

**Draft Amendments to the Gas Act (Cap. 116A)
Consultation Paper
Second Feedback by SembCorp Gas Pte Ltd**

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Summary of Major Points

Primary Concerns

Where any existing contractual arrangements exist, the sanctity of such contractual arrangements should be observed, especially cross-border ones and those that were entered into before the announcement of gas market reform by the Singapore Government in Year 2000. In addition, the suggested amendments should clearly ensure that the Authority take into account the various restrictions, contractual and physical, of the ORF where legitimate, in directing the arrangements for gas allocation via an ORF.

The previous drafting for Section 63, which empowers the Authority to impose financial penalties on consumers or other persons relating to ensuring the reliability, availability and continuity of gas supply, or to allow shippers to pass through those penalties incurred via the Network Code to consumers or persons who caused such penalties to arise, should be reinstated.

Other areas of concern

We refer you to the Appendix of this paper which sets out our other areas of concern.

Statement of Interest

We provide this feedback in our capacity as an importer of gas with existing cross border contracts and end user agreements, onshore receiving facility operator, potential shipper and a gas retailer. We are committed to support the move by the Singapore Government towards a competitive market framework, promoting and maintaining fair and efficient market conduct for the benefit of the gas industry as a whole.

Conclusion

SembCorp Gas remains committed to the liberalization of the gas industry and will endeavor to the best of its ability to support this move.

We would be pleased to meet you to discuss our comments and suggested modifications, and our concerns over the same. We would be grateful if you can incorporate our views into revised drafts, and let us have an opportunity to further review and comments, before the amendments to the Gas Act are finalized.

Specific Provisions of Proposed Amendments	Revised Amendments	Comments/Reasons for suggested revisions
Section 2	<p>Definition of “onshore receiving facility”.</p> <p>““onshore receiving facility” means a facility located in Singapore upstream of an onshore gas pipeline network owned by, or under the management or control of, a gas transporter, ...”</p>	<p>Clarification requested. It is not clear from the definition of ORF as to whether the qualification “owned by, or under the management or control of, a gas transporter” is in respect of the ORF, or the onshore gas pipeline network. If it is the former, then this definition would not be without difficulties as some ORF in Singapore would not be owned by or under the management or control of a gas transporter, and would imply that a facility under the management or control of, a gas transporter, need not be one located upstream of the pipeline network.</p> <p>Finally, please clarify whether the subsection describes that all facilities upstream of the gas transporter’s pipeline network are considered as ORFs (e.g. the ConocoPhillips ORF or Pressure Reduction Station A, which is also a facility upstream of the transporter’s network fulfilling the activities referred to in s (a) to (d)).</p>
Section 2	<p>Definition of “shipper”.</p> <p>“Shipper” in relation to gas, means arranging, <u>according to the Gas Network Code and</u> with a gas transporter for gas to be introduced into, conveyed by and taken out of a gas pipeline owned by...</p>	<p>Suggested revisions underlined. Any arrangements made with the gas transporter must be made according to the <u>Gas Network Code</u> (no bilateral commercial arrangements made between a person and the gas transporter apart from the Gas Network Code should be</p>

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		allowed).
Section 4	<p>The Section empowers the Authority or an authorized person to require a person to furnish any “document or information” under subsection (1).</p> <p>“(6A) The Authority shall be entitled, <u>on reasonable grounds</u>, without payment to keep any document or information, or any copy or extract thereof, furnished it under subsection (1) or obtained under subsection (6).”</p>	<p>Clarification requested. While subsection (1A) includes the provision of “electronic records” per the Electronic Transactions Act in the term “document or information”, it is not clear what exactly is meant by “a record generated, communicated, received or stored by electronic, magnetic, optical or other means in an information system or for transmission from one information system to another” (as defined in the Electronic Transactions Act). For example, can the Authority request for a person to provide electronic data in the form of continuous SCADA signals? What are the methods used by the Authority to defray the costs incurred by such party due to providing the information to the Authority, will the Authority take into account the commercial sensitivities of such document or information at all times and can the Authority mandate such person to provide the document or information directly to another person other than the Authority itself?</p> <p>Furthermore, we propose that any right exercised by EMA with respect to retention of documents or information belonging to a person be carried out <u>on reasonable grounds</u>.</p>
Section 5(4)	“Subsection (2) shall not prevent the Authority from disclosing any information or the contents of any	Suggested revisions underlined. Subsection (2) sets out the exceptions under which the

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	<p>document –</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 <u>on a confidential basis</u>;</p> <p>(b) to the Minister or any agent, consultant, committee or panel acting for or under the direction of the Minister <u>on a confidential basis</u>;</p> <p>(c) to an Appeal Panel;</p> <p>(d) when required to do so by any court or under this Act or any other written law; or</p> <p>(e) for the purposes of any criminal proceedings.”</p>	<p>Authority may disclose confidential information without giving prior notice to the supplier of such information. Unlike subsection (2) where an appeal may be made to the Minister, there is no recourse in subsection (4) to persons who may be affected by such disclosure.</p> <p>The original section 5(4) provides that disclosure to the Minister shall be on a confidential basis.</p> <p>The suggested revisions extend this provision by allowing the Authority to disclose information or contents of any document to those persons listed in the subsection, but on a confidential basis in accordance with the original subsection (4). In any event, disclosure by the Authority under subsection (4) should be on a confidential basis, as it would be contrary that disclosure to the Minister would be on a confidential basis, but not disclosure by the Authority to an employee, agent, consultant, committee etc.</p>
Section 20	The original section 20, which provides for a right of appeal to the Minister for any person aggrieved by a decision of the Authority under section 18 or 19 to revoke or suspend a gas licence, or in respect to enforcement, has been deleted.	Clarifications requested as to the purpose of the deletion. The revocation and suspension of a licence is a draconian measure, and it appears inconsistent that a person aggrieved shall not have a right of appeal in respect of the making of such a decision of revocation/suspension, but has a right of appeal if it is a modification of the licence (under section 17).

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Section 22(2)	<p>“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 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 <u>or can be recovered</u> from any other person.</p>	<p>Suggested revisions underlined. This is to make the recovery of costs in line with subsection (5)(b)(ii) where the extent of future recovery from other persons is a relevant consideration.</p>
Section 32(1)	<p>Carrying out of earthworks within vicinity of gas pipe</p>	<p>Clarifications requested for the meaning of “within the vicinity”, as that is vague and potentially onerous, and should be defined, given that there is a requirement for notice to be given to the gas transporter in such circumstances.</p>
Section 38A(1)	<p>“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, <u>taking into account any existing arrangement or restriction relating to the allocation of gas in that offshore gas pipeline and any contractual obligations of the persons referred to in paragraphs (a) and (b)</u> and to take such steps to ensure that the arrangement is given effect to, as the Authority thinks fit.”</p>	<p>Suggested revisions underlined. The Authority should take into account any existing contractual arrangements which may exist and where possible, the sanctity of such contractual arrangements should be observed. It should also be clearly spelt out what form the Authority's direction would take, and what such directions would comprise. For example, it would be simplistic for the Authority to direct that the applicant be allowed access to the offshore gas pipeline or allocated gas, without also specifying the terms relating to price, duration, breaches etc. For such direction to be practical and effective, it would have to contain sufficient details/terms as would be normally found in any contractually agreed</p>

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		<p>allocation agreement.</p> <p>The suggested amendment also ensures that the Authority take into account the physical restrictions of the ORF (e.g. capacity restriction) where legitimate.</p> <p>The subsection should make clear that the term “access” refers to the gas allocation only and is not accompanied by the right for physical access into the facility or access to information / data (e.g. free right of entry into the ORF facility).</p>
Section 38A(2)	<p>"Where the Authority has given directions for an arrangement for the allocation of gas in an offshore gas pipeline under section (1) any <u>only such part</u> of 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 <u>which is inconsistent with the arrangement so specified by the Authority</u> shall thereupon cease to apply <u>to the extent of such inconsistency</u>"</p>	<p>Suggested revisions underlined and deleted. An existing arrangement on the allocation of gas may contain many terms and conditions and it would be draconian that all such terms and conditions (some of which may not be inconsistent with the Authority's direction) would cease to apply. There is little reason why all terms and conditions of a commercially negotiated arrangement between Party A and Party B should completely cease to apply as between the 2 parties, just because a third Party C would like to be given allocation of gas from that offshore pipeline. The sanctity of existing contractual arrangements should be given effect.</p> <p>What would the Authority's role be with regard to the re-negotiation of existing contracts</p>

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		(especially in cross-border sanctions)?
Section 52(2)(b)	"has - mak <u>de</u> good the default, or remedied the matter, in consequence of which the premises were disconnected or the supply or shipping of gas to such premises was discontinued..."	Typographical error.
Section 61B(3)	"Any modification to the Gas Network Code made under subsection (2) is subject to approval by the Authority, which <u>No</u> approval shall be granted <u>unless if</u> the Authority determines that the modification - (a) being a modification made under subsection (2)(a) - i. unduly discriminates in favour of or against the designated gas transporter, any relevant gas shipper or any class of relevant gas shippers; or ..."	Suggested revisions underlined or deleted. Under the proposed amendments, the Authority must accept all modifications proposed by the designated gas transporter unless such amendments fall within one of the categories listed in subsection (3). As the Authority should have ultimate discretion in deciding matters relating to the modification of the Gas Network Code, the suggested revisions seek to widen the Authority's powers in this regard. All modifications should be subject to approval, and the Authority should be the final arbiter of whether any modifications should be allowed, and not only in the limited categories.
Section 61B(5)	"The designated gas transporter or any relevant gas shipper shall not do <u>anything that</u> , or omit to do <u>anything which if not done</u> , has or is likely to have an adverse effect ..."	Suggested revisions underlined. It is a double negative to say "shall not omit to do anything which has an adverse effect...", which also results in a contrary meaning.
Section 61E(2)	"Nothing in this section is to be read or construed as – (a) sanctioning the absolute limitation of appeals to the courts except in relation to matters of facts.."	Clarifications requested. Drafting is not clear. Is the intention that matters of fact cannot be appealed against?

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Section 62	Codes of practice	<p>Clarifications requested. Subsection (5) provides that, where a code of practice issued by the Authority is inconsistent with any regulations made under the Act, such code of practice shall have effect subject to such regulations or, where appropriate, shall have no effect.</p> <p>The term "regulations" is defined in section 2 of the Act to mean "regulations made under this Act" and presumably, does not include the Gas Network Code. Request for clarification on the consequences of, and the order of priority which should be given in the event that there is an inconsistency between:</p> <ul style="list-style-type: none"> i. the Gas Network Code and a code of practice issued under section 62; and ii. any 2 codes of practice issued under section 62.
Section 65(2)(a)	<p>"If a gas transporter -</p> <p>(a) fails, within a reasonable time, to effectively prevent gas from escaping <u>to comply with subsection (1)(a);</u> or</p> <p>..."</p>	<p>Suggested revisions underlined or deleted. This subsection follows on from subsection (1)(a), which states that it is the gas transporter's duty to "immediately take necessary steps to prevent the gas from escaping...".</p> <p>Subsection (2)(a), which sets out the penalty for the gas transporter's breach of subsection (1), is not clear as it would be questionable what "within a reasonable time" would mean and accordingly, when the gas transporter would be in breach of its duties.</p>

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Section 63(B),(D)&(E)	<p>The Authority can “<u>give directions with respect to the Gas Network Code to be observed by any person or consumer...or pay such fees or other charges under the Gas Network Code as may be determined by the Authority...to ensure the reliability, availability and continuity of the supply of gas</u>”.</p>	<p>Suggest for the previous drafting for Section 63, which empowers the Authority to impose financial penalties on consumers or other persons relating to ensuring the reliability, availability and continuity of gas supply, or to allow shippers to pass through those penalties incurred via the Network Code to consumers or persons who caused such penalties to arise, be reinstated.</p> <p>Previously, Item 17 of the consultation paper dated Feb 2006 stated that “Shippers have to coordinate with their gas consumers to ensure the volume of gas flowing through the network does not threaten system security. The Gas Network imposes charges and penalties on shippers for non-compliance. As existing gas contracts do not have provisions for such costs to be passed through to gas consumers, it is proposed that EMA will be empowered to allow shippers to pass through charges and penalties to gas consumers”. Kindly address our comment dated Feb 2006 pertaining to Section 63B which did not provide the circumstance in which shippers can pass the penalty costs to gas consumers.</p>
Section 85(9)	<p>“In the case of a direction or decision of the Authority under Part IX, the Appeal Panel may either confirm, vary or reverse the direction or decision of the Authority or</p>	<p>Suggested amendments underlined. According to the proposed amended section 78(5A), the effect of a decision or direction is not</p>

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	<p>direct the Authority to reconsider the direction or decision, and <u>may make such orders or give such directions as it deems necessary taking into account the effect of section 78(5A) on the applicant.</u> The Appeal Panel's decision shall be final."</p>	<p>suspended notwithstanding that an appeal has been made to the Appeal Panel. If such a decision or direction is varied or reversed, the Appeal Panel should be empowered to ensure that the applicant is not placed in a more detrimental position due to compliance with section 78(5A).</p>
<p>Section 98(1)</p>	<p>"On such date as the Minister may determine, such property, rights, obligations and liabilities comprised in any gas company specified by the Minister – (a) in which the Government has an interest..."</p>	<p>Clarification requested. This section is vague – how is "gas company" defined (e.g. would it be a gas importer, retailer, transporter or consumer? Also, because SembGas is a publicly listed company, the effect of this section may be that our shareholder's rights may be prejudiced.</p>
<p>Section 99(1)</p>	<p>"Except as may be prescribed by the Minister <u>and subject to any agreement or arrangement between the transferor undertaking and the transferee undertaking,</u> all deeds, bonds, agreements and other arrangements subsisting immediately prior to the date determined by the Minister under section 98(1) in respect of any property, rights, obligations and liabilities transferred under that section shall continue in full force and effect on and after that date and shall be enforceable by or against the transferee undertaking to which the transfer was made as if instead of the transferor undertaking the transferee undertaking was named therein or has been a party thereto."</p>	<p>Suggested revisions underlined. The wording of this section is wide and may extend to "deeds, bonds, agreements and other arrangements" which neither the transferor undertaking nor transferee undertaking intended to transfer. The categories of "deeds, bonds, agreements and other arrangements .. in respect of any property, rights, obligations and liabilities transferred" are extremely wide and may be read to include things not strictly related to transportation of gas or agreements that are not meant to be transferred. .</p>
<p>Section 99(1A)</p>	<p>"Notwithstanding subsection (1), any right, obligation or liability as may have accrued under any deed, bond,</p>	<p>Suggested revisions underlined. The revisions are to address the situation that there may be</p>

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	<p>agreement or other arrangement to which subsection (1) applies prior to the date determined by the Minister under section 98(1) shall continue to be enforceable by or <u>(to the extent the transferor undertaking is able to perform such right, obligation or liability)</u> against the transferor undertaking and not by or against the transferee undertaking."</p>	<p>certain obligations or liabilities that a transferor undertaking will not be able to perform subsequent to the transfer, as such performance may require the transferor undertaking to have control or ownership over the assets transferred</p>
<p>Section 100(2)</p>	<p>"Any provision in any existing contract, agreement, conveyance, deed, lease, guarantee, bond, indemnity and other instrument or undertaking to which the transferor undertaking is a party or may be bound conferring on the other party or parties thereto any right of first refusal or pre-emption rights in respect of any property, right, obligation, or liability comprised in the undertakings to be transferred by reason of <u>which</u> or arising from <u>which</u>, or to the effect that, a default shall occur or be deemed to occur as a result of, the transfer or intended transfer of property, right, obligation or liability under this Part, shall be deemed by this Act to have been waived."</p>	<p>Suggested revisions underlined. Revisions to make the section read better as the section is convoluted.</p>
<p>Section 101(5)</p>	<p>"When the Minister issues any direction -</p> <p>(a) requiring the transferor undertaking to provide to the transferee undertaking any information, warranty or other statement; or</p> <p>(b) requiring the transferee undertaking to provide to the transferor undertaking any information, warranty or other statement,</p> <p>the undertaking required to provide the information, warranty or other statement (the first-mentioned undertaking) shall <u>not</u>, be under an obligation to ensure</p>	<p>The obligation imposed on the first-mentioned undertaking in providing any information, warranty or statement to the second-mentioned undertaking should not be too onerous.</p> <p>Section 41 of the Act relates to statements given by a gas retailer to the Authority. The said section 41 sets out the circumstances under which a gas retailer will be guilty of an offence when making false statements to the Authority.</p>

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	<p>that such information, warranty or other statement provided:</p> <p>i. <u>provide any information, warranty or other statement which he knows to be false, inaccurate, incomplete or misleading in a material particular;</u></p> <p><u>or</u></p> <p>ii. <u>recklessly provide any information, warranty or other statement which is false, inaccurate, incomplete or misleading in a material particular,</u> is not false, inaccurate, incomplete or misleading.</p> <p>to the other undertaking (the second-mentioned undertaking)."</p>	<p>For purposes of consistency, the duty for a transferor undertaking or a transferee undertaking not to provide false information should be of a similar standard as that provided for in section 41.</p>