investment and capital due to administrative hurdles and corruption at the national level as well as foreign pressure against business ventures with Iran.⁵

This Note addresses the state of the Indian energy sector, including obstacles to meeting future energy needs and proposals for reform. Part I considers India's political climate and recent economic reforms and how they have affected the industry, as well as India's current energy needs. Part II addresses obstacles to investment in the Indian oil and gas sector, including problems associated with corruption, contractual instability, and macroeconomic policies. Part III discusses what the Indian government can do to encourage foreign investment in the energy sector, addresses security concerns related to supply, and proposes strategies to bolster exploration opportunities domestically and internationally.

I. BACKGROUND

India is the second largest country in the world in terms of population, has the fourth largest economy in the world, and boasts the second largest Gross Domestic Product (GDP) among developing countries based on purchasing power parity.⁶ India's economy continues to grow at an average of six to eight percent annually, driven by consumer and corporate spending.⁷ Despite rising oil prices and delays in eco-

³ See John Larkin, *India Gains Hope in Filling Its Own Surging Oil Needs*, WALL ST. J., Dec. 22, 2004, at A11.

⁴ See Danielle Mazzini, *Stable International Contracts in Emerging Markets: An Endangered Species?*, 15 B.U. INT'L L.J. 343, 359 (1997); *A Rage for Oil*, *supra* note 2; Ravi Mahajan & Sanjay Chakrabarti, *The New Exploration and Licensing Policy*, BUS. LINE (India), May 30, 2005, available at 2005 WLNR 8549976; Josey Puliyyenthuruthel, *India to Merge Energy Companies*, DAILY DEAL, Mar. 14, 2005, available at 2005 WLNR 3836402.

⁵ See Mark Baker, *Awakening the Sleeping Giant: India and Foreign Direct Investment in the 21st Century*, 15 IND. INT'L. & COMP. L. REV. 389, 391 (2005); Toral Patel, *Corrupt Practices in India: No Payoff*, 20 LOY. L.A. INT'L & COMP. L.J. 389, 399 (1998); Solomon, *supra* note 1, at A14.

⁶ Baker, *supra* note 5, at 390.

⁷ See Eric Bellman, *Indian Economic Boom Continues*, WALL ST. J., Sept. 30, 2005, at A5.

conomic reforms, India continues to remain an attractive site for foreign investment due to its large market and economic potential.⁸

Unlike China, India has not achieved its potential because of its investment climate.⁹ Foreign direct investment (FDI) as a share of India's GDP was less than one percent in 2002 and 2003, as compared to four percent in China during the same period.¹⁰

For most of its post-independence history, India was ruled by the Congress Party.¹¹ The Congress Party, founded by Indian freedom fighters molded in the British Fabian socialist tradition, believed in a social welfare state, advocated self-sufficiency, and was generally suspicious of foreign investment.¹² The Indian economy remained closed to foreign investors for decades, until finance minister (now Prime Minister) Dr. Manmohan Singh, a Cambridge-trained economist, removed governmental obstacles and opened India's doors to foreign investment under the Industrial Policy of 1991.¹³

In 1998 the Congress Party was defeated by the Hindu nationalist Bharatiya Janata Party (BJP).¹⁴ Despite being a nationalist party, the BJP quickly proved itself to be a more economically liberal party, accelerating liberalization of the economy and beginning a process of privatization.¹⁵ The Indian economy experienced some of its fastest growth during BJP rule; however, there were concerns that the beneficial effects of liberalization were not being felt by its poorest citizens.¹⁶

The BJP was voted out of office and the Congress Party, headed by Dr. Manmohan Singh and Finance Minister P. Chidambaram, regained power in 2004.¹⁷ Though the Singh government declared itself committed to the ideas embodied in the Industrial Policy of 1991, such as the privatization and labor flexibility initiated by Congress and

⁸ See Baker, *supra* note 5, at 390; Patel, *supra* note 5, at 389; Bellman, *supra* note 7, at A5.

⁹ See Baker, *supra* note 5, at 411.

¹⁰ *Id.*

¹¹ See Amy Waldman, *India Swears in 13th Prime Minister and First Sikh in Job*, N.Y. TIMES, May 23, 2004, at A6.

¹² Jeswald W. Salacuse, *Renegotiating International Project Agreements*, 24 FORDHAM INT'L L.J. 1319, 1343 (2001); see Rada Rajadhyaskha & Nina Martyria, *Not with My Icon, You Don't*, TIMES OF INDIA, Aug. 29, 2004, available at 2004 WLNR 11962138.

¹³ Baker, *supra* note 5, at 392; John Lancaster, *Sonia Gandhi Declines Prime Minister Position More Tumult in India Hindu Nationalists Protested Against Her*, LEXINGTON HERALD LEADER (Kentucky), May 19, 2004, at A3; see Waldman, *supra* note 11, at A6.

¹⁴ *BJP Called to Form New Government*, CNN, Mar. 15, 1998, <http://edition.cnn.com/WORLD/9803/15/india/index.html>.

¹⁵ See Alex Ninian, *India's New Government and Its Economic Outlook*, 286 CONTEMP. REV. 1, 2 (2005).

¹⁶ *See id.*

¹⁷ See Waldman, *supra* note 11, at A6; Ninian, *supra* note 15.

accelerated by the BJP, it and its leftist coalition partners signaled that the pace of many of the reforms would slow down.¹⁸

Among the sectors where privatization and foreign investment was temporarily decelerated was the energy sector.¹⁹ The Indian government committed itself instead to developing bilateral ties with its neighbors, including Iran and the Central Asian countries, in order to secure oil and natural gas.²⁰ This partnership has frustrated efforts by the United States to isolate Teheran and has strained U.S.-India relations.²¹

II. DISCUSSION

Indian law dictates that all natural resources embedded in the earth's crust belong to the state and that all petroleum and natural gas found *in situ* is national property.²² Private operators require a license, which is subject to open bidding, from the central government.²³ The regulatory framework in oil and gas exploration is governed through the New Exploration and Licensing Policy (NELP) and more broadly through the Industrial Policy of 1991, both of which aim to increase foreign participation in drilling and investment in India's oil and gas sector.²⁴

Though NELP and the Industrial Policy of 1991 have improved the investment climate for FDI, "delays, complexities, obfuscations, overlapping jurisdictions and endless request[s] for more information remain much the same as they have always been."²⁵ Underlying structural obstacles to the development of India's oil sector can broadly be grouped into four categories.²⁶ The first set of problems includes

¹⁸ See Waldman, *supra* note 11, at A6; *India Scraps Sales of State Firms*, BBC NEWS, Aug. 16, 2005, <http://news.bbc.c.uk/go/pr/fr/-/2/hi/business/4156612.stm>. But see Mazzini, *supra* note 4, at 352 (noting that the economic policies of Congress and BJP nationally differed greatly from their state counterparts, as in Maharashtra in that the BJP did not accelerate economic reform at the state level).

¹⁹ See *India Scraps Sales of State Firms*, *supra* note 18.

²⁰ See John Larkin & Jay Solomon, *India's Ties with Iran Pose Challenge for U.S.*, WALL ST. J., Mar. 25, 2005, at A7.

²¹ *Id.*

²² *What Is NELP?*, ECON. TIMES (INDIA), Jan. 31, 2005, available at 2005 WLNR 1285513.

²³ *Id.*

²⁴ See Baker, *supra* note 5, at 392, 414 (describing Industrial Policy of 1991); *What Is NELP?*, *supra* note 22.

²⁵ Baker, *supra* note 5, at 414.

²⁶ See Baker, *supra* note 5, at 414 (describing problems associated with access to credit); Mazzini, *supra* note 4, at 352 (discussing contractual problems); Patel, *supra* note 5, at 389

those related to corruption in the Indian bureaucracy.²⁷ The next general category of problems can be broadly defined as contractual problems, based on investor fear of abrogation.²⁸ Macroeconomic and finance problems, including difficult access to credit, obstacles to privatizations and mergers and acquisitions (M&A), and onerous tax laws constitute the third general category of problems.²⁹ Finally, foreign policy and security issues related to opposition to a proposed pipeline with Iran also continue to frustrate the Indian government's efforts to secure petroleum from abroad.³⁰

A. Corruption

Studies show that countries with high levels of corruption receive less foreign investment from all major source countries.³¹ Corruption has long been a problem for India in its quest to modernize and liberalize its economy.³² Indian law condemns bribery through the Indian Penal Code and the Prevention of Corruption Act of 1947.³³ The laws punish public servants who accept gratuities to influence the exercise of their public functions with a fine and sentence of up to three years in prison.³⁴ These laws, however, are frequently ignored.³⁵ In addition, the laws only address corruption among public servants, and do not deal with persons who accept bribes in the course of private business.³⁶ Companies are forced to deal with a large number of government officials from whom they must gain approval for licenses to conduct business.³⁷ This ties up resources that could be used more

(discussing problems associated with corruption); Solomon, *supra* note 1, at A14 (discussing security concerns related to a proposed pipeline with Iran).

²⁷ See Patel, *supra* note 5, at 389.

²⁸ See Wendy N. Duong, *Partnerships with Monarchs: Two Case Studies—Case Two Partnerships with Monarchs in the Development of Energy Resources: Dissecting an Independent Power Project and Re-Evaluating the Role of Multilateral and Project Financing in the International Energy Sector*, 26 U. PA. J. INT'L ECON. L. 69, 109 (2005); Mazzini, *supra* note 4, at 359–60.

²⁹ See Baker, *supra* note 5, 399–401; *India Scraps Sales of State Firms*, *supra* note 18; Puliyenthuruthel, *supra* note 4.

³⁰ See Farhana Khan & Anees Jillani, *The Iran-Pakistan-India Gas Pipeline-Economy Competes with Politics*, INT'L ENERGY L. & TAX'N REV. 152, 156–57 (2001); Solomon, *supra* note 1, at A14.

³¹ Baker, *supra* note 5, at 417.

³² See Patel, *supra* note 5, at 398–99.

³³ *Id.* at 399.

³⁴ *Id.* at 400.

³⁵ *Id.* at 399.

³⁶ *Id.* at 401.

³⁷ Baker, *supra* note 5, at 416–17; see Patel, *supra* note 5, at 407.

productively and results in an additional burden on their enterprises as companies incur unnecessary interest costs.³⁸

Significantly, bureaucratic delays in the form of red tape continue to exist, even though they have loosened considerably from before.³⁹ These bureaucratic delays have resulted in the forfeiture of significant business opportunities.⁴⁰

B. *Contract Instability*

An additional concern for foreign companies seeking to invest in India or to lend capital to Indian companies for project finance is the instability of contracts due to corruption, fear of a change of government, and ultimately, contract abrogation.⁴¹ One of the first companies to receive fast-track approval from India's new policy towards foreign investment was Enron, which formed a joint venture with Reliance Industries, Inc., India's state-owned oil and gas company.⁴² The aim of the project was exploration, development, production, and operation of oil and gas fields off the coast of Mumbai (formerly known as Bombay).⁴³ The BJP coalition government of Maharashtra, the Indian state where Mumbai is located, unilaterally cancelled the contract previously negotiated by the Congress-led state government, claiming that the project (known as Dabhol) would result in electricity rates unaffordable for the general population, and that the country could undertake the project on its own.⁴⁴ Such nationalistic concerns, often cloaked in the mantle of democracy, have made many companies averse to entering the Indian market.⁴⁵ Indeed, non-payment for power supply to Dabhol from its sole customer, the utility authority of Maharashtra, resulted in the collapse of Dabhol.⁴⁶

The Indian courts have been habitually overburdened by large caseloads.⁴⁷ Businesses in India, hesitant to resort to foreign courts in the first place, find litigation expensive, uncertain, subject to proce-

³⁸ See Baker, *supra* note 5, at 417.

³⁹ Edward Luce, *Growth Sparks a Race for Supplies*, FT.COM, Jan. 17, 2005, available at 2005 WLNR 627618; see Tracy Work, Note, *India Satisfies Its Jones for Arbitration: New Arbitration Law in India*, 10 TRANSNAT'L L. 217, 218 (1997)

⁴⁰ See Baker, *supra* note 5, at 416; Luce, *supra* note 39.

⁴¹ See Mazzini, *supra* note 4, at 352, 359; Patel, *supra* note 5, at 397.

⁴² Mazzini, *supra* note 4, at 351.

⁴³ *Id.*

⁴⁴ See Salacuse, *supra* note 12, at 1351-52.

⁴⁵ *Id.*; see Mazzini, *supra* note 4, at 359.

⁴⁶ See Duong, *supra* note 28, at 106.

⁴⁷ See Work, *supra* note 39, at 224.

dural delay, and a source of negative publicity.⁴⁸ The overburdened court system has also contributed to delays that have affected the business environment, since businesses desire easy access to the court system.⁴⁹ These concerns resulted in the passage of a revised arbitration act in 1996.⁵⁰ With the passage of the revised arbitration law, the Indian government has shown its commitment to arbitration, but it is still unclear whether Indian courts will enforce awards from alternative dispute resolution (ADR) proceedings.⁵¹

C. Credit Restrictions, Fiscal Policies, and the Tax Environment

India's investment climate is also a source of concern both to companies seeking to do business in India and for Indian companies looking to do business abroad.⁵² Indian fiscal policies have worked to the detriment of Indian companies looking for financing for strategic M&As, and have provided unnecessary obstacles to the development of oil and gas fields located off India's coast and within its borders.⁵³

India's need for capital still exceeds its supply, working to the detriment of its companies that require foreign investment to finance their expansion and growth.⁵⁴ Credit has been expensive and difficult to access, which has restricted the development of Indian companies.⁵⁵ While regulations often serve legitimate purposes in other countries, in India restrictions on credit and bureaucratic regulations provide opportunities for harassment.⁵⁶ The interest cost to Indian companies is 1.5% higher than in other countries in Asia, making expansion difficult.⁵⁷ Credit problems have made it difficult for Indian companies to compete with China, whose companies have benefited from greater consolidation and larger cash reserves that have allowed them to compete in acquisitions that Indian companies are not financially able to pursue.⁵⁸

⁴⁸ *Id.*

⁴⁹ *See id.*

⁵⁰ *Id.* at 228.

⁵¹ *Id.* at 242.

⁵² *See* Mazzini, *supra* note 4, at 352, 359; Luce, *supra* note 39.

⁵³ *See* Baker *supra* note 5, at 424; Mazzini, *supra* note 4, at 350, 358; *A Rage for Oil*, *supra* note 2.

⁵⁴ Mazzini, *supra* note 4, at 350.

⁵⁵ Baker, *supra* note 5, at 417, 424.

⁵⁶ *See* Baker, *supra* note 5, at 423–24.

⁵⁷ *Id.* at 424–25.

⁵⁸ *See A Rage for Oil*, *supra* note 2.

The Indian government has not pursued mergers or privatization as vigorously as its rhetoric claims.⁵⁹ Resistance to privatization comes from oil sector workers fearing loss of jobs, as well as pressure from Congress's leftist coalition partners.⁶⁰ The Indian Supreme Court ruled that the government could not further plans to privatize the oil companies Bharat Petroleum and Hindustan Petroleum, holding that only parliament could sign off on privatization.⁶¹ This makes privatization extremely difficult given the fractious nature of Indian politics and lack of consensus regarding economic policy.⁶² The Congress-led government put off plans to privatize Bharat Petroleum and Hindustan Petroleum, and has so far not completed plans for the merger of the largest oil companies, Indian Oil and Oil and Natural Gas Corp. (ONGC), to create a national behemoth, though it maintains plans to do so in the future.⁶³

Tax laws also contribute to the negative investment climate in India, including the oil and gas sector.⁶⁴ Though India's tax laws have been relaxed to increase foreign investment, companies engaged in business in India are still subject to a variety of tax regulations, including a service tax and a minimum alternate tax.⁶⁵ Companies seeking to engage in oil and gas exploration in India also do not benefit from an extended tax holiday, which often discourages them from exploring in India.⁶⁶ These taxes on exploration constitute a significant burden on oil and gas companies, especially when no gas is found.⁶⁷

D. *The Iran-Pakistan-India Pipeline*

Foreign policy and security concerns continue to hinder the importation of liquefied natural gas from India's near-abroad, particularly from Iran.⁶⁸ The Indian and Iranian governments have explored

⁵⁹ See Pulienthuruthel, *supra* note 4, at 1; *India Scraps Sale of State Firms*, *supra* note 18.

⁶⁰ Soutik Biswas, *India's Privatisation Setbacks*, BBC NEWS, Sept. 16, 2003, http://news.bbc.co.uk/go/pr/fr/~/2/hi/south_asia/3113760.stm; *India Scraps Sale of State Firms*, *supra* note 18; Abishek Prabhat, *Court Stalls India Oil Sell-Off*, BBC NEWS, Sept. 16, 2003, http://news.bbc.co.uk/2/hi/south_asia/3112172.stm.

⁶¹ Biswas, *supra* note 60; Prabhat, *supra* note 60.

⁶² See Biswas, *supra* note 60; Prabhat, *supra* note 60.

⁶³ *India Scraps Sale of State Firms*, *supra* note 18; Pulienthuruthel, *supra* note 4.

⁶⁴ See Baker, *supra* note 5, at 399–400; Mahajan & Chakrabarti, *supra* note 4.

⁶⁵ Baker, *supra* note 5, at 400; Mahajan & Chakrabarti, *supra* note 4.

⁶⁶ See Meghdoot Sharon, *Probe Why Petro Majors Are Not Coming to India*, BUS. STANDARD, July 8, 2004, available at 2004 WLNR 4772651.

⁶⁷ Mahajan & Chakrabarti, *supra* note 4; Sharon, *supra* note 66.

⁶⁸ See Solomon, *supra* note 1, at A14.

the building of a 1.6 billion cubic feet (bcf) gas line that would travel from southern Iran through Pakistan to India.⁶⁹ This pipeline would cost \$3.5 billion and would potentially provide 3.2 bcf of gas per day.⁷⁰ While the United States has sought to financially isolate Teheran due to concerns over its alleged acquisition of nuclear technology, India has continued to court Iran.⁷¹ The United States has indicated, however, that it is willing to separate the Iranian nuclear technology issue from that of the pipeline, and dropped its previously staunch opposition to the project.⁷² Domestic security concerns have also played a role in opposition to the pipeline, as the pipeline could be a potential target for terrorist groups and militants from Pakistan.⁷³ India must deal with pleasing Washington and ensuring the security of the proposed pipeline if it seeks to gain access to foreign energy to keep pace with its domestic demand.⁷⁴

III. ANALYSIS

India must address the structural problems in its economy and modify aspects of its regulatory environment in order to meet its energy needs.⁷⁵ India must look within its borders to secure part of its oil and natural gas needs.⁷⁶ As India seeks to increase its supply of oil and natural gas, however, it will necessarily have to look abroad.⁷⁷ This certainly entails looking to Central Asia, the Caspian Sea, and the Middle East for its supply.⁷⁸

A. Addressing Corruption

New Delhi should strengthen anti-corruption laws and apply them in equal force to private business and government officials.⁷⁹ The government can also reduce the number of intermediaries in-

⁶⁹ Khan & Jillani, *supra* note 30, at 154.

⁷⁰ *Id.*

⁷¹ See Khan & Jillani, *supra* note 30, at 153; Solomon, *supra* note 1, at A14.

⁷² *Bush U-Turn on Iranian Pipeline*, BBC NEWS, Mar. 4, 2006, http://news.bbc.co.uk/2/hi/south_asia/4774312.stm.

⁷³ See Khan & Jillani, *supra* note 30, at 155.

⁷⁴ See *id.*; Solomon, *supra* note 1, at A14.

⁷⁵ See Baker, *supra* note 5, at 391; Mazzini, *supra* note 4, at 355; Patel, *supra* note 5, at 389.

⁷⁶ See Larkin, *supra* note 3, at A11.

⁷⁷ See Solomon, *supra* note 1, at A14.

⁷⁸ See Dutta, *supra* note 2; Larkin & Solomon, *supra* note 20, at A7; Solomon, *supra* note 1, at A14.

⁷⁹ Patel, *supra* note 5, at 401, 407.

volved in license-granting procedures and eliminate requirements for the consent or authorization of more than one person for non-clerical decisions.⁸⁰ New Delhi should also ensure that the process of privatization is more transparent, including the use of competitive bidding and public hearings.⁸¹

B. *Ensuring Contract Stability*

To protect themselves against unilateral sovereign or private cancellation, companies that invest in India also need to negotiate stabilization or compensation clauses in all contracts.⁸² Renegotiation clauses might be a mechanism that would permit parties to avoid default, and may guard against the possibility of business being perceived in fundamentally different ways across the cultural divide.⁸³ While India has already strengthened its arbitration laws, it should continue to actively encourage the use of arbitration as a dispute resolution mechanism to decrease the burden on India's court system and provide for increased contractual stability.⁸⁴ In addition, to the extent permitted by the new arbitration law, the courts should enforce awards resulting from alternative dispute resolution (ADR) proceedings as decrees of the court.⁸⁵

C. *Facilitating Access to Credit and Easing Tax Restrictions*

Reducing obstacles to FDI flows will be a major concern as India seeks to accommodate companies who require financing for M&A and technology development.⁸⁶ India should ease access to credit by decreasing the interest cost.⁸⁷ By reducing the percentage of costs going to service debt, this will make India a more attractive site for foreign investment as well as facilitate expansion by Indian companies seeking to make foreign acquisitions.⁸⁸

India should also simplify its tax laws.⁸⁹ Reducing taxes on exploration and extending the tax holiday will have the effect of freeing up

⁸⁰ *Id.* at 407.

⁸¹ *Id.* at 408.

⁸² *See* Mazzini, *supra* note 4, at 360.

⁸³ Salacuse, *supra* note 12, at 1329.

⁸⁴ *See* Work, *supra* note 39, at 242.

⁸⁵ *See id.*

⁸⁶ *See* Baker, *supra* note 5, at 417.

⁸⁷ *See id.* at 424–25.

⁸⁸ *See id.* at 417, 424.

⁸⁹ *See* Mahajan & Chakrabarti, *supra* note 4.

resources for growth and expansion.⁹⁰ This is especially true as Indian companies compete with China for access to oil and gas.⁹¹

The central government should proceed with consolidation efforts to merge Indian Oil with ONGC, India's largest state owned company, to create a competitive player in the world energy market.⁹² It should also privatize its petroleum companies, such as Bharat Petroleum and Hindustan Petroleum, to foreign investors.⁹³ By privatizing, the country could raise hundreds of billions of dollars to fund acquisitions and growth.⁹⁴

Under NELP, India has already taken steps to strengthen foreign investment in its petroleum sector and to lure more drillers with better technology.⁹⁵ The government should continue to encourage such investment.⁹⁶ India has started to recognize the need for exploration within its borders, which is why, beginning in the late 1990s, the state began allocating blocks of territory to Indian and foreign drillers.⁹⁷ Due to the limited supply of oil within India's borders, the government needs to pay particular attention to attracting a wider variety of foreign drillers for oil and gas exploration.⁹⁸

Interestingly, the source of reluctance may be large foreign oil companies themselves, which often find that the discoveries in India are not worth pursuing.⁹⁹ Given India's limited supply of domestic oil, it must continue to look to smaller companies from other countries for exploration.¹⁰⁰ In addition to oil fields located off the coast of Mumbai, Cairn Energy, PLC, a Scottish energy concern, has located an oil deposit in the desert of Rajasthan that holds about one billion barrels of oil.¹⁰¹ Experts say that India's geology of subterranean layers with fault lines should certainly contain oil and gas.¹⁰² If this is the case, small foreign companies like Cairn would certainly help to yield

⁹⁰ See *id.*; Sharon, *supra* note 66.

⁹¹ See Puliyyenthuruthel, *supra* note 4.

⁹² See *id.*

⁹³ See *id.*

⁹⁴ *Id.*

⁹⁵ *New Indian Policy Holds More Promise for Canada's Oil and Gas explorers*, ASIA PACIFIC BULL., Jan. 21, 2005, available at <http://www.asiapacificbusiness.ca/apbn/pdfs/bulletin192.pdf> [hereinafter *India's Energy Needs*].

⁹⁶ See *id.*

⁹⁷ Larkin, *supra* note 3, at A11.

⁹⁸ Khan & Jallani, *supra* note 30, at 152 (noting that India has proven reserves of just 66 to 70 trillion cubic feet); Larkin, *supra* note 3, at A11.

⁹⁹ See Larkin, *supra* note 3, at A11.

¹⁰⁰ See *India's Energy Needs*, *supra* note 95.

¹⁰¹ See Larkin, *supra* note 3, at A11.

¹⁰² *Id.*

discoveries within India's borders and offshore.¹⁰³ If the latest proposals under NELP are implemented, smaller oil exploration concerns can expect to see a reduction in the time taken to award an exploration contract, a greater availability of geo-scientific data online, and a single window for clearances.¹⁰⁴

D. *Resolve Foreign Policy Hindrances*

Finally, India must address the lingering doubts of the United States concerning India's ties with Teheran and national skepticism regarding its relations with Pakistan because the proposed pipeline is vital to India's energy needs and would serve the ancillary function of building up Indo-Pakistani ties.¹⁰⁵ The government should pursue U.S. Secretary of State Condoleezza Rice's suggestion that Washington and New Delhi engage in a broad energy dialogue.¹⁰⁶ It might also accept a greater role in participating in talks with Iran, the European Union, and the United States over Iran's nuclear program as a result of its energy partnership with Teheran.¹⁰⁷

CONCLUSION

While the Indian economy has significantly liberalized over the past decade, obstacles to investment in the form of corruption, contract instability, and poor macroeconomic policies continue to hamper foreign direct investment and business expansion.¹⁰⁸ For India to meet its surging oil and gas needs, it must address these problems by tackling corruption at all levels, promote the use of ADR, facilitate access to credit, and expose its oil and gas sector to market forces.¹⁰⁹ India must also engage in broad energy and security dialogues with its neighbors and the United States.¹¹⁰ India should not return to its policy of self-reliance, but must instead learn to open up to the world in a way that will ultimately benefit the nation.¹¹¹

¹⁰³ See *id.*

¹⁰⁴ *New Indian Policy*, *supra* note 95.

¹⁰⁵ See Khan & Jallani, *supra* note 30, at 156-57 (discussing how the U.S.-Iran-Libya Sanctions Act of 1996 bars foreign investment in Iran); Solomon, *supra* note 1, at A14.

¹⁰⁶ See Solomon, *supra* note 1, at A14.

¹⁰⁷ See Larkin & Solomon, *supra* note 20, at A7.

¹⁰⁸ See Baker, *supra* note 5, at 417; Patel, *supra* note 5, at 407; Puliyenthuruthel, *supra* note 4.

¹⁰⁹ See Baker, *supra* note 5, at 417; Work, *supra* note 39, at 242; Patel, *supra* note 5, at 407; Puliyenthuruthel, *supra* note 4.

¹¹⁰ See Khan & Jallani, *supra* note 30, at 153; Solomon, *supra* note 1, at A14.

¹¹¹ See Baker, *supra* note 5, at 417; Bellman, *supra* note 7, at A5.