

15 January 2007

Deputy Director (System Development & Assessment)
Energy Market Authority
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Dear Sir

AMENDMENTS TO GAS ACT (CAP. 116A)

The feedback and comments to the proposed amendments to the Gas Act are attached for your consideration.

2 The changes proposed by EMA are very significant. We would therefore like to discuss these proposed amendments and our response with the EMA. Please let us know of a suitable time for this discussion urgently.

3 We would also like an opportunity to review the final draft prior to submission to Parliament for review / promulgation.

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AMENDMENTS TO GAS ACT (CAP. 116A)

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Summary of Major Points

Set out below is a summary of major points. Our detailed response to the proposed Gas Act Amendments is contained in the Appendix which also should be read in conjunction with our earlier submissions of 24 Feb 06 and 29 Nov 06.

The amendments proposed in this second consultation, while incorporating various changes (from the amendments proposed in the first consultation) do not address all of the concerns which were raised by PowerGas. Various new amendments have also been proposed which raise additional issues, in particular Section 61 which introduces the concept of “designated gas transporter” and “relevant gas shipper”. Section 61B(5) also introduces extremely onerous obligations, like safety, efficiency, security and reliability, on the gas transporter and gas shippers without clarity on how these are to be measured.

An overarching concern with the amendments is that they grant to the EMA very wide and discretionary powers, including in relation to the grant of licences, the duties and liabilities of gas licensees, the grant of access to facilities and enforcement, as well as EMA’s unilateral right to vary existing contractual obligations.

This concern is more significant given the limited rights of appeal available against the EMA’s decisions and the EMA’s refusal to provide for a stay of their decisions pending appeal. Given that the EMA can revoke licences and can issue directions (e.g. for access to facilities), compliance with which may require PowerGas to act in a manner contrary to its existing contractual obligations, even if PowerGas is successful on appeal, it may not be possible to reverse the actions which have been undertaken in the meantime.

1 Sections 61A to 61F : Gas Network Code

1.1 The proposed sections on Gas Network Code appears not to be in line with the fundamental principle of ensuring open access and imposing the Gas Network Code to all shippers. This is because the proposed amendments seem to imply that the Gas Network Code would apply to specific onshore gas pipeline networks and not the entire onshore gas pipeline network.

1.2 The proposed amendments also introduce the concept of a “designated gas transporter” and the “relevant gas shipper”, which also seems to suggest that not all onshore gas transporters and onshore gas shippers would be subject to the Gas Network Code.

1.3 The proposed amendments also impose onerous obligations on the designated gas transporter or any relevant gas shipper not to do or omit to do anything that has or is likely to have an adverse effect on or compromise the efficiency including economic efficiency of any gas pipeline network or any of its operations. As presently drafted, this obligation is ambiguous, overly wide

and incapable of compliance. We need EMA's clarification on what this means and how this is to be measured and implemented.

2 Sections 78(5)(a) and 93 : Stay of Compliance with EMA's Directions Pending Appeal

The proposed amendments give EMA very wide reaching powers, including in relation to the implementation of the Gas Network Code, to issue directions to licensees with significant penalties for non-compliance. It therefore becomes imperative to provide for a stay of EMA's directions pending parties' appeals. Furthermore, we note that the right of appeal against anything contained in any code of practice approved by EMA has been removed. We need clarification as to the reason for this omission and believe that there should be a right of appeal against matters in a code of practice.

3 Section 38(8B) : Immunity from Action Suit or Legal Proceedings from carrying out EMA's Directions

3.1 Section 38(8B) (which grants immunity against suits in the event of compliance with a decision of the EMA to grant access to a facility) is inadequate as PowerGas will continue to be exposed to the risk of foreign proceedings as some of our legacy agreements are governed by English Law and provide for disputes to be resolved by way of arbitration in a foreign country. The tribunal in the foreign country is not bound by Section 38.

3.2 We will submit to EMA that the language of Section 38 should specifically provide that the bringing of (or threatening to bring) any proceedings in any jurisdiction will constitute an offence (in order to discourage the commencement of such proceedings) and (if parties nevertheless proceed with such proceedings) that actions cannot be brought in Singapore in respect of foreign judgments and awards (i.e. any foreign judgments or awards will not be enforceable in Singapore). In the event such provisions are not adopted, PowerGas should be adequately indemnified.

4 Section 21 : General Duties of Gas Transporter

4.1 In Section 21, the gas transporter's obligations have been expanded to include gas pipelines or a gas pipeline network under the management or control of a gas transporter. The terms "management" and "control" are ambiguous. The obligations of the gas transporter should be clearly defined with respect to clear physical boundaries that can be determined on site, which should be up to the gas service isolation valve, which is currently the case under the Public Utilities Act/Gas Supply Regulations.

4.2 We further note that the gas transporter is required to perform additional functions (to comply with the proposed amendments) of close monitoring and management of third parties' earthworks. These additional functions will increase the overall cost, which must be recoverable through transportation tariffs.

5 Section 63H : Appointment of CEO, Directors and Chairman Subject to EMA's Approval

Our Feb 06 submission that the above should not be subject to the EMA's approval has not been accepted. The current regulatory framework already provides EMA with extensive powers to regulate the licensee and how it is run.

6 Section 63B : Change in Control Provisions (Shareholding)

Our earlier submission that the change of control regime in Part VIIA is unnecessarily restrictive has not been adopted. The thresholds in Part VIIA are very widely defined. It may be difficult for a shareholder or unit holder to determine when a threshold stipulated under Part VIIA has been crossed. Given the lack of clear criteria for the grant of approval under Part VIIA and the serious consequences of a breach, such wide and restrictive controls would greatly reduce the viability of trades in such shares and units.

7 Section 38A : Arrangement by Authority on Gas Allocation

We note that this has been introduced to support and implement Government's open access policy. A provision similar to section 38(8B) (see also our comments in relation to section 38(8B)) should also be included to ensure immunity from suits as a result of compliance with the EMA's directions under this section.

8 Sections 98 to 101 : Asset Transfer

We note that this has been introduced to support and implement Government's open access policy.

Statement of interest

PowerGas Limited is an interested party as it is currently a Gas Transporter under the PU Act.

PowerGas Limited will be the gas transporter and will be issued a Gas Transporter's Licence under the Gas Act (Cap. 116A)

Conclusion

We are happy to discuss our submissions with the EMA. The changes proposed are significant and therefore we would request the opportunity to review the final draft before it goes to Parliament for review / promulgation.

COMMENTS IN RESPONSE TO 2ND REQUEST FOR FEEDBACK ON AMENDMENTS TO GAS ACT (CAP 116A)

Specific Provision(s) of Proposed Amendments	Revised Amendments	Detailed Reasons for Revised Amendments
<p>Section 2(1)</p> <p>"gas service pipe" means a pipe or any part thereof, other than a gas main, used for the purpose of conveying gas from a gas main to a gas service isolation valve, and includes any pipe owned by, or under the management or control of, a gas transporter which is used for the purpose of conveying gas from the gas service isolation valve to the meter at a consumer's premises;</p>	<p>Section 2(1) to be amended as follows:</p> <p>"gas service pipe" means a pipe or any part thereof, other than a gas main, used for the purpose of conveying gas from a gas main to a gas service isolation valve</p>	<p>The definition of "gas service pipe" should not extend to pipes after the gas service isolation valve</p> <p>The existing provisions and the proposed amendments to the Gas Act creates potential areas of dispute as the boundary point is subject to interpretation of ownership, control and management.</p> <p>A gas transporter's primary responsibility is to develop, operate and maintain the gas transmission and distribution network. Gas pipes within consumers' boundaries and premises should be the responsibility of the consumers. This placing of responsibility of gas pipes within consumers' boundaries on the consumers is the only way to ensure that these pipes are well maintained and are always ready for safe operations. There is an existing pool of Licensed Gas Service Workers ("LGSW") who can be engaged by the consumer to manage these pipes in their premises and ensure their safety. This is consistent with section 29(3)(b) of the Gas Act.</p>
<p>Section 2(1)</p> <p>"import", in relation to natural gas or LNG,</p>	<p>"import", in relation to natural gas or LNG, means to bring or cause to be</p>	<p>The definition of "import" should exclude the conveyance of gas by a gas transporter or a gas</p>

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means to bring or cause to be brought into Singapore by any means, the natural gas or LNG from any place outside Singapore, other than any such natural gas or LNG in transit or to be transhipped;	brought into Singapore by any means, the natural gas or LNG from any place outside Singapore, other than any such natural gas or LNG; () in transit or to be transhipped; <u>or</u> (a) <u>which is brought or caused to be brought into Singapore by a gas transporter or a gas transport agent on behalf of a gas importer;</u>	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.
Section 2(1) “relevant gas shipper”, in relation to a consumer, means any gas shipper who ships gas to the premises of the consumer;	“relevant gas shipper”, in relation to a consumer, means any gas shipper who ships gas to the premises of the consumer <u>or, if the consumer is itself shipping gas to its premises, the consumer;</u>	It is not correct to assume that the consumer and gas shipper will be different persons The gas consumer may itself be the gas shipper. The definition of “relevant gas shipper” should therefore be amended to include this situation.
Section 2(1) “shipping”, in relation to gas, means arranging with a gas transporter for gas to be introduced into, conveyed by and taken out of a gas pipeline owned by, or under the management or control of, the gas transporter, and “ship” shall be construed	“shipping”, in relation to gas, means arranging with, <u>whether before, on or after the appointed day,</u> a gas transporter for gas to be introduced into, conveyed by and taken out of a gas pipeline owned by, or under the management or control of, the gas transporter, and “ship” shall be	The definition of “shipping” should not be limited to the act of “arranging” In line with our previous comments, we would highlight that the use of the word “arranging” could lead to ambiguity since it could be interpreted to mean that “shipping” applies only to parties who enter into arrangements after the appointed day.

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accordingly;	construed accordingly;	
<p>Section 4(6A)</p> <p>(6A) The Authority shall be entitled without payment to keep any document or information, or any copy or extract thereof, furnished to it under subsection (1) or obtained under subsection (6).</p>	<p>(6A) The Authority shall be entitled without payment to keep any copy or extract of any document or information; or any copy or extract thereof, furnished to it under subsection (1) or obtained under subsection (6).</p>	<p>EMA should only be entitled to retain copies of documents</p> <p>As highlighted in our previous comments, the proposed amendment provides the EMA with the power to keep both originals and copies of documents furnished to it. There is no limit on the duration for which the EMA can keep such documents nor does the Act provide for an avenue by which a person may seek to obtain the return of such documents. Given the various statutory duties imposed on entities to retain records, the power granted to EMA should be limited to a power to retain copies only (as is the case under the Telecommunications Act).</p>
<p>Section 5(4)</p> <p>(a) to any member, officer or employee of the Authority or any agent, consultant, committee or panel acting for or under the direction of the Authority;</p> <p>(b) to the Minister or any agent, consultant, committee or panel acting for or under the direction of the Minister;</p>	<p>(a) on a confidential basis, to any member, officer or employee of the Authority or any agent, consultant, committee or panel acting for or under the direction of the Authority;</p> <p>(b) on a confidential basis, to the Minister or any agent, consultant, committee or panel acting for or under the</p>	<p>Disclosure of information/documents which are not in the public domain must be on a confidential basis</p> <p>As highlighted in our previous comments, given that the right to disclose information or documents includes disclosure to agents, consultants, committees and panels (which may well include persons in the gas industry), it is vital that the disclosure be made on a “confidential basis”.</p>

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	direction of the Minister;	
<p>Section 6(2A)</p> <p>(2A) Where an onshore receiving facility is to be managed or operated by a person for or on behalf of a principal (other than as an employee) —</p> <p>(a) if the principal is incorporated or has a place of business in Singapore —</p> <p style="padding-left: 40px;">(i) the principal shall, for the purpose of subsection (1), obtain a licence under section 7 to manage or operate the facility as principal; and</p> <p style="padding-left: 40px;">(ii) the person managing or operating the facility for or on behalf of the principal may, without a licence, do so; or</p> <p>(b) if the principal is not incorporated or does not have a place of business in Singapore —</p> <p style="padding-left: 40px;">(i) the principal shall appoint another person who is incorporated or has a</p>	<p>(2A) Where an onshore receiving facility is to be managed or operated by a person for or on behalf of a principal (other than as an employee) —</p> <p>(a) if the principal is incorporated or has a place of business in Singapore —</p> <p style="padding-left: 40px;">(i) the principal shall, for the purpose of subsection (1), be the party required to obtain a licence under section 7 to manage or operate the onshore receiving facility; and</p> <p style="padding-left: 40px;">(ii) the person managing or operating the onshore receiving facility for or on behalf of the principal shall not be required to obtain a licence under section 7 to manage or operate the onshore receiving facility; or</p> <p>(b) if the principal is not incorporated and does not have a place of business in</p>	<p>The drafting of section 6(2A)(b) could give rise to ambiguity</p> <p>Presumably, section 6(2A)(b) is intended to apply where a ORF is managed or operated by an agent for a principal which is not incorporated <u>and</u> does not have a place of business in Singapore. However, as currently drafted, section 6(2A)(b):</p> <p>(i) applies if the principal is not incorporated <u>or</u> does not have a place of business in Singapore;</p> <p>(ii) section 6(2A)(b)(i) appears to require the principal to appoint yet another person as an agent;</p> <p>(iii) 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.</p> <p>In addition, we would suggest that instead of having requirements in the statute in relation to the place of incorporation, such requirements can be stipulated by the</p>

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<p>place of business in Singapore to manage or operate the facility for or on his behalf (other than as an employee);</p> <p>(ii) the person so appointed shall obtain a licence under section 7 to manage or operate the facility for or on behalf of the principal; and</p> <p>(iii) the principal may, without a licence, manage or operate facility under section 7 as a principal.</p>	<p>Singapore —</p> <p>(i) the person managing or operating the onshore receiving facility for or on behalf of the principal must be incorporated or have a place of business in Singapore;</p> <p>(ii) the person managing or operating the onshore receiving facility for or on behalf of the principal shall, for the purpose of subsection (1), be the party required to obtain a licence under section 7 to manage or operate the onshore receiving facility; and</p> <p>(iii) the principal shall not be required to obtain a licence under section 7 to manage or operate the onshore receiving facility.</p>	<p>EMA as requirements (under subsidiary legislation or otherwise) for the grant of a gas licence. We would also suggest that, to avoid potential issues as to jurisdiction, the EMA should require that all gas licensees be a Singapore incorporated company or a LLP, business, partnership or branch of a foreign company registered in Singapore. In this regard, we would highlight that such a requirement is common in other regulated industries in Singapore, e.g. telecommunications.</p>
<p>Section 7</p>	<p>A new subsection (4A) to be inserted into Section 7 as follows:</p> <p>"(4A) A gas transporter agent's licence granted or extended for the purpose</p>	<p>Agents should be regulated differently from gas transporters</p> <p>The licensing of agents should also take into account the nature of the roles undertaken by such parties. Given that</p>

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	<p>referred to in section 6(1)(b) shall specify which of the duties and obligations (and no other) imposed under the gas transporter under this Act or any licence issued to the gas transporter shall be discharged by the gas transport agent."</p>	<p>such parties have significantly different rewards from the gas transporter with whom they contract, it is inappropriate that they be subject to the same risks (i.e. subject to the same obligations, fines and penalties as the gas transporter). This is also commercially untenable since such parties would then have to insure themselves against such risks, the costs associated with which will invariably be passed on to the gas transporter and eventually the gas consumers.</p> <p>In particular, in relation to the obligations imposed, it is inappropriate that an act should be capable of amounting to a breach by both the gas transporter as well as its agent or and that the EMA should be entitled to take action against both parties. Accordingly, there should be a clear distinction drawn between the obligations, fines and penalties to which such agents are subject and those imposed on a gas transporter especially if SPPG is to be the agent.</p>
<p>Section 7(5)</p> <p>(5) A gas licence shall not be granted to any person, if the grant of the licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any duty imposed on the person under this Act,</p>	<p>(5) A gas licence shall not be granted to any person, if the grant of the licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any duty imposed on the person under this Act, the Electricity Act</p>	<p>Section 7(5) is redundant and creates ambiguity</p> <p>Given the existence of sections 7(6) to 7(6E) and the discretion which the EMA generally possesses in relation to the grant of licences, it is not clear why there is a need for section 7(5). Section 7(5) appears to be an unnecessary attempt to provide for unforeseen conflicts other than those</p>

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<p>the Electricity Act (Cap. 89A) or any licence granted to him under this section.</p>	<p>(Cap. 89A) or any <u>other</u> licence granted to him under this section.”</p>	<p>stipulated in sections 7(6) to 7(6E). Such wide reaching provisions will only result in ambiguity and uncertainty and create a licensing regime where the requirements for obtaining a licence are unclear which may deter potential entrants and new investments. We would suggest that the proposed section 7(5) not be adopted in its entirety or limited to specific electricity licensees. In addition, as highlighted in our previous comments, this provision is unnecessary since any failure to discharge a duty imposed under the Gas Act, the Electricity Act or any licence would amount to an offence and could lead to a cancellation of the relevant licence.</p> <p>In any event, for clarity, the word “other” should be included.</p>
<p>Section 8(3)</p> <p>(3) If any condition of an exemption granted to a class of persons is not complied with by any person of that class, the Authority may give to that person a direction declaring that the exemption is revoked, in so far as it relates to that person, to such extent and from such date</p>	<p>(3) If any condition of an exemption granted to a class of persons is not complied with by any person of that class, the Authority may:</p> <p><u>(a)</u> give to that person a direction declaring that the exemption is revoked, in so far as it relates to that person, to such extent and from such date as may be</p>	<p>A wider range of penalties should be provided for</p> <p>As highlighted in our previous comments, we believe that the EMA should have greater discretion in the types of penalties which the EMA may impose.</p>

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as may be specified in the direction.	<p>specified in the direction:-</p> <p><u>(b) direct the exempt person to do or not do such things as are specified in such direction; or</u></p> <p><u>(c) require the exempt person to pay a financial penalty of an amount not exceeding 10% of the annual turnover of that part of the person's business in respect of which the person has been granted an exemption, ascertained from the person's latest audited accounts, or an amount not exceeding \$1 million, whichever is the higher.</u></p>	
<p>Section 9(2)(m)</p> <p>(m) requiring the gas licensee to provide a performance bond, guarantee or any other form of security on such terms and conditions as the Authority may determine; and</p>	<p>Proposed section 9(2)(m) not to be adopted.</p>	<p>The requirement for a performance bond or other security is onerous and unusual</p> <p>Presently, the EMA may only require the provision of a performance bond, guarantee or other form of security where a licensee is in breach of its licence or the Gas Act. The proposed section 9(2)(m) would allow the EMA to require licensees to provide a performance bond, guarantee or other form of security at any time. It also appears that the</p>

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		<p>provision of such security can be required for an indefinite time (e.g. throughout the duration of the licence).</p> <p>The provision of security in any form would cause a licensee to incur various expenses and may have an impact on the financial viability of the licensee. It is also a highly onerous and unusual requirement. For example, the EMA does not have such a power under the Electricity Act and in the telecommunications industry, performance bonds/security are only required by the IDA to ensure committed capital investment (for facilities-based operations licensees only) and for licensees collecting money deposits.</p> <p>We would therefore urge that section 9(2)(m) not be adopted.</p>
<p>Section 9(2)(n) (n) where the gas licensee is not incorporated or does not have a place of business in Singapore, requiring the gas licensee to appoint, and notify the Authority of, a person who has a residential address or a place of business in Singapore</p>	<p>Proposed section 9(2)(n) not to be adopted.</p>	<p>Section 9(2)(n) is redundant</p> <p>This provision is probably redundant - it is unlikely that a gas licensee would not have established a business presence in Singapore - it would otherwise be unlawfully carrying on business in Singapore. In any event, as suggested above (see comments on section 6(2A)), the EMA may wish to consider imposing a requirement that gas licensees be</p>

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to accept service on behalf of the gas licensee of any notice, order or document required or authorised by this Act to be given or served on the gas licensee.		incorporated or registered in Singapore.
<p>Section 19</p> <p>19. If the Authority is satisfied that a gas licensee is contravening, is likely to contravene or has contravened any condition of its gas licence or code of practice or other standard of performance applicable to the licensee, any provision of this Act, or any direction (including a direction under paragraph (a)) issued by the Minister or the Authority to, or applicable to, the gas licensee, the Authority may by notice in writing to the gas licensee do one or more of the following:</p> <p>(a) direct the gas licensee to do or not to do such things as are specified in such direction;</p> <p>(b) require the gas licensee to provide a</p>	<p>A new subsection 19(2) to be inserted as follows:</p> <p>“The Authority shall not require a gas licensee or exempt person to pay a financial penalty in respect of any contravention referred to in subsection (1) which is an offence under this Act or where the Authority has required the payment of a financial penalty in accordance with the terms of section 18(2).”</p>	<p>The overlap in the enforcement provisions under sections 18 and 19 should be removed.</p> <p>There seems to be an element of overlap between the enforcement provisions of section 18 and section 19. Under section 18, the EMA can revoke / suspend the licence and require payment of a financial penalty “in addition to any sanction imposed under section 19”. Section 19(c) contains the same financial penalty and therefore a gas licensee (including a transporter) who has breached a licence condition so important that it entitles the EMA to revoke or suspend the licence could be required to pay the financial penalty twice, once under section 18 and again under section 19, in addition to being asked to provide credit support.</p>

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<p>performance bond, guarantee or other form of security on such terms and conditions as the Authority may determine; and</p> <p>(c) where the gas licensee is contravening or has so contravened such condition, provision or direction, require the payment of a financial penalty of an amount not exceeding 10% of the annual turnover of the gas licensee’s licensed gas business ascertained from its latest audited accounts, or an amount not exceeding \$1 million, whichever is higher.</p>		
<p>Section 20</p> <p>“Any person who is aggrieved by any decision of the Authority under section 18 or 19 may, within 14 days after the person has been given the notice in writing referred to in those sections, appeal to the Minister whose decision shall be final”. This section has been repealed.</p>	<p>Section 83(1) to be amended by:</p> <ul style="list-style-type: none"> - inserting immediately after paragraph (a) of subsection (1) the following subsection: “(aa) a gas licensee who wishes to appeal against a decision of the Authority made under section 18 or section 19” - inserting immediately after paragraph (a) of subsection (2) the following subsection: 	<p>The right of an appeal against a decision of the EMA to revoke or suspend a licence should not be limited to a right of appeal to the Minister.</p> <p>As highlighted in our previous comments, 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. This means that the only remedy available to a party who wish to dispute the decision of the EMA is to apply to the Minister for resolution under the amended section 93,</p>

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	“(aa) of the receipt of a decision of the Authority in the exercise of its discretion under section 18 and section 19”.	<p>within 14 days of the receipt of the decision or direction. It would be preferable if the appeal procedure was to involve a court or panel of professionals in order to assure independence of proceedings.</p> <p>Considering the impact that a decision of the Authority can have on a gas licensee’s business, including revocation of licence, it is essential that a fair and independent procedure is in place to challenge the decision.</p> <p>Although we note that the new section 93(5) allows the Minister to refer an appeal lodged under section 93 to an Appeal Panel if he considers the issue too complex, this is left to his discretion. Further section 83(1) restricts the application of such section 83 to challenges to modifications of gas licences conditions and to decision by the EMA relating to competition. It does not cover challenges to decisions taken on other grounds. It is therefore inconsistent with the wording of the new section 93(5).</p>
Section 21 and other provisions		What constitutes a gas pipeline or gas pipeline network

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<p>21. —(1) It shall be the duty of a gas transporter —</p> <p>(a) to develop and maintain a safe, efficient, reliable and economical gas pipeline or gas pipeline network for the conveyance of gas;</p> <p>(b) subject to paragraph (a), to comply, so far as it is economical to do so, with any reasonable request to connect to that gas pipeline or gas pipeline network, and convey gas by means of that gas pipeline or gas pipeline network to, any premises; and</p> <p>(c) to carry on its licensed gas business at all times in such a manner so as not to prevent, restrict or otherwise hinder the development of competition in any gas market in Singapore.</p> <p>(2) It shall also be the duty of a gas transporter to avoid undue preference or undue discrimination —</p> <p>(a) in the terms on which it undertakes the</p>		<p>under the management or control of a gas transporter must be expressly defined</p> <p>In section 21 and many other provisions throughout the Gas Act, the gas transporter’s obligations have been expanded to include gas pipelines or a gas pipeline network under the management or control of a gas transporter.</p> <p>While we appreciate the concerns giving rise to this change, we believe that it is essential that what constitutes a gas pipeline or gas pipeline network under the management or control of a gas transporter must be expressly defined, particularly given the very wide definitions of “gas pipeline” and “gas pipeline network”.</p> <p>In particular, it should be clarified that a gas pipeline or any part of a gas pipeline network after the gas service isolation valve will not be considered to be under the management or control of a gas transporter. In addition, it should be stipulated that a gas pipeline or gas pipeline network, or part thereof, should, at a minimum, not be considered to be under the management or control of a gas transporter simply because:</p> <p>(a) such gas pipeline or gas pipeline network or</p>

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<p>conveyance of gas by any gas pipeline or gas pipeline network owned by, or under the management or control of, the gas transporter; or</p> <p>(b) in the connection of premises to such a gas pipeline or gas pipeline network.</p>		<p>part thereof is or will be used by the gas transporter for the conveyance of gas;</p> <p>(b) the flow of gas conveyed by the gas transporter through such gas pipeline or gas pipeline network or part thereof;</p> <p>(c) such gas pipeline or gas pipeline network or part thereof is located on land owned or occupied by the gas transporter; or</p> <p>(d) such gas pipeline or gas pipeline network or part thereof is maintained by or under the care of the gas transporter.</p>
<p>Section 22</p> <p>22. —(1) Subject to the provisions of this Act, a gas transporter shall, on the request of the owner or occupier of any premises, provide and install a gas service isolation valve, provide and lay a gas service pipe from the relevant gas main to the gas service isolation valve and connect such premises to the relevant gas main.</p> <p>(2) Where any connection is made under</p>	<p>22.—(1) Subject to the provisions of this Act, a gas transporter shall, on the request of the owner or occupier of any premises, provide and install a gas service isolation valve, provide and lay a gas service pipe from the relevant gas main to the gas service isolation valve and <u>undertake such other work as the gas transporter may deem necessary to</u> connect such premises to the relevant gas main.</p>	<p>The rights and obligations of the gas transporter in relation to providing and maintaining connections should be clarified</p> <p>The scope of the gas transporter’s obligations under section 22 to connect and maintain a connection must be clearly defined. It is also essential that provision be made for the recovery of the costs incurred by the gas transporter in connecting and maintaining a connection if such costs cannot be recovered by any other means. To achieve this, changes to section 22 will need to be made to address the</p>

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<p>subsection (1), the costs of providing and installing the gas service isolation valve, providing and laying the gas service pipe and making the connection, shall only be recovered by the gas transporter from the owner or occupier, as the case may be, to the extent they have not been previously recovered from any other person.</p> <p>(3) Where any premises are connected to a relevant gas mains under this Act, any written law which has been repealed or any arrangement entered into by the owner or occupier of the premises prior to the appointed day, the gas transporter shall maintain the connection until it is no longer required by the owner or occupier of the premises.</p> <p>(4) Nothing in subsection (1) or (3) shall require the gas transporter to connect, or maintain a connection of, a relevant gas main to any premises, if —</p> <p>(a) the gas transporter is unable to do</p>	<p>(2) Where any connection is made under subsection (1), the costs of providing and installing the gas service isolation valve, providing and laying the gas service pipe, <u>undertaking such other works as the gas transporter may deem necessary for the connection</u> and making the connection, shall only be recovered-recoverable by the gas transporter from the owner or occupier, as the case may be, to the extent they have not been previously recovered from any other person.</p> <p>(3) Where any premises are connected to a relevant gas mains under this Act, any written law which has been repealed or any arrangement entered into by the owner or occupier of the premises prior to the appointed day, the gas transporter shall maintain the connection until <u>the gas transporter is notified by the owner or occupier of the premises that such connection</u> it is no longer required by the</p>	<p>following deficiencies with the proposed language of section 22:</p> <ul style="list-style-type: none"> (a) the only pre-requisite stipulated under section 22(1) is a request by the owner or occupier. (b) section 22(5) envisages that the gas main may need to be enlarged or other works undertaken, in contrast to section 22(1). (c) section 22(3) imposes on the gas transporter the burden of establishing when an owner or occupier no longer requires the connection. (d) section 22(3) is silent on the recovery of disconnection costs. (e) section 22(4)(b) is too limited. <p>We would also highlight that there appears to be an inconsistency between section 22(5)(b)(ii) and section 22(2) in that section 22(5)(b)(ii) refers to “the extent to which costs can be recovered from other persons” whereas section 22(2) refers to “the extent [to which costs] have not been previously recovered from any other person”.</p> <p>Section 22(5) should also be amended to provide for the option for the costs to be borne by the relevant gas shipper</p>

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<p>so by circumstances beyond its control; or</p> <p>(b) there exist circumstances which by reason of the gas transporter doing so would involve a danger to the public.</p> <p>(5) If the connection, or the maintenance of the connection, of any premises to a relevant gas main under this section —</p> <p>(a) will result in a new or an increased supply of gas to the premises; and</p> <p>(b) the new or increased supply of gas cannot be made without the laying of a new, or the enlargement of an existing, gas main or the undertaking of other works related to the conveyance of gas,</p> <p>the gas transporter may refuse to make or maintain the connection until such time as the owner or occupier referred to in subsection (1) or (3) enters into an agreement with the gas transporter for the payment of a reasonable amount to the gas transporter having regard to —</p>	<p>owner or occupier of the premises. <u>The costs of disconnecting such premises, removing such connection and any other work related to the disconnection shall be recoverable by the gas transporter from the owner or occupier of such premises, as the case may be.</u></p> <p>(4) Nothing in subsection (1) or (3) shall require the gas transporter to connect, or maintain a connection of, <u>or undertake any work related to connecting or maintaining a connection of,</u> a relevant gas main to any premises, if —</p> <p>(a) the gas transporter is unable to do so by circumstances beyond its control; or</p> <p>(b) <u>the gas transporter is of the view that to do so could there exist circumstances which by reason of the gas transporter doing so would involve or could result in</u> a danger to the public.</p> <p>(5) <u>The gas transporter shall not be under</u></p>	<p>or the relevant gas retailer (which is the practice presently).</p>

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<p>(i) the costs to be incurred by the gas transporter in laying or enlarging the relevant gas main or undertaking other works related to the conveyance of gas; and</p> <p>(ii) the extent to which such costs can be recovered from other persons.</p> <p>(6) The owner or occupier of any premises shall grant the gas transporter rights of access for laying, installing, maintaining, repairing, altering or removing any gas service isolation valve or gas service pipe.</p>	<p><u>any obligation under this section to connect or maintain or undertake any work related to</u> If the connection, or the maintenance of the connection, of any premises to a relevant gas main under this section —</p> <p>(a) — will result in a new or an increased supply of gas to the premises; and</p> <p>(b) — the new or increased supply of gas cannot be made without the laying of a new, or the enlargement of an existing, gas main or the undertaking of other works related to the conveyance of gas, the gas transporter may refuse to make or maintain the connection until such time as the <u>relevant gas retailer, relevant gas shipper or the</u> owner or occupier referred to in subsection (1) or (3) enters into an agreement with the gas transporter for the payment of a reasonable amount to the gas transporter having regard to —</p>	

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	<p>(i) the costs to be incurred by the gas transporter in laying or enlarging the relevant gas main or undertaking other works related to the conveyance <u>performance of the gas transporter's obligations under this section of gas</u>; and</p> <p>(ii) the extent to which such costs can be recovered from other persons.</p> <p>(6) The owner or occupier of any premises shall grant the gas transporter rights of access for laying, installing, maintaining, repairing, altering or removing any gas service isolation valve or gas service pipe <u>or undertaking any other works related to the performance of the gas transporter's obligations under this section.</u></p>	
<p>Section 29(3)</p> <p>(3)The Authority may, from time to time, prescribe that any person or class of persons shall be responsible for the</p>	<p>(3)The Authority may, from time to time, prescribe that any person or class of persons shall be responsible for the <u>inspection.</u> maintenance, repair or renewal of any part of a gas installation or any part</p>	<p>Section 29(3) should include a reference to inspection</p> <p>For consistency with section 29(4), section 29(3) should include a reference to inspection.</p>

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maintenance, repair or renewal 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.	of a gas service pipe linking a gas service isolation valve to the gas installation.	
<p>Section 32</p> <p>32. —(1)Subject to this section, no person other than a gas transporter shall commence or carry out, or cause or permit the commencement or carrying out of, any earthworks within the vicinity of any gas plant or gas pipe in a gas pipeline network owned by, or under the management or control of, by the gas transporter unless the person —</p> <p>(a) has given to the gas transporter not less than 7 days notice in writing of the date on which it is proposed to commence the earthworks;</p> <p>(b) has obtained from the gas transporter the necessary information on the location of the gas plant or gas pipe; and</p> <p>(c) has consulted the gas transporter on the steps to be taken to prevent the gas plant or gas pipe from being damaged</p>	<p>A new subsection (4A) and a new subsection (4B) to be inserted in section 32 as follows:</p> <p>"(4A) Where a person who carries out any earthworks referred to in subsection (1) refuses or fails to comply with any of his duties under subsection (3), the Authority may, by notice in writing, order him to stop any earthworks referred to in subsection (1) until such time as the notice is revoked or until such time as the duties of such person under subsection (3) have been complied with.</p> <p>(4B) Any person who fails to comply with a notice issued under subsection (4A) shall be guilty of an offence and shall, in addition to any sanction imposed under subsection (6), be liable on conviction to a fine not exceeding \$10,000 for every day during which the notice is not complied</p>	<p>The EMA should have the power to issue a stop work order</p> <p>As highlighted in our previous comments, given the importance of ensuring the safety of the gas pipeline network, we believe that the EMA should be granted the power to issue a stop work order to the person seeking to carry out earthworks if such person refuses or fails to comply with section 32(3).</p>

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<p>while the earthworks are being carried out.</p> <p>(2) The Authority may, if it thinks fit, modify the period for which a notice under subsection (1)(a) is to be given to a gas transporter.</p> <p>(3) It shall be the duty of the person who carries out any earthworks referred to in subsection (1) —</p> <p>(a) to comply with all reasonable requirements of the gas transporter for the prevention of damage to the gas plant or gas pipe;</p> <p>(b) to ensure that reasonable precautions are taken when carrying out such earthworks to prevent any damage to the gas plant or gas pipe; and</p> <p>(c) to allow the gas transporter reasonable access to the work site for the purpose of inspecting or taking any necessary measures to protect the gas plant or gas pipe.</p>	<p>with or to imprisonment for a term not exceeding 3 months or to both."</p>	
<p>Section 32(3)</p> <p>(3) It shall be the duty of the person who</p>	<p>(3) It shall be the duty of the person who carries out any earthworks referred to in</p>	<p>The use of a “reasonable” standard will lead to ambiguity and disputes</p>

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<p>carries out any earthworks referred to in subsection (1) —</p> <p>(a) to comply with all reasonable requirements of the gas transporter for the prevention of damage to the gas plant or gas pipe;</p> <p>(b) to ensure that reasonable precautions are taken when carrying out such earthworks to prevent any damage to the gas plant or gas pipe; and</p> <p>(c) to allow the gas transporter reasonable access to the work site for the purpose of inspecting or taking any necessary measures to protect the gas plant or gas pipe.</p>	<p>subsection (1) —</p> <p>(a) to comply with all reasonable requirements of the gas transporter for the prevention of damage to the gas plant or gas pipe;</p> <p>(b) to ensure that reasonable precautions are taken when carrying out such earthworks to prevent any damage to the gas plant or gas pipe; and</p> <p>(c) to allow the gas transporter reasonable access to the work site for the purpose of inspecting or taking any necessary measures to protect the gas plant or gas pipe.</p>	<p>As what would constitute a reasonable requirement/precaution/access under section 32(3)(a) is subjective and ambiguous, this qualification would allow persons to challenge and thus refuse to comply with section 32(3) on the basis that the gas transporter’s requirements are not reasonable. As the gas transporter does not have the power to stop the carrying out of the earthworks notwithstanding the existence of a dispute as to whether the requirements of the gas transporter are reasonable, the person carrying out the earthworks must be under an absolute duty to comply with the gas transporter’s requirements.</p>
<p>Section 32(4)(c)</p> <p>(c) to take all such measures at the work site as may be reasonable and necessary for the protection of the gas pipe and, in so doing, the gas transporter shall have regard to the potential risks and</p>	<p>(c) to take all such measures <u>(save for such precautions advised by the gas transporter under subsection (4)(b))</u> at the work site as may be reasonable and necessary for the protection of the gas pipe and, in so doing, the gas transporter</p>	<p>The gas transporter’s obligation exclude the obligations of the person carrying out the earthworks and the costs of preventive measures should be borne by the party carrying out the earthworks</p> <p>As currently drafted, there is an overlap between the obligations of the gas transporter and those of the person</p>

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<p>dangers that can arise from any damage to the gas plant or gas pipe.</p>	<p>shall have regard to the potential risks and dangers that can arise from any damage to the gas plant or gas pipe <u>and the gas transporter may require any expenses reasonably incurred in taking such measures to be defrayed by the person who has given him the notice.”</u>.</p>	<p>carrying out the earthworks and would appear to require the gas transporter to undertake the preventive measures. This is inappropriate given that the person who is carrying out the works is the person who has control over the work site and is thus best placed to take the measures necessary to prevent damage. The gas transporter does not have control of the work site and will not be present on the site at all material times. Rather, the duty of the gas transporter should be limited to determining what measures need to be undertaken by the person carrying out the works and should not include an obligation to carry out those precautions which the gas transporter has notified the person carrying out the earthworks to undertake. To require the gas transporter to undertake preventive measures (when it is not the party having control over the work site) could also impose, on the gas transporter, additional legal obligations and liabilities (e.g. under the Workplace Safety and Health Act 2006) which the gas transporter will not be in a position to discharge (by virtue of not being in control of the work site). Furthermore, the costs incurred by the gas transporter should be reimbursed by the person who is carrying out the earthworks (as it is unfair for the gas transporter to have to</p>

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		<p>bear such costs which it would not have ordinarily incurred but for the works).</p> <p>In line with the general obligation under section 42A that the party carrying out the earthworks is obliged to ensure that no damage occurs to a gas pipe, such party should be required to compensate the gas transporter for the costs of the measures required to be undertaken by the gas transporter to protect the gas pipe.</p>
<p>Section 32(6)</p> <p>(6) The person referred to in subsection (5) shall, as soon as practicable but not more than 24 hours after the earthworks have been commenced or carried out, give to the gas transporter notice in writing stating the nature and extent of those earthworks.</p>	<p>(6) The person referred to in subsection (5) shall, as soon as practicable but not more than 24 hours after <u>immediately following the commencement of the earthworks</u> have been commenced or carried out, give to the gas transporter notice in writing stating the nature and extent of those earthworks.</p>	<p>The gas transporter must be given immediate notice of any emergency earthworks</p> <p>Given the potentially serious consequences should any damage occur to a gas pipeline and the ambiguity as to when earthworks are necessary for public or private safety, this provision should either be removed in its entirety or it must require the gas transporter to be given immediate notice of any emergency earthworks.</p>
<p>Section 32A</p> <p>(2) Notwithstanding subsection (1), any person who, in the course of carrying out any earthworks, damages or suffers to be damaged any gas plant or gas pipe in a gas</p>	<p>(2) Notwithstanding subsection (1), any person who, in the course of carrying out any earthworks, damages, <u>causes</u> or suffers to be damaged any gas plant or gas pipe in a gas pipeline network owned by,</p>	<p>The relationship between section 32 and section 32A is unclear</p> <p>Section 32A should be revised further to clarify how it should operate vis-à-vis section 32 (in particular section 32(5) and the relationship between section 32A(4) and</p>

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<p>pipeline network owned by, or under the management or control of, a gas transporter shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million or to imprisonment for a term not exceeding 5 years or to both.</p>	<p>or under the management or control of, a gas transporter shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million or to imprisonment for a term not exceeding 5 years or to both.</p>	<p>sections 32(3), (4) and (8)).</p> <p>The relationship between sections 32A(1) and 32A(2) is unclear</p> <p>Presumably, section 32A(1) is intended to be narrower in scope than section 32A(2) and is intended to apply to the more culpable offence of wilful damage or destruction. If so, it is unclear why the punishment provided for under section 32A(1) is less severe than that provided for under section 32A(2).</p> <p>It is also unclear why section 32A(1) refers to “removes, destroys or damages” whereas section 32A(2) refers only to “damages” - this could be interpreted as meaning that removal or destruction would not amount to offences under section 32A(2).</p> <p>Section 32A(2) should apply to any damage howsoever caused</p> <p>Section 32A, as presently drafted, does not apply to damage which is not wilfully caused and which does not occur in the course of earthworks. Given that some gas pipelines are not buried (and thus in greater need of protection from damage), section 32A(2) should be revised to apply to any damage</p>

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		howsoever caused.
<p>Section 32A(3)</p> <p>(3) Where an offence under subsection (2) is committed by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under that subsection in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance or that it was not attributable to any neglect on his part.</p>	<p>(3) Where an offence under subsection (2) is committed by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under that subsection in the same manner and to the same extent as if he has personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance or <u>and</u> that it was not attributable to any neglect on his part.</p>	<p>The word “or” in the last line should be replaced with “and”</p> <p>As presently drafted, the principal would be able to avoid liability by satisfying either of the two conditions. The principal will be able to avoid liability by either proving to the satisfaction of the court that he had not directed the commission of the offence or by showing that there was no neglect on his part. Section 32A(3) should be revised such that the principal can only avoid liability by satisfying both conditions i.e. the principal has to show that he did not direct the commission of the offence and also that the commission was not attributable to neglect on his part</p>
<p>Sections 33 and 34</p> <p>33. —(1) A special administration order is an order of the Minister made in</p>	<p>To insert a new subsection 4(A):</p> <p>"(4A) Any order made by the Minister under subsection (1) must be published in</p>	<p>The issue of a special administration order by the Minister should be published. It should also be stipulated that the EMA, in stepping-in under a special</p>

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<p>accordance with section 34 in relation to a gas transporter or a gas transporter’s agent directing that, during the period for which the order is in force, the affairs, business and property of that gas transporter or a gas transporter’s agent shall be managed directly or indirectly by the Authority —</p> <p>(a) for securing one or more of the purposes of such an order set out in subsection (2); and</p> <p>(b) in a manner which protects the respective interests of the shareholders and creditors of the gas transporter or a gas transporter’s agent and relevant shippers.</p> <p>(2) The purposes referred to in subsection (1) (a) are —</p> <p>(a) the security and reliability of the conveyance of gas by the gas transporter or a gas transporter’s agent to consumers’ premises;</p> <p>(b) the survival of the gas transporter or a gas transporter’s agent or the whole or part</p>	<p>such manner as will secure adequate publicity."</p>	<p>administration order will assume the liabilities of the licensee which arise as a result of the EMA’s (management or mismanagement).</p> <p>As highlighted in our previous comments, under this section, the Minister may issue a special administration order (if the Minister is satisfied that, amongst other things, it is in the public interest to do so) requiring the EMA to manage the business of PowerGas.</p> <p>Unlike other liberalised gas market jurisdictions, the “step-in” powers which may be exercised by the EMA upon an order of the Minister is not accompanied by statutory provisions which specify that the step-in authority (in this case, the EMA) will be required to assume the liabilities of the licensee which arise as a result of its management (or mismanagement) during the step-in period. In the absence of such provisions, it appears that any further liabilities incurred by PowerGas during the time that it is managed by the EMA pursuant to sections 33 and 34 will be borne by PowerGas.</p>

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<p>of its licensed gas business, as a going concern;</p> <p>(c) the transfer to another company, or (with respect to different parts of the area to which the gas transporter’s licence or the gas transporter’s agent’s licence relates, or different parts of its licensed gas business) to 2 or more different companies, as a going concern, of so much of the licensed gas business of the gas transporter or the gas transporter’s agent as is necessary to transfer in order to ensure that the functions and duties which have been vested in the gas transporter or the gas transporter’s agent by virtue of its licence may be properly carried out; or</p> <p>(d) the carrying out of the functions and duties which have been vested in the gas transporter or a gas transporter’s agent pending the making of the transfer and the vesting of those functions and duties in the other company or companies.</p> <p>(3) The Minister may make regulations for giving effect to this section and section 34,</p>		<p>A provision should also be put in place ensuring that there would be adequate publicity when EMA steps in, similar to section 29(4) of the Electricity Act, Cap 89A.</p>

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<p>including regulations governing the transfer of the licensed gas business referred to in subsection (2) (c), and making provision for applying, omitting or modifying provisions of Part VIIIA of the Companies Act (Cap. 50) where a special administration order is made.</p> <p>Power to make special administration order, etc.</p> <p>34. —(1) If, on an application made to the Minister by the Authority, the Minister is satisfied that any one or more of the grounds specified in subsection (2) are satisfied in relation to a gas transporter, or a gas transporter’s agent the Minister may make any one or more of the following orders:</p> <p>(a) a special administration order in relation to the gas transporter or the gas transporter’s agent;</p> <p>(b) an order requiring the gas transporter or the gas transporter’s agent immediately to take any action or to do or not to do any act or thing in relation to its licensed gas</p>		

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<p>business as the Minister may consider necessary;</p> <p>(c) an order appointing a person to advise the gas transporter or the gas transporter's agent on the proper conduct of its licensed gas business.</p> <p>(2) The grounds referred to in subsection (1) are —</p> <p>(a) the gas transporter or the gas transporter's agent is or is likely to be unable to pay its debts;</p> <p>(b) the occurrence of a public emergency;</p> <p>(c) the Minister considers it in the interest of the security and reliability of the conveyance of gas to consumers' premises; or</p> <p>(d) the Minister otherwise considers it in the public interest.</p> <p>(3) Notice of any application under subsection (1) shall be given immediately</p>		

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<p>by the Authority to such persons and in such manner as may be determined by the Authority.</p> <p>(4) Any decision of the Minister under subsection (1) shall be final.</p> <p>(5) For the purposes of this section, a gas transporter or a gas transporter’s agent, being a company, is unable to pay its debts if it is deemed to be so unable under section 254 (2) of the Companies Act (Cap. 50).</p> <p>(6) Notwithstanding any written law —</p> <p>(a) a gas transporter or a gas transporter’s agent shall not be wound up voluntarily without the consent of the Authority;</p> <p>(b) no judicial management order under Part VIIIA of the Companies Act shall be made in relation to a gas transporter or a gas transporter’s agent;</p> <p>(c) no step shall be taken by any person to enforce any security over the property of a</p>		

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<p>gas transporter or a gas transporter’s agent except where that person has served 14 days’ notice of his intention to take that step on the Authority; and</p> <p>(d) no step shall be taken by any person to execute or enforce a judgment or order of court obtained against a gas transporter or a gas transporter’s agent, except where that person has served 14 days’ notice of his intention to take that step on the Authority.</p> <p>(7) The Authority shall be a party to any proceedings under the Companies Act relating to the winding up of the affairs of a gas transporter or a gas transporter’s agent.</p>		
<p>Section 38(8B)</p> <p>(8B) No action, suit or other legal proceedings shall lie against —</p> <p>(a) any party to a contract for failing, neglecting or refusing to carry out any act required by the contract; or</p> <p>(b) any person for failing, neglecting or</p>	<p>(8B) No action, suit or other legal proceedings shall lie <u>or be brought or maintained</u> against —</p> <p>(a) any party to a contract for failing, neglecting or refusing to carry out any act required by the contract <u>or for the payment or recovery of any sum of money payable by such party as a result</u></p>	<p>Section 38(8B) does not provide for sufficient protection against suits</p> <p>Section 38(8B) seeks to grant a person which is required to comply with a direction made by the EMA with immunity against suits. However, this may not be inadequate to grant protection against legal proceedings brought outside Singapore. Offshore pipeline agreements are very commonly governed by foreign laws, and provide for</p>

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<p>refusing to carry out any act under any written law, where such failure, neglect or refusal is solely attributable to, or occasioned by, the compliance by that party or person with any direction of the Authority under this section.</p>	<p><u>of such failure, neglect or refusal</u>; or (b) any person for failing, neglecting or refusing to carry out any act under any written law <u>or for the payment or recovery of any sum of money payable by such party as a result of such failure, neglect or refusal</u>, where such failure, neglect or refusal is solely attributable to, or occasioned by, the compliance by that party or person with any direction of the Authority under this section <u>and any person who brings or maintains or threatens to bring or maintain any such action, suit or other legal proceedings in any jurisdiction shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$1 million, and in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day or part thereof during which the offence continues after conviction</u>.</p>	<p>dispute resolution in a foreign country. The tribunal in the foreign country is not bound by Section 38(8B) – particularly in respect of any pipeline and related assets which are located outside Singapore.</p> <p>While the Gas Act cannot be amended to be binding on foreign courts and tribunals, to minimise the risk faced by the owner of a relevant facility, section 38(8B) should be revised to provide that the bringing of (or threatening to bring) any proceedings in any jurisdiction will constitute an offence. The language of section 38(8B) should also be revised to provide that actions cannot be brought in Singapore in respect of foreign judgments and awards. In the event such provisions are not adopted, PowerGas should be adequately indemnified.</p>

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<p>Section 38A</p> <p>38A.—(1) Upon the application of any person who is unable to enter into an arrangement relating to the allocation of gas in any offshore gas pipeline, the Authority may give directions to —</p> <p>(a) the applicant; and</p> <p>(b) every person whose gas is being conveyed through the offshore gas pipeline,</p> <p>requiring the persons referred to in paragraphs (a) and (b) to enter into such arrangement for the allocation of gas in the offshore gas pipeline, and to take such steps to ensure that the arrangement is given effect to, as the Authority thinks fit.</p> <p>(2) Where the Authority has given directions for an arrangement for the allocation of gas in an offshore gas pipeline under subsection (1) as between the persons referred to in paragraphs (a) and</p>		<p>Section 38(A)should have provision for immunity against suits .</p> <p>Section 38A should (as in Section 38(8B)), include a provision to provide that a person who complies with the EMA’s directions under Section 38A(1) will not be exposed to actions, suits or other legal proceedings. In this regard, please also see our comments above in relation to Section 38(8B).</p>

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<p>(b) of that subsection —</p> <p>(a) any arrangement relating to the allocation of gas in that offshore gas pipeline in force immediately prior to the arrangement so specified by the Authority shall thereupon cease to apply; and</p> <p>(b) the arrangement directed by the Authority shall cease to apply as between the persons referred to in paragraphs (a) and (b) of subsection (1) upon those persons thereafter entering into an arrangement as between themselves for the allocation of gas in the offshore gas pipeline.</p> <p>(3) Any person who fails to comply with a direction of the Authority under this section shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$1 million, and in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day or part thereof during which the offence continues</p>		

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<p>after conviction.</p> <p>(4) In this section, “offshore gas pipeline” means any gas pipeline in Singapore waters used for the conveyance of gas to any onshore receiving facility.</p>		
<p>Section 39(1)</p> <p>39. —(1) Where any gas transmission pipeline, gas main, gas service pipe, internal pipe or other apparatus placed in, on, over, under, upon, along or across any premises for the use by, or supply or conveyance of gas to, the occupier of the premises becomes obstructed or in any way damaged, the occupier shall, immediately on the obstruction or damage coming to his knowledge, give notice thereof to the gas transporter or gas retailer.</p>	<p>39. —(1) Where any gas transmission pipeline, gas main, gas service pipe, internal pipe or other apparatus placed in, on, over, under, upon, along or across any premises for the use by, or supply or conveyance of gas to, the occupier of the premises becomes obstructed or in any way damaged, the occupier <u>of such premises</u> shall, immediately on the obstruction or damage coming to his knowledge, give notice thereof to the gas transporter or gas retailer.</p>	<p>Section 39(1) should not be limited to pipelines, mains and apparatus used to supply the occupier</p> <p>As the pipelines, mains, pipes and other apparatus may not be used for the purpose of supply or conveyance of gas to the occupier, section 39(1) should not be so limited.</p>
<p>Section 51</p> <p>51. If any consumer supplied with gas improperly uses or deals with the gas so as to interfere with the efficient conveyance,</p>	<p>51. If any consumer supplied with gas or to whom gas is shipped improperly uses or deals with the gas so as to interfere with the efficient conveyance, supply or</p>	<p>To also include reference to shipping of gas</p> <p>Amendment required as the language in the Gas Act draws a distinction between the “supply” of gas by a gas retailer and the “shipping” of gas by a gas shipper.</p>

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<p>supply or shipping of gas (whether to that person or to any other person), his premises may be disconnected by a gas transporter, the supply of gas to his premises may be discontinued by the relevant gas retailer, or the shipping of gas to his premises may be discontinued by the relevant gas shipper.</p>	<p>shipping of gas (whether to that person or to any other person), his premises may be disconnected by a gas transporter, the supply of gas to his premises may be discontinued by the relevant gas retailer, or the shipping of gas to his premises may be discontinued by the relevant gas shipper.</p>	
<p>Sections 61A and 61B</p> <p>61A. In this Part, unless the context otherwise requires —</p> <p>“gas” means natural gas;</p> <p>“designated gas transporter” means a gas transporter declared by the Authority, by notification in the Gazette, to be a designated gas transporter for the purposes of this Part;</p> <p>“gas pipeline network” means any gas pipeline network which is used by the designated gas transporter for the conveyance of gas from any onshore</p>	<p>61A. In this Part, unless the context otherwise requires —</p> <p>“gas” means natural gas;</p> <p>“designated onshore gas transporter” means a gas transporter declared licensed by the Authority, by notification in the Gazette, to be a designated gas transporter for the purposes of this Part to convey gas by means of the onshore gas pipeline network;</p> <p>“<u>onshore</u> gas pipeline network” means any the gas pipeline network <u>comprising of all gas transmission networks, all gas</u></p>	<p>The Gas Network Code should apply to all onshore gas transportation</p> <p>The proposed section 61A appears not to be inline with the fundamental principle of ensuring open access and the application of the Gas Network Code to all shippers. The proposed amendments seem to imply that the Gas Network Code would apply only to specific onshore gas pipeline networks and not the entire onshore gas pipeline network. The proposed amendments also introduce the concept of a “designated gas transporter” and the “relevant gas shipper”, which also seems to suggest that not all onshore gas transporters and onshore gas shippers would be subject to the Gas Network Code.</p> <p>In line with the principle of open access, all onshore gas</p>

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<p>receiving facility;</p> <p>“relevant gas shipper” means a gas shipper who ships gas by means of a gas pipeline network.</p> <p>Gas Network Code</p> <p>61B.—(1) The Authority shall issue a Gas Network Code for the use and operation of any gas pipeline network, which shall include the following:</p> <p>(a) the governing of arrangements between the designated gas transporter and the relevant gas shippers for the purpose of enabling or ensuring that —</p> <p>(i) no person is prevented from gaining access to the gas pipeline network; and</p> <p>(ii) there is no undue discrimination for or against any person’s access to the gas pipeline network; (b) the governing of the activities of the designated gas transporter and the relevant gas shippers;</p> <p>(c) the establishing and governing of the</p>	<p><u>mains networks and all gas service pipes</u> which is-are or may be used by the designated gas transporter for the conveyance of gas from any onshore receiving facility;</p> <p>“relevant gas shipper” means a gas shipper who ships gas by means of <u>the onshore-a</u> gas pipeline network.</p> <p>Gas Network Code</p> <p>61B.—(1) The Authority shall issue a Gas Network Code for the use and operation of <u>the anyonshore</u> gas pipeline network, which shall include the following:</p> <p>(a) the governing of arrangements between the designated-onshore gas transporter and the relevant gas shippers for the purpose of enabling or ensuring that —</p> <p>(i) no person is prevented from gaining access to the <u>onshore</u> gas pipeline network; and</p>	<p>transportation in Singapore should be conducted pursuant to the Gas Network Code.</p>

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<p>principles and methodologies relating to the operation of the gas pipeline network; and</p> <p>(d) the establishing and governing of the charges payable by, and other liabilities to be discharged by, the designated gas transporter and the relevant gas shippers.</p> <p>(2) The designated gas transporter —</p> <p>(a) may modify the Gas Network Code in such manner as provided in the Gas Network Code; and</p> <p>(b) shall modify the Gas Network Code if directed to do so by the Authority.</p> <p>(3) Any modification to the Gas Network Code made under subsection (2) is subject to approval by the Authority, which approval shall be granted unless the Authority determines that the modification —</p> <p>(a) being a modification made under subsection (2)(a) —</p>	<p>(ii) there is no undue discrimination for or against any person’s access to the <u>onshore</u> gas pipeline network;</p> <p>(b) the governing of the activities of the designated-onshore gas transporter and the relevant gas shippers <u>in relation to the onshore gas pipeline network</u>;</p> <p>(c) the establishing and governing of the principles and methodologies relating to the operation of the <u>onshore</u> gas pipeline network; and</p> <p>(d) the establishing and governing of the charges payable by, and other liabilities to be discharged by, the designated-onshore gas transporter and the relevant gas shippers <u>in relation to the onshore gas pipeline network</u>.</p> <p>(2) The designated-onshore gas transporter <u>as appointed by the Authority</u> —</p> <p>(a) may modify the Gas Network Code in</p>	

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<p>(i) unduly discriminates in favour of or against the designated gas transporter, any relevant gas shipper or any class of relevant gas shippers; or</p> <p>(ii) prevents any person from gaining access to any gas pipeline network; or</p> <p>(b) is inconsistent with any function or duty of the Authority under section 3(3).</p> <p>(4) The Gas Network Code issued or modified in accordance with this section shall be published by the designated gas transporter in such manner as will secure adequate publicity.</p>	<p>such manner as provided in the Gas Network Code; and</p> <p>(b) shall modify the Gas Network Code if directed to do so by the Authority.</p> <p>(3) Any modification to the Gas Network Code made under subsection (2) is subject to approval by the Authority, which approval shall be granted unless the Authority determines that the modification —</p> <p>(a) being a modification made under subsection (2)(a) —</p> <p>(i) unduly discriminates in favour of or against the designated <u>any onshore</u> gas transporter, any relevant gas shipper or any class of relevant gas shippers; or</p> <p>(ii) prevents any person from gaining access to any <u>the</u> gas pipeline network; or</p> <p>(b) is inconsistent with any function or duty of the Authority under section 3(3).</p> <p>(4) The Gas Network Code issued or</p>	

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	<p>modified in accordance with this section shall be published by the designated <u>onshore</u> gas transporter <u>as appointed by the Authority for the purposes of subsection (2)</u>, in such manner as will secure adequate publicity.</p>	
<p>Section 61B(5) (5) The designated gas transporter or any relevant gas shipper shall not do or omit to do any thing that has or is likely to have an adverse effect on or compromise — (a) the safety <u>or</u> efficiency (including economic efficiency) of any gas pipeline network or any of its operations; or (b) the security or reliability of the conveyance of gas by means of the gas pipeline network.</p>	<p>Proposed section 61B(5) not to be adopted.</p>	<p>The scope of section 61B(5) is unacceptably wide and is unnecessary</p> <p>As currently drafted, section 61B(5) is extremely wide in scope - it includes omissions and refers to “likely” adverse effects (i.e. potential) and ambiguously refers to “compromise” (any impact could be said to compromise regardless of extent). . Imposing an obligation not to omit to do anything, without stating clearly what the gas transporter should do, is excessively wide and creates uncertainty. Section 61B(5) therefore imposes an impossibly high standard on the designated gas transporter/relevant gas shipper to do everything possible to protect against any eventuality, no matter how remote, regardless of cost or difficulty. The gas transporter/gas shipper will not be able to determine what they would need to do to comply with their</p>

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		<p>obligations under this section much less comply with the same.</p> <p>Furthermore, this obligation is expressed by reference to certain objectives – safety, efficiency, security and reliability. However, some of these expressions are extremely ambiguous. For example, it is not clear what constitutes “efficiency”. In fact, the concept of efficiency is highly subjective – what may be regarded by a person as efficient for it may not have the same effect on another person. The concepts of “security” and “reliability” are equally vague and subjective. It could be interpreted as the gas transporter undertaking that the gas pipeline network will be 100% “reliable” or “secure” in all circumstances, which would not be realistic. The term “efficiency”, in particular “economic efficiency” is also too wide and ambiguous. Does this mean that the gas transporter must continuously incur expenditure to upgrade the network notwithstanding that there may be no economic justification for the same? Likewise, the economic efficiency of the gas pipeline network will obviously be increased if there were sufficient gas shippers to utilise the full capacity of the gas pipeline network - does this mean that the designated gas</p>

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		<p>transporter is obliged to try and get more parties to be gas shippers (or the existing gas shippers to utilise more capacity)? Efficiency and economic efficiency of the network should be left to market forces.</p> <p>Bearing in mind that the consequences of a contravention or likely contravention of any provision of the Gas Act are severe, it is suggested that the duties imposed on the gas transporter should be expressed in clear and unambiguous terms. The gas transporter needs to know exactly what it should do, or not omit to do. In any event, a wide ranging provision such as section 61B(5) is unnecessary. Where any preventive measures are required to be taken, these can be incorporated in the Gas Network Code.</p>
<p>Section 61B(6)</p> <p>(6) The Gas Network Code shall be deemed not to be subsidiary legislation.</p>	<p>(6) The Gas Network Code shall <u>not</u> be deemed not to be subsidiary legislation <u>or a code of practice</u>.</p>	<p>Is the Gas Network Code intended to be a code of practice?</p> <p>If it is not intended that the Gas Network Code be a code of practice, this should be expressly stated.</p>
<p>Section 61C</p> <p>61C.—(1) The designated gas transporter shall devise such tests or trials as are required for the implementation of a Gas</p>		<p>There should be express provision as to the party which is to bear the costs of the tests and trials</p>

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<p>Network Code.</p> <p>(2) The designated gas transporter and every relevant gas shipper shall participate in any test or trial devised under subsection (1).</p>		
<p>Section 61E</p> <p>61E.—(1) If the Gas Network Code —</p> <p>(a) regulates the manner in which disputes under the Gas Network Code are to be resolved; and</p> <p>(b) restricts recourse to the courts until such time as the dispute resolution process in the Gas Network Code has been exhausted,</p> <p>recourse to the courts shall be limited in accordance with the Gas Network Code except in relation to matters of law and jurisdiction.</p> <p>(2) Nothing in this section is to be read or construed as —</p> <p>(a) sanctioning the absolute limitation of</p>	<p>Proposed section 61E not to be adopted.</p>	<p>Section 61E is ambiguous and is unnecessary</p> <p>The reference in section 61E(b) to “has been exhausted” could give rise to ambiguity since the Gas Network Code may not provide for when the dispute resolution process is “exhausted”. In any event, given that section 61D already provides that the Gas Network Code has the force of contract, there is no need for section 61E. In the event that a party, in breach of the dispute resolution procedure set out in the Gas Network Code, seeks to commence court proceedings, it is trite law that the court can grant a stay of the proceedings.</p>

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<p>appeals to the courts except in relation to matters of facts; or</p> <p>(b) limiting the right of any person to seek interim injunctive relief from the courts.</p>		
<p>Section 62(3)</p> <p>(3) For the purposes of subsections (1) or (2), the Authority may require any gas licensee to prepare such code of practice or such modification to any code of practice as the Authority determines.</p>		<p>Where the EMA requires a gas licensee to prepare a code of practice or modification to a code of practice, the EMA should bear the costs of the same</p>
<p>Section 62(6)</p> <p>(6) The Authority shall specify the codes of practice which are applicable to a gas licensee or a class of gas licensees and each gas licensee shall, subject to subsection (7), comply with such codes of practice as are applicable to it.</p>		<p>The EMA should be obliged to conduct public consultations on codes of practice</p> <p>As presently drafted, it would seem that the EMA may promulgate codes of practice without conducting public consultations or seeking representations from the entities which may be affected by the same. This concern is exacerbated by the removal (from section 93(1)) of the right to appeal against matters contained in a code of practice.</p>
<p>Section 62(8)</p> <p>(8) Any code of practice issued by the Authority under this section shall be</p>	<p>(8) Any code of practice issued by the Authority under this section shall not be deemed not to be subsidiary legislation</p>	<p>Editorial amendment</p>

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deemed not to be subsidiary legislation.		
<p>Section 63(1)</p> <p>63.—(1) The Authority may give directions to a gas licensee or any other person for or with respect to any code of practice, standard of performance or other procedures —</p> <p>(a) to ensure the security or reliability of the conveyance of gas to consumers’ premises;</p> <p>(b) in the interests of public safety; or</p> <p>(c) as may be necessary to enable the Authority to carry out its functions and duties under section 3.</p>	<p>63. —(1) The Authority may give directions to a gas licensee or any other person for or with respect to any code of practice, standard of performance or other procedures —</p> <p>(a) to ensure the security or reliability of the conveyance of gas to consumers’ premises; <u>or</u></p> <p>(b) in the interests of public safety; or</p> <p>(c) as may be necessary to enable the Authority to carry out its functions and duties under section 3.</p>	<p>Section 63(1) is too wide</p> <p>As currently drafted, section 63(1) gives overarching powers to the EMA to issue directions to any person for various reasons including as necessary to enable the EMA to carry out its functions and duties. Given the extensive powers already granted to the EMA under the other provisions of the Gas Act, such a wide power to issue directions is not justified.</p>
<p>Section 63B</p> <p>63B.—(1) Any person who, on or after the appointed day, becomes a substantial equity interest holder of a designated gas licensee, designated entity or designated business trust shall give notice in writing to the Authority of that fact within 5 days</p>	<p>All references to “indirect controller” in section 63B to be deleted.</p> <p>A new subsection (6) shall be inserted into section 63B:</p> <p>"(6) The Authority may give directions with respect to the types of acquisition of</p>	<p>As highlighted in our previous comments, the change of control regime in Part VIIA is unnecessarily restrictive.</p> <p>The thresholds in Part VIIA are very widely defined and require a consideration of direct and indirect shareholding and other equity interests as well as indirect control (irrespective of equity interests). In addition, the thresholds are based on not only by a party’s own interests but also</p>

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<p>after becoming a substantial equity interest holder of the licensee, entity or business trust.</p> <p>(2) No person shall, on or after the appointed day, become a 12% controller, a 30% controller or an indirect controller of a designated gas licensee, designated entity or designated business trust without obtaining the prior written approval of the Authority.</p> <p>(3) No person shall, on or after the appointed day, acquire as a going concern —</p> <p>(a) the business of a designated gas licensee conducted pursuant to its licence;</p> <p>(b) the business of a designated entity relating to its gas pipeline network or any part thereof; or</p> <p>(c) the business of a designated business trust relating to a gas pipeline network or any part thereof in respect of</p>	<p>equity interest that shall be disregarded for the purposes of this section 63F."</p> <p>A new subsection (7) shall be inserted into section 63F:</p> <p>"(7) Prior to designating any entity as a designated entity, the Authority will provide the entity with written notice regarding the basis on which the Authority proposes to designate it as a designated entity. The designated entity will have 30 days from the date of the Authority's written notice to submit a written representation to the Authority with supporting evidence as to why the Authority should not make such a designation. Within 30 days of receiving the entity's written representation, the Authority will notify the entity of its determination. A designated entity may petition the Authority, at any time, for removal of its designated status."</p>	<p>cumulatively with such party's associates. The term "associate" is in turn very widely defined and includes a corporation which, together with such corporation's associates controls not less than 20% of the voting power in such person. Considering that one or more direct or indirect shareholders or equity interest holders of a gas licensee could be entities listed on a stock exchange and/or a publicly traded business trust, it may be difficult for a shareholder or unit-holder to determine whether it has inadvertently crossed a threshold stipulated under Part VIIA. Given the lack of clear criteria for the grant of approval under Part VIIA and the serious consequences of a breach, such wide and restrictive controls would greatly reduce the viability of trades in such shares and units.</p> <p>The way "associate" and "equity interest" are defined under the proposed amendments should be revised along the same lines as that under the Electricity Act. Under section 30A of the Electricity Act, the meaning of "associate" is not provided in the Act itself but will be separately provided through regulations made by the EMA under Section 30C of the Electricity Act. Similarly, the meaning of "equity interest" will also be separately provided in regulations</p>

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<p>which, wholly or in part, the business trust is established,</p> <p>unless the person, and the licensee, the entity or the trustee-manager of the business trust, as the case may be, obtain the prior written approval of the Authority.</p> <p>(4) A notice under subsection (1) shall be given and an application for the Authority’s approval under subsection (2) or (3) shall be made in such form and manner as may be specified by the Authority.</p> <p>(5) An application for the Authority’s approval under subsection (3) shall be made jointly by the person, and the designated gas licensee, the designated entity or the trustee-manager of the designated business trust, as the case may be.</p>		<p>made by the EMA. By revising the proposed amendments along the same lines as the Electricity Act, there is the advantage of consistency.</p> <p>There is no necessity for a restriction on “indirect controllers” if a party’s interest in shares is defined using the approach under section 7 of the Companies Act. This will avoid an unnecessary increase in the burden of regulatory compliance imposed.</p> <p>It is submitted that the regime under the Telecommunications Act is preferable and should be adopted instead. Please refer to the corresponding provisions in the Telecommunications Act, sections 32A and 32B.</p> <p>Pro Forma Transactions</p> <p>The Code of Practice for Competition in the Provision of Telecommunication Services 2005 (S 87/2005) ("Telecommunications Competition Code") provides for various exemptions from the change of control provisions in</p>

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		<p>relation to pro forma transactions such as liquidation and transactions which result only in a pro forma change (e.g. an assignment of interest from a parent corporation to a wholly owned subsidiary) or shares held as security. The Telecommunications Competition Code also introduces a different regime for share buybacks whereby no prior approval is required.</p> <p>To avoid over-regulation, pro forma transactions should similarly be excluded.</p> <p>It is not clear whether approval is required for existing shareholders</p> <p>It is not clear whether existing shareholders will require approval upon the enactment of the proposed amendments. This should be clarified.</p> <p>The designation of licensees/entities should be subject to representations</p> <p>In relation to licensees under section 7(3), a regime similar to that provided for under the Telecommunications Act for</p>

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		<p>Services-Based Operator Licensees who are declared as Designated Telecommunications Licensees should instead be adopted. Such a regime would allow the EMA to determine and declare which parties require a licence and also provide the parties with the opportunity to make representations on the same.</p> <p>A similar right to make representations should also be provided to entities which the EMA proposes to declare as designated entities.</p>
<p>Section 63F(2)</p> <p>(2) Where any direction is issued under section 63E(2)(b) or (c), notwithstanding any other written law or anything contained in the memorandum or articles of association, trust deed or other constitution, of the designated gas licensee, designated entity or designated business trust, as the case may be —</p>	<p>(2) <u>The Authority may, Wwhere any direction is has been issued under section 63E(2)(b) or (c), <u>direct the designated gas licensee, designated entity or designated business trust, as the case may be, to,</u> notwithstanding any other written law or anything contained in the memorandum or articles of association, trust deed or other constitution of the designated gas licensee, designated entity or designated</u></p>	<p>The designated gas licensee, designated entity or designated business trust should only be required to implement the restrictions under section 63F(2) upon the direction of the EMA</p> <p>Given the significance of the restrictions under section 63F(2), the designated gas licensee, designated entity or designated business trust should only be required to implement such restrictions pursuant to a direction issued by the EMA.</p>

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<p>(a) no voting rights shall be exercisable in respect of the specified equity interest unless the Authority expressly permits such rights to be exercised;</p> <p>(b) no equity interest in the licensee, entity or business trust shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified equity interest unless the Authority expressly permits such issue or offer; and</p> <p>(c) except in a winding up of the licensee, entity or business trust, no payment shall be made by the licensee, entity or trustee-manager of the business trust of any amount (whether by way of dividends or otherwise) in respect of the specified equity interest unless the Authority expressly authorises such payment,</p> <p>until the transfer or disposal is effected in accordance with the direction or until the</p>	<p>business trust, as the case may be, <u>do any or all of the following</u> —</p> <p>(a) to <u>restrict the exercise of</u> voting rights shall be exercisable in respect of the specified equity interest unless the Authority expressly permits such rights to be exercised;</p> <p>(b) <u>to restrict the issuance or offer of</u> no <u>any</u> equity interest in the licensee, entity or business trust shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified equity interest unless the Authority expressly permits such issue or offer; and</p> <p>(c) except in a winding up of the licensee, entity or business trust, <u>to restrict the</u> no <u>payment of any amount shall be made</u> by the licensee, entity or trustee-manager of the business trust of any amount (whether by way of dividends or otherwise) in respect of the specified equity interest unless the Authority expressly authorises</p>	

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direction is revoked, as the case may be.	such payment, until the transfer or disposal is effected in accordance with the direction or until the direction is revoked, as the case may be.	
<p>Section 63H</p> <p>“chief executive officer”, in relation to a designated gas licensee, means any person, by whatever name described, who is —</p> <p>(a) in the direct employment of, or acting for or by arrangement with, the designated gas licensee; and</p> <p>(b) principally responsible for the management and conduct of any type of business of the designated gas licensee, and includes any person for the time being performing all or any of the functions or duties of a chief executive officer;</p>	<p>“chief executive officer”, in relation to a designated gas licensee, means any person, by whatever name described, who is —</p> <p>(a) in the direct employment of, or acting for or by arrangement with, the designated gas licensee; and</p> <p>(b) principally responsible for the management and conduct of any type of business of the designated gas licensee <u>which is licensed under the designated gas licensee’s gas licence</u>, and includes any person for the time being performing all or any of the functions or duties of a chief executive officer <u>(other than on an interim basis)</u>;</p>	<p>The approval of the EMA should not be required for appointment of CEO, directors and chairman</p> <p>(a) The current regulatory framework already provides EMA with extensive powers to regulate the licensee and how it is run.</p> <p>(b) Furthermore, from a corporate governance perspective, 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>(c) The SP group of companies already has good corporate governance practices in place that are akin to listed companies. This includes a board nominating committee to select and screen potential directors. If EMA’s concern is security-linked, there are other controls which may be more appropriate eg. security screening. EMA may want to consider looking at similar provisions in other jurisdictions, eg Victoria, Australia.</p>

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		We would also highlight that similar provisions do not exist in other jurisdictions such as the UK and Australia.
<p>Section 65</p> <p>65. —(1) Where any gas escapes from any gas pipeline owned by or under the management or control of, a gas transporter, or from any internal pipe, gas fitting or gas appliance used by a consumer to whose premises gas is conveyed by the gas transporter, the gas transporter shall —</p> <p>(a) immediately take necessary steps to prevent the gas from escaping (whether by disconnecting any premises or otherwise); and</p> <p>(b) take any other steps necessary to avert danger to life or property.</p>	<p>65. —(1) Where any gas escapes from any gas pipeline owned by or under the management or control of a gas transporter, or from any internal pipe, gas fitting or gas appliance used by a consumer to whose premises gas is conveyed by the gas transporter, the gas transporter shall —</p> <p>(a) immediately <u>after having knowledge of or after such time when the -gas transporter ought reasonably to have knowledge of such escape of gas</u> take necessary steps to prevent the gas from escaping (whether by disconnecting any premises or otherwise); and</p> <p>(b) take any other steps necessary to avert danger to life or property.</p>	<p>The gas transporter should not be under an obligation to take action before it is aware of the escape of gas</p> <p>The proposed deletions in subsections 1(a) and 2(a) would mean that the gas transporter is under an obligation to <u>immediately</u> take remedial action.</p> <p>(i) The standard of “immediately” is too onerous as the gas transporter will not have actual knowledge of every condition occurring at every part of its gas pipeline network. Again, a failure to take steps immediately upon the occurrence of the gas escape constitutes a contravention of the Gas Act and subjects the gas transporter to severe penalties.</p> <p>(ii) A gas transporter cannot reasonably be expected to take remedial action before it knows, or ought reasonably to have known, of the fact of the gas escape.</p> <p>(iii) As such, it is suggested that the obligation be revised to take preventive steps as soon as the gas transporter knows, or ought reasonably to know that gas had escaped.</p> <p>We would also highlight to the EMA that section 65(1)(a)</p>

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		<p>requires the gas transporter to “immediately take necessary steps to prevent the gas from escaping (whether by disconnecting any premises or otherwise)”. The requirement that the gas transporter immediately take the necessary steps will, in most cases, mean that the gas transporter has no option but to disconnect the premises.</p>
<p>Sections 78(5A) and 93</p> <p>78. — (5A) An appeal under subsection (5) shall not suspend the effect of a decision or direction to which the appeal relates unless the appeal is against the imposition or the amount of a financial penalty.</p> <p>93.—(1) A person aggrieved by —</p> <p>(a) any decision of the Authority in the exercise of any discretion vested in it by or under this Act, except for section 27(9) or (12); or</p> <p>(b) any direction issued by the Authority under this Act,</p> <p>may, except where provision has been made under this Act for an appeal to be</p>		<p>There should be a stay on the EMA’s decisions pending appeal</p> <p>The draft amendments to (inter alia) Sections 78(5A) and 93 provide that the making of an appeal under the Gas Act by a person who is aggrieved by a decision or direction of the EMA will nevertheless not suspend the effect of that decision or direction (unless it relates to a financial penalty). However, the decision or direction may be of a nature which is irreversible or very difficult to reverse. If so, this could render the appeal being rendered meaningless or academic.</p> <p>(i) It may be that the EMA is concerned with licensees abusing the appeal processes by making unmeritorious appeals, and thereby undermining the EMA’s regulatory powers under the Gas Act.</p> <p>(ii) However, it is clear that this is very unlikely to</p>

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<p>made to an Appeal Panel, appeal to the Minister, together with adequate details of the grounds for the appeal.</p> <p>(2) Unless otherwise provided in this Act, an appeal under subsection (1) shall be lodged within 14 days of the receipt of the decision or direction.</p> <p>(3) Any person who has lodged an appeal under subsection (1) shall provide such information and documents as may be required by the Minister in such manner and within such period as may be specified by the Minister.</p> <p>(4) Unless —</p> <p>(a) otherwise provided in this Act; or</p> <p>(b) the appeal is against the imposition or the amount of a financial penalty, an appeal under subsection (1) shall not suspend the effect of a decision or direction to which the appeal relates.</p> <p>(5) Where the Minister considers that an</p>		<p>happen in the context of the Gas Act. As an example, the Competition Act provides for several layers of appeal. Hence, a considerable amount of time may have elapsed by the time that an appeal is finally disposed of. This will not be the case under the Gas Act, as there is generally only one level of appeal (to the Minister), and as such, the appeal process is likely to be disposed of quickly.</p> <p>(iii) It is 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 appeal is thwarted because the effect of the decision or direction is permanent.</p>

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<p>appeal lodged under subsection (1) involves issues of such nature or complexity that it ought to be considered and determined by persons with particular technical or other specialised knowledge, he may, subject to section 84(1), establish by direction an Appeal Panel comprising one or more of such persons to consider and determine the appeal.</p> <p>(6) The Minister may determine an appeal under this section by —</p> <p>(a) confirming, varying or reversing any decision or direction of the Authority; or</p> <p>(b) directing the Authority to reconsider its decision or direction.”.</p> <p>(7) The decision of the Minister shall be final.</p> <p>(8) The Minister may make regulations in respect of the manner in which an appeal may be made to the Minister under this</p>		

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section and the procedure to be adopted in hearing such appeals.		
Part X	<p>A new section 85A to be inserted into Part X as follows:</p> <p>“Appeals to High Court and Court of Appeal</p> <p>85A.– (1) An appeal against, or with respect to, a decision of the Appeal Panel made under section 85 shall lie to the High Court –</p> <p>(a) on a point of law arising from a decision of the Appeal Panel; or</p> <p>(b) from any decision of the Appeal Panel as to the amount of a financial penalty.</p> <p>(2) An appeal under this section may be made only at the instance of a person who was a party to the proceedings in which the decision of the Appeal Panel was made.</p> <p>(3) The High Court shall hear and determine any such appeal and may –</p>	<p>The appeal process in relation to matters arising under Part X of the Gas Act should mirror the appeal process in the Competition Act</p> <p>As highlighted in our previous comments, section 74 of the Competition Act allows for a right of appeal against, or with respect to, a decision of the Competition Appeal Board to lie with the High Court, and for a further right of appeal against or with respect to the decision of the High Court to lie with the Court of Appeal. Presently, in relation to directions and decisions of the EMA made under Part IX, appeals may only be made to the Appeal Panel whose decision is final.</p> <p>It is submitted that this opportunity should be taken to amend the appeal process in relation to directions and decisions of the EMA under Part IX to align it with the process provided for under the Competition Act, that is, to provide for a further right of appeal from the decision of the Appeal Panel to the High Court and the Court of Appeal.</p>

Specific Provision(s) of Proposed Amendments	Revised Amendments	Detailed Reasons for Revised Amendments
	<p>(a) confirm, modify or reverse the decision of the Appeal Panel; and (b) make such further or other order on such appeal, whether as to costs or otherwise, as the Court may think fit.</p> <p>(4) There shall be such further right of appeal from decisions of the High Court under this section as exists in the case of decisions made by that Court in the exercise of its original civil jurisdiction.”</p>	
<p>Section 93(1)(b) 93.—(1) A person aggrieved by — (a) any decision of the Authority in the exercise of any discretion vested in it by or under this Act, except for section 27(9) or (12); or (b) any direction issued by the Authority under this Act, may, except where provision has been made under this Act for an appeal to be made to an Appeal Panel, appeal to the</p>	<p>93.—(1) A person aggrieved by — (a) any decision of the Authority in the exercise of any discretion vested in it by or under this Act, except for section 27(9) or (12); or (b) <u>anything contained in any code of practice approved by the Authority under this Act; or</u> (c) any direction issued by the Authority under this Act, may, except where provision has been</p>	<p>Right of appeal against matters contained in a code of practice It should continue to be explicitly provided that a right of appeal would lie against anything contained in a code of practice.</p>

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Minister, together with adequate details of the grounds for the appeal.	made under this Act for an appeal to be made to an Appeal Panel, appeal to the Minister, together with adequate details of the grounds for the appeal.	
General		All typographical and editorial errors to be corrected