

Indian coal licences go up in smoke

October 2014

The India Supreme Court has cancelled all coal block licences issued from 1993-2010

On 24 August 2014, the Supreme Court of India ruled that the process for allocating coal block licences over the last two decades has been "arbitrary and illegal" for lack of fairness and transparency. The entire allotment process was described as "fatally flawed".

In a more recent ruling, on 25 September 2014, the same Court determined that there could only be one of two possible consequences flowing from its earlier finding: (a) the cancellation of the allotment of all coal licences from 1993-2010; or (b) the cancellation only of those blocks which had not begun producing coal (whilst leaving intact those blocks that were already producing). The Court decided upon the more radical option: it cancelled all 214 coal licences. In reaching that decision, the Court dismissed proposals to deal with the allotments on a case by case basis, for example, through individual hearings or the appointment of a committee to review the allocation history of each individual block. Rather, the Court held there was no legal basis to uphold any allotment whilst the flawed process was in effect, irrespective of the individual circumstances.

For those 42 blocks that have begun production, the cancellation will not take effect until 1 April, 2015. Coal India Limited, the State-controlled coal mining company, will move in to continue extracting coal from the mines within those blocks and, in addition to losing their licences, existing operators of the mines will also face a fine on all coal they have produced to date. For the remaining non-active blocks, the cancellation order has immediate effect.

Implications for foreign investors with interests in the cancelled coal licences

Foreign investors have interests in a number of the cancelled licences, and these investors with exposure should consider potential remedies provided by investment treaties which India has entered into.

Assuming they fulfil the requirements under applicable treaties, foreign investors may be able to bring claims against India for violations of the standards of protection afforded to them under the treaties. For example, investment treaties typically allow a foreign investor to bring a claim for expropriation of its investment if prompt and adequate compensation is not provided. Significantly, investment treaties typically provide a forum for foreign investors to bring

such claims before a neutral, international arbitral tribunal rather than before the local courts.

We frequently advise on the protections afforded by bilateral and multilateral investment treaties and have acted for both investors and States in a number of investment treaty claims (including before the International Centre for the Settlement of Investment Disputes (ICSID)).

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