

SECOND REQUEST FOR PUBLIC FEEDBACK ON AMENDMENTS TO THE GAS ACT

1. A second public feedback exercise on proposed amendments to the Gas Act (Cap. 116A) (the "Gas Act") was held from 26 December 2006 to 15 January 2007 to obtain feedback on the proposed amendments.
2. The proposed amendments put up for feedback were aimed at enhancing EMA's regulatory oversight of the gas market.
3. Feedback was received from 7 respondents, viz. Gas Supply Pte Ltd, Island Power Company Pte Ltd, PowerGas Ltd, PowerSeraya Ltd, SembCorp Gas Pte Ltd, Senoko Power Ltd, and Tuas Power Ltd.
4. Common concerns were raised on provisions pertaining to the licensing of a person seeking to operate or manage an onshore receiving facility, the licensing of gas import, control over the ownership and appointment of key personnel with respect to the gas transporter and its agent/contractor, measures to open access of the gas pipelines and the appeal process.
5. A summary of the key concerns and EMA's assessment is tabulated in the Appendix. Feedback from 5 of the respondents is also published for general information. 2 respondents have requested for their feedback to be kept confidential.
6. EMA thanks all the respondents for their feedback.

Table of Feedback from Consultation on amendments to the Gas Act (2nd Round) ended 15 Jan 07

(Unless otherwise stated, references to “sections” in this table are to sections of the Gas Act)

Feedback	EMA’s Assessment
Measures to Ensure Open Access to Gas Network [Sections 38, 38A & 61A – 61F]	
Feedback was given that EMA should be required to give consideration to the contractual obligations already in existence when issuing directions under Section 38 or Section 38A.	The amendments are necessary to ensure that the larger public interest is served by allowing open access to the gas network in Singapore. EMA will act judiciously in the exercise of the authority conferred on it by Parliament and will give affected parties the opportunity to be heard before issuing such directions on open access. EMA would encourage relevant parties to first come together, negotiate and arrive at an agreement on their own.
Feedback was given that the EMA should be required to give consideration to pre-specified principles and parameters when specifying what the relevant facility owner should or should not charge the existing users of the facility.	Given that each case is different with different parties, context and background, EMA requires flexibility to exercise its discretion and to reach a reasonable decision based on the unique circumstances of each case. EMA will exercise its discretion reasonably within the powers conferred by the Gas Act.
Feedback was given that it was not clear why section 38(8A), a provision which creates a statutory offence, should be expressly specified as not affecting the operation of the Frustrated Contracts Act.	The feedback is accepted. The intent is that the proposed legal immunity shall not affect the operation of the Frustrated Contracts Act.
Feedback was given that Section 38A should have provision for immunity against suits for the directed parties arising from their compliance with EMA’s direction.	The feedback is accepted. Section 38A has been amended to reflect the feedback on immunity and to mirror section 38(8A) which creates a statutory offence for a person who attempts to obstruct the directed party from complying with EMA’s directions. EMA has also refined section 38A to clarify that the entry into such an arrangement would be on terms to be specified by EMA and that immunity is confined to existing contracts.
Feedback was given that the gas allocation agreement imposed by EMA should only override parts of an existing agreement that are inconsistent with EMA’s imposed arrangement.	The feedback is accepted. Section 38A has been amended so that only parts of an agreement relating to the allocation of gas shall be overridden by the imposed allocation agreement.
Clarification was sought on section 61D(2). Parties were unclear if they would still be required to conclude a transportation framework contract in order to flow gas under the Gas Network Code.	Parties will no longer be required to sign the transportation framework contract in light of section 61D(2). The effect of this section is to confer contractual rights and obligations between the designated gas transporter and the relevant gas shipper as per the Gas Network Code.

Feedback	EMA's Assessment
Licensing Regime [Sections 2, 6, 7, 18 & 20]	
Feedback was given on the definition of "gas transmission pipeline" in section 2. It was proposed that the reference to "directly connected consumer" be deleted and replaced with "direct access customer" since the phrase "directly connected consumer" is not defined in the Gas Act.	The feedback is accepted. The Gas Bill would be amended accordingly.
Feedback was given that the definition of "import" should exclude the conveyance of gas by a gas transporter or a gas transport agent on behalf of a gas importer. As currently drafted, the definition of "import" would also cover the situation where PowerGas, as the gas transporter, conveys gas through an offshore pipeline on behalf of a gas importer.	Conveyance of gas should be excluded from the definition of "import" since the act of conveying gas is separately licensed. The feedback is accepted and the Gas Bill would be amended accordingly.
Feedback was given that the definition of "onshore receiving facility" would capture SembCorp Gas' Pressure Reduction Station A (the "PRS A"), and clarification was sought on whether this was the intent.	The intent is not to capture PRS A. This feedback is accepted and the Gas Bill would be amended accordingly.
Feedback was given that the consumer and gas shipper may not be different persons; it was commented that the gas consumer may itself be the gas shipper. The definition of "relevant gas shipper" should therefore be amended to include this situation.	The feedback is accepted and the Gas Bill would be amended accordingly.
There was general feedback that it may be premature to consider details in the Gas Act that concern the principles which will govern the LNG business in Singapore, since the framework for the production, use and other activities relating to LNG is not yet finalized.	This feedback is not accepted in the context of the general changes proposed in the Gas Bill. The Gas Bill proposes general changes which would apply to the LNG business i.e. the import of natural gas/LNG and the licensing of the LNG terminal operator.
Feedback was given that the drafting of section 6(2A)(b) could give rise to ambiguity. It was commented that as currently drafted, (i) section 6(2A)(b) applies if the principal is not incorporated <u>or</u> does not have a place of business in Singapore; (ii) section 6(2A)(b)(i) appears to require the principal to appoint yet another person as an agent; (iii) section 6(2A)(b) refers to the management or operation of the ORF by the principal which cannot be correct given that the principal has appointed some other party to manage or operate the ORF.	The feedback is accepted and the Gas Bill would be amended accordingly.

Feedback	EMA's Assessment
<p>Section 20 providing a right of appeal against a revocation, suspension or enforcement action taken by the EMA has been repealed and no further provision has been made to replace section 20. Clarifications were sought as to the reason for the deletion.</p>	<p>The right to appeal against the revocation of a licence still lies under the amended section 93.</p> <p>Section 20 was removed since it would be covered in the general appeal provisions, given that (i) the general appeal provisions refer to the right to appeal if the person is aggrieved by any decision of EMA in the exercise of any discretion under the Gas Act; and (ii) the time frame within which a person may appeal after a decision is made is now 14 days across the board. There is no necessity to reinstate section 20. This feedback is not accepted.</p>
<p>Directions for or with respect to codes of practice [Section 62]</p>	
<p>Feedback was given that EMA should clarify the priority between codes, given that priority between codes and regulations was stated in section 62(5).</p>	<p>The order of priority of the Gas Network Code and codes of practice will be set out in the codes of practice to be issued under the Gas Act.</p>
<p>Strengthening Regulatory Powers Power to Obtain Information [Sections 4 & 5]</p>	
<p>Feedback was given that EMA should keep only copies of documents requested for, rather than originals.</p>	<p>EMA would assess this on a case-by-case basis.</p>
<p>Safeguarding Security of Gas Transportation System in a Multiple Shipper Environment [Sections 63A – 63H]</p>	
<p>Feedback was given that the definitions of “associate” and “equity interests” were defined in regulations promulgated pursuant to the Electricity Act, rather than in the Electricity Act itself. There was a request for consistency in the approaches.</p>	<p>EMA had amended the Gas Bill for greater clarity in its terms and to reduce the number of documents to be read and cross-referenced by the relevant licensee for purposes of complying with these requirements. EMA will be reviewing the Electricity Act in the future.</p>
<p>Feedback was given that the regime under the Telecommunications Act is preferable and should be adopted instead.</p> <p>Reference was also made to The Code of Practice for Telecommunication Services 2005 (the “Telecommunications Competition Code”) which provides for exemptions, for transactions such as pro-forma transactions. It was suggested that transactions such as pro-forma transactions should be excluded.</p>	<p>Section 63D provides EMA with the powers to exempt certain transactions. The Telecommunications Competition Code may not be appropriate in the context of the gas industry.</p> <p>The feedback is not accepted.</p>
<p>Feedback indicated that the drafting was not clear on whether existing shareholders would require approval upon the enactment of the proposed amendments.</p>	<p>The provisions are not intended to apply retrospectively.</p>

Feedback	EMA's Assessment
<p>There was feedback that the appointment of Chairman, directors and CEOs etc should not require the approval of EMA. The reasons given were that the effect of these changes would be to indirectly undermine the decision making authority of the shareholders in determining the composition of the Board, and the Board's authority in appointing its Chairman, Directors and CEO.</p>	<p>The gas pipeline network is a critical infrastructure. EMA's approval for the appointment of Chairman, directors and CEOs of the gas transporter and gas transport agent is hence required.</p>
<p>Revised Appeal Process [Sections 78, 83 & 93]</p>	
<p>There were suggestions that there should be a stay on EMA's decision pending the appeal. Some respondents thought that the EMA's decision or direction may be of a nature which is irreversible or very difficult to reverse. If so, this could render the appeal meaningless or academic. As such, licensees suggested that directions or decisions that are under appeal be suspended pending the decision of the Minister, as there is unlikely to be any permanent damage caused by a temporary suspension, as compared to a situation where the effect of the decision or direction is permanent.</p>	<p>The Gas Act will be amended to give Minister the discretion to grant a stay of EMA's direction pending appeal in light of the industry feedback.</p> <p>EMA has to follow due process when issuing directions or making decisions. When issuing directions, EMA would have gathered the necessary facts, conducted its own investigations and consulted the interested parties to make representations.</p>
<p>Protection of Underground pipelines [Section 32A]</p>	
<p>It was commented that s32A only applies to wilful damage of gas pipes and this may not be adequate.</p>	<p>EMA agrees that there may be cases where gas pipes are recklessly damaged and this would be as serious as wilful damage. S32A would be amended accordingly.</p>
<p>Obligations of Gas Transporter [Section 29]</p>	
<p>It was suggested that section 29(3) should include a reference to inspection so that there is consistency with sections 29(4).</p> <p>In connection with this section, there was also a suggestion to amend the definition of gas service pipe.</p>	<p>This feedback is accepted. The Gas Act would be amended such that EMA may prescribe any person or class of persons to be responsible for inspection of any part of a gas installation or any part of a gas service pipe linking a gas service isolation valve to the gas installation.</p> <p>The suggested amendment to the definition of "gas service pipe" is unnecessary since the division of responsibility on maintenance of gas pipes is set out in section 29.</p>