

NOTICE / सूचना

Sub: Modalities regarding change in name/ control with respect to Non- Regulated Sector FSA


Under various initiatives taken by CIL towards ease of doing business, the System of seeking prior approval by the Purchaser in case of 'Change of Control' has been done away with. As communicated by CIL vide letter no. CIL/M&S/47252 (New Pol)/127 dated 18/03/2020 (copy enclosed), the following guidelines relating to Change of Name are brought to the notice of all concerned.

1. The relevant clauses of Fuel supply Agreement (FSA) under NRS Linkage Auction and existing & LOA route FSA stands modified as Annexed.
2. For Pending cases of change of name/control with valid FSAs, a notice is being issued hereby for necessary compliance.
3. The purchasers are further informed to comply within three months from the succeeding month in which this notice is issued. Procedure and timeline in such cases shall remain same as dealt in the modified clause relating to change of name (hereby annexed).
4. Consequent to taking change of name on record, the Service provider shall be informed for effecting change in name of such registered bidder.
5. Prospective / Successful bidders are required to inform pendency/outcome of IBC proceedings, if any, through relevant Board Resolution/intimation by Company Secretary/self-declaration by proprietor/ partners (in case of proprietorship/ partnership firm). In case of non-intimation about referral/commencement of proceedings before IBC/Debt Recovery Tribunal (DRT), as it be, by the bidder to the Seller prior to participation in the bid process or signing of FSA, as the case may be, the Bid security submitted by the purchaser would be forfeited in case such a lapse comes to the knowledge of Seller. FSA shall be signed only if the matter is resolved favourably by NCLT/DRT.

महाप्रबंधक (विपणन और विक्रय)

Distribution

- DT (OP), MCL
- GM(M&S), CIL, Kolkata
- Chief Manager (M&S-OP)/Chief Manager (M&S-Coml.)/Manager (M&S-RS)
- GM(Systems)- is requested to hoist the above notice on MCL website under the Link "Our Business"-- > "Sales & Marketing"-- > "Notices"--- > "Notices for FSA"

<p>कोलइंडियालिमिटेड विपणनतथा विक्रय विभाग कोल भवन, प्रांगण सं 04 एमएआर, प्लाट सं - एएफ-III, एक्शन एरिया - 1ए न्यू टाउन, राजरहाट, कोलकाता- 700 156 फोन: 033-23244214, फैक्स: 033- 23244229 सीआईएन: L23109WB1973GO1028844 ईमेल : gmsnm.cil@coalindia.in वेबसाइट : www.coalindia.in</p>		<p>COAL INDIA LIMITED MARKETING & SALES DEPARTMENT</p> <p>COAL BHAWAN, PREMISE NO- 04 MAR PLOT- NO -AF-III, ACTION AREA-1A, NEWTOWN, RAJARHAT, KOLKATA -700 156 Ph:033-23244214,Fax: 033-23244229 CIN: L23109WB1973GO1028844 E-MAIL : gmsnm.cil@coalindia.in WEBSITE : www.coalindia.in</p>
---	---	---

CIL/M&S/47252 (New P2)/127

18.03.2020

To
The General Manger/HOD (M&S)
BCCL/CCL/ECL/SECL/WCL/MCL/NCL &
GM, NEC.

Sub: Modalities regarding change in name/ control with respect to Non- Regulated Sector FSA.

Dear Sir(s),

The relevant FSA clauses have been modified/ deleted/ incorporated doing away with stipulation of taking prior approval in change of control cases and incorporating procedure for taking change of name on record. In brief the modifications are as under -

- Definition of "Transfer Event" has been deleted.
- Clause 15 relating to change in control and transfer shall not be in use.
- Clause 21.6 and 21.11 has been amended/ incorporated as detailed in **Annx.-A.**
- Additional clauses have been proposed to be incorporated in the following model FSAs
 - Non-Power model FSAs (low, medium and high demand)- LOA route
 - Non-Power model FSAs (low, medium and high demand)- Existing FSAs (old)

Comparative table of existing and modified clauses of various FSA models of non-regulated sector is enclosed as **Annx.B**

Besides above the Coal Companies may notify the following:

1. For Pending cases of change of name/ control with valid FSAs, Coal Company shall issue a notice for compliance. After issuance of such notice the compliance is to be done within three months from the succeeding month in which notice is issued. Procedure and timeline in such cases shall remain same as dealt in the modified clause relating to change of name.
2. Prospective / successful bidders are required to inform pendency/ outcome of IBC proceedings, if any, through relevant Board resolution/ intimation by Company Secretary/ self-declaration by proprietor/ partners (in case of proprietorship/ partnership firm). In case of non-intimation about referral/ commencement of proceedings before IBC/ Debt Recovery Tribunal (DRT), as it be, by the bidder to the Seller prior to participation in the bid process or

signing of FSA, as the case may be, the Bid security submitted by the Purchaser would be forfeited in case such a lapse comes to the knowledge of seller. FSA shall be signed only if the matter is resolved favorably by NCLT/ DRT.

3. Consequent to taking change of name on record, Coal Company shall inform Service Provider for effecting change in name of such registered bidder.

Draft notice to the above effect , enclosed as Annx. C is to be issued by Coal Companies after making suitable modifications as per their requirement.

Yours faithfully,


GM (M&S/QC)
18/3

Encl: as above.

Copy to:

GM (Legal) CIL

HOD (M&S/Operations), CIL

HOD(M&S/Comml.), CIL

HOD (Systems), CIL - With a request to arrange to upload the same along with enclosures on CIL Website under "Our Business" > "Marketing & Sales" > "NCDP- FSA" menu.

TS to D(M), CIL.

**MODEL FUEL SUPPLY AGREEMENT - NON REGULATED SECTOR - VARIOUS
TRANCHES SUB SECTORS**

21.6 Assignment

The Purchaser shall not without the express prior written consent of the Seller, assign to any Third Party, this Agreement or any part thereof or any of its rights, benefits, obligations and/or interests herein or hereunder.

21.11 Change of name

Any Change of name of the Purchaser, with or without change in control shall be taken on record provided that the nature of Specified End Use Plant and its location remains unaltered/unchanged and new Purchaser complies the eligibility conditions as per Scheme Document.

Explanation – For the purpose of Clause 21.11 & 21.11.1, change of name means any change in the names of the parties with whom the Seller has entered this Fuel Supply Agreement.

21.11.1 Procedure & timeline

- a) In case the Purchaser is Company registered under the Companies Act, 2013, the Purchaser (new name) shall intimate the Seller about change of name within three months succeeding the month in which Certificate of Incorporation pursuant to change of name is issued by the Registrar of Companies.
- b) In case the Purchaser is Company registered under the Companies Act, 2013, and the change of name of Purchaser is consequent to sale of Specified End Use Plant to a Company registered under Companies Act, 2013, then the Purchaser (new entity) shall intimate the Seller about the change of name within three months succeeding the month in which the instrument evidencing the sale of Specified End Use Plant/Sale Deed is executed and submit the Board Resolutions of both the Companies (vendor and vendee of the Specified End Use Plant).
- c) In case the Purchaser are partners of a partnership firm or individual who is owner of sole proprietorship and consequent change of name due to sale of Specified End Use Plant to a partnership firm or sole proprietorship or vice versa, the Purchaser (new entity) shall intimate the Seller about change of name within three months succeeding the month in which the instrument evidencing the sale of Specified End Use Plant/Sale Deed is executed. The Purchaser shall in addition submit a declaration from all partners/sole proprietor regarding the sale of Specified End Use Plant from the vendor and vendee of the Specified End Use Plant.
- d) In case the Purchaser is Company registered under the Companies Act, 2013, and the change of name of Purchaser is consequent to sale of Specified End Use Plant to a partnership firm or sole proprietorship or vice versa, the Purchaser (new entity) shall intimate the Seller about change of name within three months succeeding the month in which the instrument evidencing the sale

of Specified End Use Plant/Sale Deed is executed. The Purchaser shall in addition submit a declaration regarding the sale of Specified End Use Plant from the partners of the partnership firm or from the sole proprietor and the Board Resolutions of the Company as the case may be.

- e) In case the Purchaser is a Company registered under the Companies Act, 2013 and the change of name is on account of inter alia amalgamation, merger, demerger, takeover of the Purchaser, the Purchaser (new entity) shall intimate within three months succeeding the month in which the date of approval of the amalgamation, merger, demerger, takeover by the court/tribunal of competent jurisdiction.
- f) In case the change of name of the Purchaser is consequent to any event not covered under clauses (a),(b),(c),(d) & (e) of 21.11.1, the Purchaser (new entity) shall intimate the Seller about the change of name within three months succeeding the month of issuance/execution of the relevant document.
- g) The Purchaser (new entity) while intimating the Seller shall submit the following documents: -
- i. Certificate of Incorporation pursuant to change of name wherever applicable
 - ii. Instrument evidencing sale of Specified End Use Plant/Board Resolutions wherever applicable/ Declaration from partners/proprietor wherever applicable
 - iii. PAN
 - iv. GSTIN
 - v. TAN as applicable
 - vi. Details of bank account
 - vii. Amended Bank Guarantee or any relevant financial instrument
 - viii. An indemnity bond (format as per Annexure - IXA) from Authorized Signatory.
 - ix. An undertaking/ declaration in the form of affidavit (Format as per Annexure-IX B) from Authorized Signatory
- h) The Purchaser (new entity) shall provide any further documents/details as may be sought by the Seller.
- i) In the event of change of ownership of the plant or change of control necessitating a change of name and the Purchaser fails to intimate about the change of name within such time as prescribed in Clauses (a),(b),(c),(d) (e) & (f) of 21.11.1, the Seller shall be entitled to terminate the Fuel Supply Agreement and take any coercive action as it deems fit including but not limited to forfeiture of bank guarantee.
- j) After intimation of change of name by the Purchaser, if the Purchaser (new entity) fails to submit all requisite documents then coal supply may be continued for a period of three months succeeding the month of issuance/execution of the applicable document provided that the Purchaser has submitted the indemnity bond and the affidavit as provided in 21.11.1 (g)(viii) & (ix).

- k) After submission of requisite documents within the stipulated period, coal supply to the Purchaser may be continued beyond the period of three months as provided in Clause (i) of 21.11.1 till the issuance of Acceptance Letter by the Seller.
- l) During the intermittent period as mentioned in Clause (i) & (j) of 21.11.1, coal supply shall be made in the changed name (formerly)
- m) Seller on acceptance of such change of name shall issue an Acceptance letter. A copy of Acceptance letter duly acknowledged by Purchaser's Authorized signatory, shall be an annexure to FSA and treated as its integral part. The Acceptance Letter issued by Seller and acknowledged by Purchaser, shall be treated as deemed modification in change of name in the FSA for the purpose of all transactions.
- n) Non acceptance of the change of name of the Purchaser by the Seller or any violation of the above provisions shall entitle the Seller to terminate the Fuel Supply Agreement with forfeiture of Security Deposit. The reason for non acceptance of change of name shall be communicated to the Purchaser by the Seller.

FORMAT OF INDEMNITY BOND

(To be furnished in Stamp paper as per Stamp Act)

(Stamp Paper should be purchased in the name of the New Entity)

(At present not less than Rs.50/- stamp paper)

This deed of Indemnity is executed on this day (Date) by (Name of the Proprietor/Partnership/Company Name) having its registered corporate office at (Address) represented through Mr/Ms (Name) s/o (Name) its duly authorized representative (hereinafter referred to as 'Indemnifier') in favour of M/s. Coal India Limited/Subsidiary. (hereinafter referred to as the 'Indemnified') having its registered office at (Address).

Whereas the Indemnified herein has entered into a Fuel Supply Agreement dated with (Name of the previous entity).

And Whereas, (Name of Previous Entity) has changed its name from XYZ to ABC on account of (Explanation of the Change of Name Event)

And Whereas the (Name of New Entity) has complied with all applicable laws, rules and regulations in relation to (Explanation of Change of Name event)

The Indemnifier irrevocably agrees to indemnify for any liability to the Indemnified accruing on account of the (Name of earlier Entity) & (Name of Present Entity) and for any false statement in the Affidavit/Undertaking dated

The Indemnifier irrevocably agrees to indemnify for any liability to the Indemnified by virtue on non compliance of any law, rules and regulations and any consequential liability arising out of such non compliance in relation to the (explanation of Change of Name event)

The Indemnifier hereby irrevocably agrees from time to time and all times to save and keep harmless and to indemnify Coal India Limited/Subsidiary from any loss or damage caused to the Indemnified due to any act/omission/misrepresentation of the Indemnifier in relation to the (Change of Name Event).

Station :

(Signature with Name and Designation)

Date :

Company Seal (New Entity)

Witness:

1 Signature with Name, Designation & Address.

2 Signature with Name, Designation & Address

AFFIDAVIT cum UNDERTAKING

I, [•], son of Mr. [•], aged [•] years resident of [•]working as [•]in (Name of the new entity) do hereby solemnly affirm and declare as under :

1. I am authorized to swear and submit this affidavit on behalf of (Name of the new entity).
2. That a Fuel Supply Agreement dated was entered between (Name of the Previous Entity) and the Coal Company.
3. Pursuant to (Details of the Change of Name Event), the (Name of Earlier Entity) has changed to (Name of the New Entity)
4. That the (Name of the new entity) hereby undertakes to pay any outstanding amount due to the Seller from the (Name of Previous Entity).
5. That the (Name of the new entity) hereby undertakes to satisfy all the eligibility conditions for entering into the Fuel Supply Agreement with Coal Company
6. That the (Name of the new entity) hereby undertakes that the supplies in (New name) shall not be construed to be acceptance of the Seller for change of name till the same is taken on record.
7. That the (Name of the new entity) hereby undertakes that it shall be solely responsible for all statutory compliances and terms and conditions of the Fuel Supply Agreement in respect of supplies of coal under new name and agrees to fully indemnify the seller for any consequences thereof.

DEPONENT

VERIFICATION :

Verified at on this ...th day of December, 2020that the contents of the above affidavit are true and correct to the best of my knowledge, being derived from the records maintained by the Company in the ordinary course of its business and nothing material has been concealed therefrom.

DEPONENT

Comparative table of existing and proposed modified clauses	
Existing	Modified
Model Fuel Supply Agreement - Non Regulated Sector linkage Auction – various tranches/ sub sectors	
Definitions : (bbb)/(ccc)/(eee)- as applicable " Transfer Event" shall have the meaning ascribed to it in Clause 15.1	To be deleted
15. Change in Control and Transfer	Not in use.
21.6 Assignment Subject to the provisions of Clause 15, the Purchaser shall not without the express prior written consent of the Seller, assign to any Third Party, this Agreement or any part thereof or any of its rights, benefits, obligations and/or interests herein or hereunder.	21.6 Assignment The Purchaser shall not without the express prior written consent of the Seller, assign to any Third Party, this Agreement or any part thereof or any of its rights, benefits, obligations and/or interests herein or hereunder.
21.11 Change in Name: The Purchaser shall intimate the Seller of any change in its name (on account reasons other than a change in its Control), immediately upon occurrence of name change. The Parties shall thereafter take necessary steps to record such change in the name of the Purchaser in the books and records of the Seller and shall also execute an amendment agreement to the Agreement to record such name change.	<p>21.11 Change of name Any Change of name of the Purchaser, with or without change in control shall be taken on record provided that the nature of Specified End Use Plant and its location remains unaltered/unchanged and new Purchaser complies the eligibility conditions as per Scheme Document.</p> <p><u>Explanation</u> – For the purpose of Clause 21.11 & 21.11.1, change of name means any change in the names of the parties with whom the Seller has entered this Fuel Supply Agreement.</p> <p>21.11.1 Procedure & timeline</p> <p>a) In case the Purchaser is Company registered under the Companies Act, 2013, the Purchaser (new name) shall intimate the Seller about change of name within three months succeeding the month in which Certificate of Incorporation pursuant to change of name is issued by the Registrar of Companies.</p> <p>b) In case the Purchaser is Company registered under the Companies Act, 2013, and the change of name of Purchaser is consequent to sale of Specified End Use Plant to a Company registered under Companies Act, 2013, then the Purchaser (new entity) shall intimate the Seller about the change of name within three months succeeding the month in which the instrument evidencing the sale of</p>

Specified End Use Plant/Sale Deed is executed and submit the Board Resolutions of both the Companies (vendor and vendee of the Specified End Use Plant).

- c) In case the Purchaser are partners of a partnership firm or individual who is owner of sole proprietorship and consequent change of name due to sale of Specified End Use Plant to a partnership firm or sole proprietorship or vice versa, the Purchaser (new entity) shall intimate the Seller about change of name within three months succeeding the month in which the instrument evidencing the sale of Specified End Use Plant/Sale Deed is executed. The Purchaser shall in addition submit a declaration from all partners/sole proprietor regarding the sale of Specified End Use Plant from the vendor and vendee of the Specified End Use Plant.
- d) In case the Purchaser is Company registered under the Companies Act, 2013, and the change of name of Purchaser is consequent to sale of Specified End Use Plant to a partnership firm or sole proprietorship or vice versa, the Purchaser (new entity) shall intimate the Seller about change of name within three months succeeding the month in which the instrument evidencing the sale of Specified End Use Plant/Sale Deed is executed. The Purchaser shall in addition submit a declaration regarding the sale of Specified End Use Plant from the partners of the partnership firm or from the sole proprietor and the Board Resolutions of the Company as the case may be.
- e) In case the Purchaser is a Company registered under the Companies Act, 2013 and the change of name is on account of inter alia amalgamation, merger, demerger, takeover of the Purchaser, the Purchaser (new entity) shall intimate within three months succeeding the month in which the date of approval of the amalgamation, merger, demerger, takeover by the court/tribunal of competent jurisdiction.
- f) In case the change of name of the Purchaser is consequent to any event not covered under clauses

(a),(b),(c),(d) & (e) of 21.11.1, the Purchaser (new entity) shall intimate the Seller about the change of name within three months succeeding the month of issuance/execution of the relevant document.

- g) The Purchaser (new entity) while intimating the Seller shall submit the following documents: -
- i. Certificate of Incorporation pursuant to change of name wherever applicable
 - ii. Instrument evidencing sale of Specified End Use Plant/Board Resolutions wherever applicable/ Declaration from partners/proprietor wherever applicable
 - iii. PAN
 - iv. GSTIN
 - v. TAN as applicable
 - vi. Details of bank account
 - vii. Amended Bank Guarantee or any relevant financial instrument
 - viii. An indemnity bond (format as per Annexure - IXA) from Authorized Signatory.
 - ix. An undertaking/ declaration in the form of affidavit (Format as per Annexure-IX B) from Authorized Signatory
- h) The Purchaser (new entity) shall provide any further documents/details as may be sought by the Seller.
- i) In the event of change of ownership of the plant or change of control necessitating a change of name and the Purchaser fails to intimate about the change of name within such time as prescribed in Clauses (a),(b),(c),(d) (e) & (f) of 21.11.1, the Seller shall be entitled to terminate the Fuel Supply Agreement and take any coercive action as it deems fit including but not limited to forfeiture of bank guarantee.
- j) After intimation of change of name by the Purchaser, if the Purchaser (new entity) fails to submit all requisite documents then coal supply may be continued for a period of three months succeeding the month of issuance/execution of the applicable document provided that the Purchaser has submitted the indemnity bond and the affidavit as provided in 21.11.1 (g)(viii) & (ix).

- k) After submission of requisite documents within the stipulated period, coal supply to the Purchaser may be continued beyond the period of three months as provided in Clause (i) of 21.11.1 till the issuance of Acceptance Letter by the Seller.
- l) During the intermittent period as mentioned in Clause (i) & (j) of 21.11.1, coal supply shall be made in the changed name (formerly)
- m) Seller on acceptance of such change of name shall issue an Acceptance letter. A copy of Acceptance letter duly acknowledged by Purchaser's Authorized signatory, shall be an annexure to FSA and treated as its integral part. The Acceptance Letter issued by Seller and acknowledged by Purchaser, shall be treated as deemed modification in change of name in the FSA for the purpose of all transactions.
- n) Non acceptance of the change of name of the Purchaser by the Seller or any violation of the above provisions shall entitle the Seller to terminate the Fuel Supply Agreement with forfeiture of Security Deposit. The reason for non-acceptance of change of name shall be communicated to the Purchaser by the Seller.

The modified 'Change in Name' clause as above shall be an additional clause in the following FSAs as per clause nos. indicated against each category.

Non Power Model FSAs (LOA route – medium and high demand)	19.9
Non Power Model FSAs (LOA route – low demand)	18.9
Non Power Model FSAs (Existing – medium and high demand)	19.11
Non Power Model FSAs (Existing – low demand)	18.11