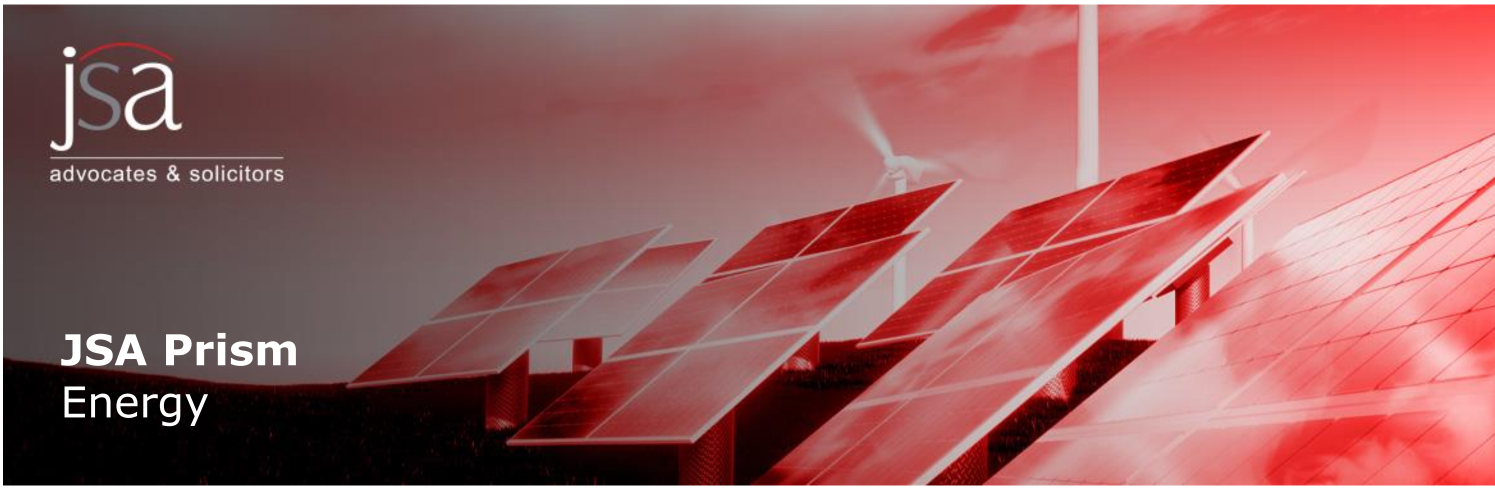

September 2022

Proposed amendments to Energy Conservation Act, 2001 seek to usher in carbon markets and mandate to consume renewable energy

The Energy Conservation (Amendment) Bill, 2022 (the "**Amendment Bill**") was passed by the Lower House of Parliament on August 08, 2022. The Amendment Bill is intended to amend the Energy Conservation Act, 2001, a legislation enacted to provide for efficient use of energy and its conservation and for matters connected therewith or incidental thereto.

The statement of objects and reasons of the Amendment Bill states that these amendments are necessary to promote renewable energy, develop a domestic carbon market to battle climate change, introduce new concepts such as carbon trading and mandate use of non-fossil sources to ensure faster decarbonization of Indian economy and help in achieving sustainable development goals in line with the Paris Agreement[1] and various other actions related to climate change.

The Amendment Bill is pending passage in the Upper House of the Parliament. However, since the Parliament has been adjourned *sine die*, the Amendment Bill is expected to be taken up by the Upper House in the winter session of the Parliament later this year.

Key Changes

The key changes sought to be introduced by way of the Amendment Bill are as under:

1. **Mandatory consumption from non-fossil sources**: The Amendment Bill empowers the central government, in consultation with the Bureau of Energy Efficiency, to specify a minimum share of consumption of non-fossil sources by designated consumers (i.e., mining, steel, cement, textile, chemicals, and petrochemicals, transport sector (including railways), and specified commercial buildings) as energy or feedstock. Different shares of consumption may be specified for different types of non-fossil sources and different designated consumers.

2. **Carbon trading**: The Amendment Bill empowers the central government, in consultation with the Bureau of Energy Efficiency, to specify a carbon credit trading[2] scheme (i.e., scheme for reduction of carbon emissions). The central government, or any agency authorised by it in this behalf (such as Carbon Registry-India), may issue a carbon credit certificate to any entity registered under and compliant with the carbon trading scheme. Registered entities are entitled to purchase or sell the carbon trading certificate in accordance with the carbon trading scheme. Any other person may also purchase a carbon credit certificate on a voluntary basis.

3. **Energy consumption standards for vehicles and vessels**: The Amendment Bill empowers the central government, in consultation with the Bureau for Energy Efficiency, to specify energy consumption standards for

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[1] The Paris Agreement, is an international treaty on climate change, adopted in 2015. It covers climate change mitigation, adaptation, and finance. The Agreement was negotiated by 196 (one hundred ninety six) parties at the 2015 United Nations Climate Change Conference near Paris, France.

[2] Carbon credit implies a tradeable permit to produce a specified amount of carbon emissions.

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vehicles (as defined under the Motor Vehicles Act, 1988) and vessels (i.e., every description of water craft used or capable of being used in inland waters or in coastal waters, including any ship, boat or sailing vessel).

4. **Penalties for non-compliance:** The Amendment Bill sets out stringent penalties for non-compliance of various provisions. Non-compliance with respect to consumption from non-fossil sources and failure to comply with energy consumption standards will be punishable with a penalty of up to INR 10,00,000 (Indian Rupees ten lakh) and an additional penalty of up to twice the price of oil equivalent of energy consumed above the prescribed norm. Vehicle manufacturers in violation of fuel consumption norms will be liable to pay an additional penalty per unit of vehicles sold in the corresponding year, *viz*:

   (a) INR 25,000 (Indian Rupees twenty five thousand) per vehicle for non-compliance of norms up to 0.2 (zero point two) litres per 100 (one hundred) kms;

   (b) INR 50,000 (Indian Rupees fifty thousand) per vehicle for non-compliance of norms above 0.2 (zero point two) litres per 100 (one hundred) kms.

5. **Composition of the governing council of Bureau of Energy Efficiency**: The Amendment Bill increases the number of members in the governing council of the Bureau of Energy Efficiency to between 31 (thirty one) and 37 (thirty seven) (up from 20 (twenty) and 26(twenty six)), while the number of secretaries will be 12 (twelve) and up to 7 (seven) members may represent industries and consumers.

JSA Comment

India has committed at the COP 26 summit in Glasgow to achieve carbon neutrality by 2070. Additionally, India had, pursuant to the Paris Agreement, committed to adopt a climate friendly and a cleaner path than the one followed hitherto by others at corresponding level of economic development, and to reduce the emissions intensity of its GDP by 33–35% by 2030 from 2005 levels. Given that India is expected to witness rapid economic growth in coming decades and is targeting becoming a developed country by 2047, achieving these climate action targets will require broad-based and concerted actions spanning legal, regulatory, financial, institutional and policy spheres. Against this backdrop, the measures proposed to be introduced by the Amendment Bill are laudable, and it is anticipated that they will be a lynchpin of India's climate action and decarbonisation efforts.

The proposed carbon market marks a watershed shift with the potential to single-handedly transform the economy.

- At the outset, a domestic carbon market is also welcome as it stems the outflow of Indian credits to international markets (which means Indian credits are not used in India, depriving domestic players of the benefits from India's own ecosystem).

- Further, given the profile of India's emitters, a mandatory carbon market is likely to have an outsize impact on the public sector (given its dominance of key emitting industries such as iron and steel, transportation and energy). Such players may take the lead in participating in and operationalising the market. Once the market is sufficiently buoyant, private sector should also be included within the market's framework.

- Success will depend upon underlying pricing mechanisms so as to ensure liquidity and robustness. Experience from the European Union suggests that a loose emissions caps can effectively devalue carbon credits, thereby undermining the efficacy and goals of the system. The design of the proposed scheme should acknowledge that a carbon market is a tool to incubate and encourage sustainable behaviour and the creation of a market for green credits.

- It may also be considered to have multiple platforms on which carbon credits can be trading. However, sufficient safeguards would be required to prevent double-counting.

❖ Potentially transformational measures for achieving climate action goals.
❖ Effective pricing mechanisms and adequacy of emissions cap are key to ensuring credits have marketable/ tradeable value.
❖ Public sector is likely to see outsize impact owing to emissions profile – should take lead in participating.
❖ Multiple platforms and independent expert third-party administration can ensure robust uptake.
❖ With discouraging track-record of implementing norms, enforcement will be key.

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- The norms for the carbon market should be stringently enforced, preferably by an independent third-party agency with adequate capacity and expertise.

With respect to the energy consumption standards for vehicles and vessels, as also the minimum share of consumption of non-fossil sources by designated consumers, the key is effective enforcement. As the experience with renewable purchase obligations shows, obligated entities need to be suitably penalised as an active deterrent to non-compliance. Moreover, the lax enforcement of hitherto notified energy efficiency norms is not encouraging (a 2017 report co-authored by NITI Aayog, and the Bureau of Energy Efficiency suggested that enforcement of building codes was almost entirely absent across states and UTs). Having said that, mandatory compliance backed by stiff penalties is likely to drive up costs and put pressure on balance sheets already strained by pre-existing environmental and efficiency compliances – industry will have to duly and fully account for the same going forward.

It is an essential that sustained economic growth is responsive to the present and potential disruptive changes unleashed by climate change. Economic development should be driven by the need for climate action, which would, in turn, help India meet its Paris Agreement commitments – thereby ensuring a greener more sustainable tomorrow. The Amendment Bill offers the path towards realisation of this goal.

Energy Practice

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JSA has contributed to several landmark precedents in the field. In such assignments, we represent a cross section of stakeholders (Indian and foreign), including finance funding agencies, regulatory/statutory authorities, corporate houses, public sector undertakings, and industry bodies. JSA is regularly invited to serve on various G2B panels and present expert testimonies to Parliamentary Committees. The firm regularly conducts and leads complex dispute proceedings.

As a leading Litigation practice in the Energy Sector, JSA has contributed significantly to the evolving jurisprudence in this domain including (a) Regulatory processes / decisions including evolving market structures, licensing, tariff setting while balancing viability and welfare (subsidy / cross-subsidy), restructuring challenges, competition issues, performance standards; Facilitating development and effective enforcement of regulatory instruments and commercial arrangements including licenses, market for regulated utilities, tariff regime, supply and safety codes; and (c) A unique distinction is that invariably our senior attorneys are instructed to lead the Litigation strategy and conduct of proceedings (including arguments) in high value and precedent setting regulatory and commercial Dispute Resolution proceedings / matters before Regulatory and Judicial Fora.

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