



REQUEST FOR FEEDBACK

AMENDMENTS TO GAS ACT (CAP. 116A)

Closing date for submissions of comments and feedback:

26 February 2006, 11:59pm

**Note: There will be no extension of deadline beyond 26 February 2006,
11:59pm**

13 FEBRUARY 2006

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Disclaimer:

The information in this Request for Feedback is not to be treated by any person as any kind of advice. The Energy Market Authority and the Ministry of Trade & Industry shall not be liable for any damage or loss suffered as a result of the use of or reliance on the information given in this Request for Feedback. The information contained within this document is to be considered draft and further amendments to the Gas Act not covered in this document or dissimilar as indicated in this document may be introduced.

INTRODUCTION

1. The Government announced in Mar 2000 its policy decisions to restructure the gas industry to facilitate competition in gas import and retail, with transportation to be undertaken by a single entity – PowerGas Ltd. The Gas Act (Cap. 116A) (the “Act”) was passed in Mar 2001 to establish the regulatory framework for this.
2. It is proposed that the Act be amended to implement the Government’s policies. This will allow new gas importers and retailers to have open competitive access to the gas pipeline infrastructure. It will also provide potential investors with greater clarity of the regulatory regime in the gas industry.
3. EMA invites feedback from the public on the proposed amendments to the Act which is currently being reviewed by the Attorney-General’s Chambers.

OPEN ACCESS POLICY

4. A key tenet that underpins Singapore’s policies in the gas industry is open access to gas pipeline infrastructure. Without open access to pipeline infrastructure, there will not be a level playing field in the gas industry. A level playing field allows for competition, and this will ultimately benefit consumers as producers and retailers will be incentivised to greater levels of efficiency and price competitiveness.

FRAMEWORK OF THE PROPOSED AMENDMENTS

5. The proposed amendments cover the following key areas:
 - a. Licensing Regime;
 - b. Measures to Ensure Open Access to Gas Network;
 - c. Strengthening Regulatory Powers & Safeguarding Security of Gas Transportation System in a Multiple Shipper Environment; and
 - d. Other General Amendments.

Licensing Regime

6. The Act currently imposes obligations on specified categories of licensees, viz. gas retailers and gas transporter. For security reasons and for the proper operation of the Gas Network Code (which is a set of terms and conditions for transportation of gas through the gas network), gas

shippers and operators of the Gas Onshore Receiving Facilities (“ORF”) should be licensed as well, so that they will be required to comply with stipulated licensing conditions.

7. For ORF operators with little assets or paid-up capital in Singapore, they will be required to post a performance bond.

8. “Shipper” is currently defined in the Act as the party that arranges with the transporter to transport gas through the gas network. It is proposed that the definition of a shipper be clarified as the party that contracts with as well as pays the gas transporter for transportation of the gas through the gas pipeline or gas pipeline gas network.

Measures to Ensure Open Access to Gas Network

9. To have open access to the gas pipeline infrastructure, a Gas Network Code has to be imposed on all shippers. It is proposed to make compliance with the Gas Network Code a mandatory requirement via a licence condition. A shipper must abide by all the requirements of the Gas Network Code and will be penalized for non-compliance. It is proposed that the Act stipulates that the initial Gas Network Code must be approved by EMA, and that all code change proposals shall be considered and decided by EMA. It shall be a requirement that the Gas Network Code is updated as may be directed by EMA.

10. It is proposed to amend the Act so that any terms in existing and new transportation agreements for onshore pipelines that are inconsistent with the Gas Network Code be made illegal. Similarly, any terms in existing and new transportation agreements for offshore pipelines that prevent third party access should also be made illegal. These provisions will have retrospective application.

11. To prevent any party applying a foreign law to such transportation agreements and arguing that the Act does not apply to such agreements, it is proposed to amend the Act to render any terms that exclude the application of the Act or its regulations illegal and not enforceable. In view of the serious consequences of such illegal acts on the industry, EMA will be empowered to issue an order to such party not to flow gas under such illegal terms or, in the alternative, impose financial penalties.

12. For the offshore pipelines, it is proposed that the Act be amended to empower EMA to impose a gas allocation arrangement on users to enable third party access, if parties cannot come to an agreement of their own

accord. This prevents a situation where an existing user attempt to block third party access by refusing to negotiate a gas allocation arrangement.

Strengthening Regulatory Powers & Safeguarding Security of Gas Transportation System in a Multiple Shipper Environment

13. **Control of ownership of critical infrastructure:** The gas grid is a critical infrastructure whose failure can have disproportionate effects on the economy. It is proposed to amend the Act to give EMA oversight and powers of approval over (i) the ownership of the gas grid, the gas transporter and any licensee engaging in the management of the transportation business; and (ii) the disposal/acquisition of the gas grid. This amendment will allow EMA, in consultation with the Ministry of Trade & Industry and any other relevant Government agencies, to reject potential ownership transfer that is assessed to be detrimental to national security. It is also proposed to amend the Act to give the Minister the power to issue a written order to reverse any ownership transfer detrimental to national security.

14. **Control of key personnel appointed to operate critical infrastructure:** It is proposed that EMA's approval be required before the gas transporter and any licensee engaging in the management of the gas transportation business can appoint a person as its chief executive officer, its director or the chairman of its board of directors.

15. **Power to obtain information:** It is proposed to enhance EMA's powers to obtain information and to make explicit that in carrying out its functions under the Act, EMA is empowered to obtain relevant documents and materials from any person without payment. It is also proposed to empower EMA to disclose such information to agents acting under the direction of the Minister.

16. **Power to issue Codes of Practice/Standards of Performance:** The current Act provisions stipulate that gas licensees are to produce and comply with relevant codes and standards subject to EMA's approval. It is proposed that the Act be amended to empower EMA to issue codes of practice (e.g. Metering Code and Gas Supply Code) and other standards of performance.

17. **Making gas consumers liable for causing risk to gas system security:** 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 Code 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 be empowered to allow shippers to pass through such charges and penalties to gas consumers. This is needed to ensure that gas consumers also play their role in complying with gas system security requirements.

18. To deter non-compliance with conditions of exemption: Currently, should (i) a person or (ii) any person in a class of persons granted an exemption from holding a licence contravene any condition of the exemption, the only enforcement action EMA can take is to revoke the exemption. It is proposed to amend the Act to empower EMA to impose financial penalty on such person for contravention of exemption conditions.

Other General Amendments

19. Clarity on appeal to the Minister & Stipulating a Time Limit for Appeal to the Minister against EMA's decision: Section 93 of the Act provides for a licensee or any other person aggrieved by EMA's exercise of any discretion vested in it by the Act, to be able to make an appeal to the Minister, whose decision shall be final. In the interest of greater clarity, it is proposed that the Act be amended to be specific on the responsibility of the appellant to provide the grounds for the appeal, in a manner and within such period as specified by the Minister. It is proposed that any such appeal must be lodged with the Minister within 14 days after the EMA gives the relevant party notice in writing of the decision.

20. It is also proposed to amend the Act such that the Minister would have the flexibility, on the merits of each case, to refer appeals of a technical nature to an Appeal Panel (appointed by the Minister) for resolution. Where such cases are referred to an Appeal Panel, the decision of the Appeal Panel is final.

21. Compliance with decision or direction of EMA pending determination of an appeal: There is currently no requirement for compliance with the decision or direction of EMA pending the determination of an appeal by the Appeal Panel. It is proposed to amend the Act to require compliance with the decision or direction of EMA pending the determination of an appeal by the Appeal Panel.

22. Penalty to be imposed for contravening the Minister's direction: There is currently no penalty prescribed for non-compliance with the Minister's direction to transfer properties between gas companies

substantially owned by the Government in the transitional provisions. To ensure that the transfer exercise is successfully undertaken, it is proposed to make it an offence for such companies failing to comply with the Minister's direction.

23. **Protection of underground pipelines:** For public safety reasons, it is proposed to introduce additional provisions relating to precautions to be taken by any person prior to carrying out any earthworks in the vicinity of any underground gas pipeline. This is to prevent such pipelines from being damaged. Failure to take precautions to prevent damage and causing damage to such pipelines shall be an offence.

24. **Licensing Town Gas Production:** At present, the production of town gas is a licensable activity under the Public Utilities Act (1996 Ed.) preserved under the Public Utilities Act (Cap. 261). It is proposed to make the production of town gas a licensable gas activity under the Act and to repeal the relevant provisions in the Public Utilities Act (1996 Ed.).

MODE OF FEEDBACK

25. EMA invites comments and feedback on the proposed amendments to the Act as set out in Appendix 1.

26. Written comments may be sent through the following means:

Email: leow_leng_chong@ema.gov.sg and lilian_lau@ema.gov.sg

Post/Courier:

Deputy Director (Systems Development & Assessment)
Energy Market Authority
111 Somerset Road, #15-05
Singapore 238164.

Fax: (65) 68358084

27. Parties that submit feedback should organise their submissions as follows:

- a. Cover page (including the information specified in paragraph 29 of this document);
- b. Table of contents;

- c. Summary of major points;
- d. Statement of interest;
- e. Comments (using the format given in Appendix 2); and
- f. Conclusion.

28. Supporting material may be placed in an annex. All submissions should be clearly and concisely written, and should provide detailed reasons for any proposed revision to the draft amendments to the Gas Act. Parties should identify the specific provision of the draft amendments on which they are commenting (Please submit comments in the format as shown in Appendix 2). In any case in which a party chooses to suggest revisions to the text of the draft amendments, the party should state clearly the specific changes to the text that they are proposing.

29. All comments or feedback should be made on or before 11:59pm, 26 February 2006. **There will be no extension of deadline beyond 26 February 2006, 11:59pm.** Submissions must be submitted in both hard and soft copies (in Microsoft Word format). Parties submitting comments should include their personal/company particulars as well as their correspondence address, contact numbers and email addresses on the cover page of their submissions.

30. Anonymous submissions will not be considered.

31. EMA will acknowledge receipt of all submissions. Please contact Ms Lilian Lau if you have not received an acknowledgement of your submission within two business days.

32. EMA reserves the right to make public all or parts of any written submission made in response to this Request for Feedback and to disclose the identity of the source. Any part of the submission, which is considered by respondents to be commercially sensitive, should be clearly marked and placed in a confidential annex. EMA will take this into account regarding disclosure of the information submitted. EMA will not accept any submission that requests confidential treatment of all or a substantial part of the submission.

DRAFT AMENDMENTS TO THE GAS ACT (CAP. 116A)

(THIS DRAFT IS STILL UNDER REVIEW BY THE ATTORNEY GENERAL'S CHAMBERS.)

Short title and commencement

1. This Act may be cited as the Gas (Amendment) Act 2006 and shall come into
5 operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2 of the Gas Act is amended —

(a) by inserting, immediately after the definition of “check meter”, the following definition:

10 ““code of practice” means a code issued or approved by the Authority under section 62”;

(b) by deleting the words “gas transporter” in the definition of “exempt gas transporter” and substituting the word “person”;

(c) by deleting the definitions of “gas licence” and “gas licensee” and
15 substituting the following definitions:

““gas licence” means a licence granted or extended by the Authority under section 7;

“gas licensee” means any person who is granted a gas licence by the Authority;”;

(d) by inserting, immediately after the definition of “gas mains network”, the following definition:

20 “Gas Network Code” means the code issued or approved by the Authority or modified in accordance with section 63A;

(e) by inserting the words “, or under the management or control of” in the
25 definition of “gas service pipe” after the words “includes any pipe owned by”;

(f) by inserting, immediately after the definition of “gas service worker”, the following definitions:

““gas shipper” means a person holding a gas shipper’s licence;

30 “gas shipper’s licence” means a licence granted under section 7(3)(ba);”;

(g) by deleting the words “gas reception facilities,” in the definition of “gas transmission pipeline”;

(h) by deleting the words “for the conveyance of,” in the definition of “gas transmission pipeline” and substituting the words “by a gas transporter to convey”;

5 (i) by inserting, immediately after the definition of “gas transporter”, the following definitions:

“ “gas transporter’s agent” means a person holding a gas transporter’s agent’s licence;

“gas transporter’s agent’s licence” means a licence granted under section 7(3)(aa);”;

10 (j) by inserting, immediately after the definition of “occupier”, the following definitions:

“ “onshore receiving facility” means a gas reception facility located in Singapore and used for the purpose of importation of natural gas into Singapore;

15 “onshore receiving facility operator” means a person holding an onshore receiving facility operator’s licence;

“onshore receiving facility operator’s licence” means a licence granted under section 7(3)(bb);”;

20 (k) by deleting the definition of “shipping” and substituting the following definition:

“ “shipping”, in relation to gas, means contracting with a gas transporter for gas to be introduced into, conveyed by and taken out of a gas pipeline or a gas pipeline network operated by the gas transporter and paying the gas transporter for conveyance of the gas, and “ship” shall be construed accordingly;”;

25 (l) by inserting immediately after the definition of “town gas”, the following definitions:

“ “town gas producer” means a person holding a town gas producer’s licence;

30 “town gas producer’s licence” means a licence granted under section 7(3)(bc);”;

Amendment of section 3

3. Section 3 of the Gas Act is amended —

(a) by inserting, immediately after subsection (5), the following subsection:

5 “(5A) In addition to the functions and duties imposed by this section, the Authority may undertake such other functions as the Minister may assign to the Authority and in so doing the Authority shall be deemed to be fulfilling the purposes of this Act and the provisions of this Act shall apply to the Authority in respect of such functions.”.

Amendment of section 4

4. Section 4 of the Gas Act is amended —

10 (a) by inserting, immediately after the words “under this Act” in subsection (1), the words “or by the Minister under this Act or other written law”;

(b) by inserting, immediately after subsection (1), the following subsection:

15 “(1A) The power under subsection (1) to require a person to furnish any document or information includes the power —

(a) to require that person, or any person who is or was an officer or employee of his, to provide an explanation of the document or information after it is furnished;

20 (b) if the document or information is not furnished, to require that person to state, to the best of his knowledge and belief, where it is; and

(c) if the information is recorded otherwise than in legible form, to require the information to be made available to the Authority in legible form.”; and

25 (c) by inserting, immediately after subsection (6), the following subsection:

“(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).”.

Amendment of section 5

5. Section 5 of the Gas Act is amended —

30 (a) by deleting subsection (3) and substituting the following subsection:

“(3) A person aggrieved by a notice under subsection (2)(b) may appeal to the Minister under section 93(1) within 7 days of the date of giving of the notice.”; and

35 (b) by deleting paragraph (b) of subsection (4) and substituting the following paragraph:

“(b) from disclosing any information or document to the Minister or any agent, consultant, committee or panel acting for or under the direction of the Minister, or to an Appeal Panel.”.

Amendment of section 6

5 **6.** Section 6 of the Gas Act is amended —

(a) by inserting, immediately after paragraph (a) of subsection (1), the following paragraph:

10 “(aa) act as an agent or contractor of a gas transporter in the management or operation of a gas pipeline network (or any part thereof);”;

(b) by deleting the word “or” at the end of subsection (1)(b);

(c) by inserting, immediately after paragraph (b) of subsection (1), the following paragraphs:

 “(ba) ship gas;

15 “(bb) manage or operate any onshore receiving facility;

 “(bc) produce town gas; or”;

(d) by deleting the words “a gas transporter’s licence or gas retailer’s licence or” and “3(c)” in subsection (1);

20 (e) by deleting the word “\$500,000” and substituting the words “\$1 million and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction” in subsection (4); and

(f) by inserting, immediately after subsection (4), the following subsection:

 “(5) In this section —

25 “agent” shall not include an employee of the gas transporter;

 “contractor” means any person who contracts with a gas transporter to perform any service or do any work but shall not include an employee of the gas transporter.”.

Amendment of section 7

30 **7.** Section 7 of the Gas Act is amended —

(a) by inserting, immediately after paragraph (a) of subsection (1), the following paragraph:

 “(aa) be for the purpose referred to in section 6(1)(a), 6(1)(aa), 6(1)(b), 6(1)(ba), 6(1)(bb), 6(1)(bc) and 6(1)(c);

35 (b) by inserting, immediately after paragraph (a) of subsection (3), the following paragraph:

“(aa) for the purpose referred to in section 6(1)(aa), a gas transporter’s agent’s licence;”;

(c) by deleting the word “and” at the end of subsection (3)(b);

(d) by inserting, immediately after paragraph (b) of subsection (3), the following paragraphs:

“(ba) for the purpose referred to in section 6(1)(ba), a gas shipper’s licence;

(bb) for the purpose referred to in section 6(1)(bb), an onshore receiving facility operator’s licence;

(bc) for the purpose referred to in section 6(1)(bc), town gas producer’s licence; and”;

(e) by deleting the word “or” at the end of subsection (5)(a);

(f) by inserting, immediately after paragraph (a) of subsection (5), the following paragraph:

“(aa) a person who is the holder of a gas shipper’s licence;

(ab) a person who is the holder of a town gas producer’s licence; or”;

(g) by inserting, immediately after subsection (5), the following subsection:

“(5A) A gas transporter’s agent’s licence shall not be granted to —

(a) a person who is the holder of a gas retailer’s licence;

(b) a person who is the holder of a gas shipper’s licence;

(c) a person who is the holder of a town gas producer’s licence; or

(d) any other person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any duty imposed on such a person under this Act, the Electricity Act or any licence issued to him under this section.”.

(h) by inserting, immediately after paragraph (a) of subsection (6), the following paragraph:

“(aa) a person who is the holder of a gas transporter’s agent’s licence;” and

(i) by inserting, immediately after subsection (6), the following subsections:

“(6A) A gas shipper’s licence shall not be granted to —

(a) a person who is the holder of a gas transporter’s licence;

(b) a person who is the holder of a gas transporter’s agent’s licence; or

(c) any other person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any

duty imposed on such a person under this Act, the Electricity Act or any licence issued to him under this section.

(6B) An onshore receiving facility operator's licence shall not be granted to any person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any duty imposed on such a person under this Act, the Electricity Act or any licence issued to him under this section.

(6C) A town gas producer's licence shall not be granted to —

(a) a person who is the holder of a gas transporter's licence;

(b) a person who is the holder of a gas transporter's agent's licence; or

(c) any other person, if the grant of such licence may, in the opinion of the Authority, give rise to a conflict of interest in the discharge of any duty imposed on such a person under this Act, the Electricity Act or any licence issued to him under this section.”.

Amendment of section 8

8. Section 8 of the Gas Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) If the Authority is satisfied that —

(a) any condition of an exemption granted to a class of persons is not complied with by any person of that class;

(b) any condition of an exemption granted to a person is not complied with by him;

(c) any direction issued by or any requirement of the Authority under section 19 is not complied with by any exempt person; or

(d) the public interest or security of Singapore requires,

the Authority may, by notice in writing and without payment of any compensation, issue to that person a direction declaring that the exemption is revoked, insofar as it relates to that person, to such extent and from such date as may be specified in the direction.”

Amendment of section 9

9. Section 9 of the Gas Act is amended —

(a) by inserting, immediately after the words “to the gas licensee” in subsection (2)(h), the following words “with such modification or exemption as may be approved by the Authority”;

(b) by deleting the word “and” at the end of subsection (3)(g);

(c) by inserting, immediately after paragraph (h) of subsection (3), the following paragraph:

“(i) requiring the gas transporter to participate in tests or trials for the purposes of implementing the Gas Network Code; and

(j) requiring the gas transporter to implement and to comply fully with the provisions of the Gas Network Code by a date specified by the Authority.”

(d) by inserting, immediately after subsection (4), the following subsections:

“(5) Without prejudice to the generality of subsection (1), a gas shipper’s licence may include conditions –

(a) requiring the gas shipper to participate in tests or trials for the purposes of implementing the Gas Network Code; and

(b) requiring the gas shipper to implement and to comply fully with the provisions of the Gas Network Code by a date specified by the Authority.

(6) Without prejudice to the generality of subsection (1), an onshore receiving facility operator’s licence may include conditions —

(a) requiring the onshore receiving facility operator to operate and maintain its onshore receiving facility to ensure the reliability of the supply of gas; and

(b) requiring the onshore receiving facility operator to provide a performance bond, guarantee or any other form of security on such terms and conditions as the Authority may determine.”

Amendment of section 11

10. Section 11 of the Gas Act is amended by inserting the words “or he is registered as a professional engineer under the Professional Engineers Act (Cap. 253)” at the end of subsection (1).

Repeal and re-enactment of section 19

11. Section 19 of the Gas Act is repealed and the following section substituted therefor:

“Enforcement

19.—(1) If the Authority is satisfied that —

(a) a gas licensee is contravening, is likely to contravene or has contravened any condition of its gas licence, any code of practice or other standard of performance applicable to the licensee, any provision of this Act or any direction (including a direction referred to in sub-paragraph (i)) issued by the Authority to or applicable to the gas licensee; or

(b) an exempt person is contravening, is likely to contravene or has contravened any condition imposed on the exempt person under section 8, or any code of practice or any direction (including a

direction referred to in sub-paragraph (i)) issued by the Authority to or applicable to the exempt person,

the Authority may by notice in writing to the gas licensee or the exempt person, as the case may be, do one or more of the following:

5 (i) direct the gas licensee or the exempt person to do or not do such things as are specified in such direction;

(ii) require the gas licensee or the exempt person to provide a performance bond, guarantee or any other form of security on such terms and conditions as the Authority may determine;

10 (iii) subject to subsection (2) —

(A) require the gas licensee to pay a financial penalty of an amount not exceeding 10% of the annual turnover of that part of the licensee's business in respect of which the licensee holds a licence, ascertained from the licensee's latest audited accounts, or an amount not exceeding \$1 million, whichever is the higher; or

15 (B) 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
20 an amount not exceeding \$1 million, whichever is the higher.

(2) 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.”

Repeal of section 20

25 **12.** Section 20 of the Gas Act is repealed.

Amendment of section 26

13. Section 26 of the Gas Act is amended —

30 (a) by inserting, immediately after the words “in the opinion of the gas transporter”, the words “or a gas transporter's agent”, and inserting, immediately after the words “plant or pipe, the gas transporter”, the words “or a gas transporter's agent”, in subsection (1); and

(b) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter's agent”, in subsection (2).

Amendment of section 27

35 **14.** Section 27 of the Gas Act is amended —

(a) by inserting, immediately after the words “Subject to the provisions of this Act, a gas transporter”, the words “or a gas transporter's agent”, inserting, immediately after the words “gas transporter's licence”, the words “or a gas transporter's agent's licence”, and inserting, immediately after the words

“between the gas transporter” the words “or the gas transporter’s agent as the case may be”, in subsection (1);

- (b) by deleting the words “gas transporter’s purpose”, and substituting the words “purpose of the gas transporter or the gas transporter’s agent” in subsection (2);
- (c) by inserting, immediately after the words “A gas transporter”, the words “or a gas transporter’s agent”, and inserting, immediately after the words “the gas transporter”, the words “or a gas transporter’s agent”, in subsection (4);
- (d) by inserting, immediately after the words “gas transporter”, the words “or the gas transporter’s agent”, in subsection (7);
- (e) by deleting “Subject to subsection (10),” and inserting immediately after the words “to be carried out” the words “and the decision of the Authority shall be final” in subsection (9);
- (f) by deleting subsection (10);
- (g) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (11);
- (h) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (12);
- (i) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (13);
- (j) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (14); and
- (k) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (15).

Amendment of section 33

15. Section 33 of the Gas Act is amended —

- (a) by inserting, immediately after the words “in relation to a gas transporter”, the words “or a gas transporter’s agent”, and inserting, immediately after the words “that gas transporter”, the words “or a gas transporter’s agent”, in subsection (1);
- (b) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (1)(b);
- (c) by inserting, immediately after the words “gas transporter”, the words “or the gas transporter’s agent”, in subsection (2)(a);
- (d) by inserting, immediately after the words “gas transporter”, the words “or the gas transporter’s agent”, in subsection (2)(b);
- (e) by deleting subsection (2)(c), and substituting the following subsection:
 - “(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”; and

- (f) by inserting, immediately after the words “gas transporter”, the words “or the gas transporter’s agent”, in subsection (2)(d).

Amendment of section 34

16. Section 34 of the Gas Act is amended —

- (a) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (1);
- (b) by inserting, immediately after the words “gas transporter”, the words “or the gas transporter’s agent”, in subsection (1)(a);
- (c) by inserting, immediately after the words “gas transporter”, the words “or the gas transporter’s agent”, in subsection (1)(b);
- (d) by inserting, immediately after the words “gas transporter”, the words “or the gas transporter’s agent”, in subsection (1)(c);
- (e) by inserting, immediately after the words “gas transporter”, the words “or the gas transporter’s agent”, in subsection (2)(a);
- (f) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (5);
- (g) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (6)(a);
- (h) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (6)(b);
- (i) by deleting the words “a gas transporter’s property”, and substituting the words “the property of a gas transporter or a gas transporter’s agent”, in subsection (6)(c);
- (j) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (6)(d); and
- (k) by inserting, immediately after the words “gas transporter”, the words “or a gas transporter’s agent”, in subsection (7).

Amendment of section 35

17. Section 35 of the Gas Act is amended —

- (a) by inserting, immediately after the words “gas transporter”, the words “or the gas transporter’s agent”, in subsection (1); and

- (b) by inserting, immediately after the words “a gas transporter”, the words “or a gas transporter’s agent”, and by inserting, immediately after the words “the gas transporter”, the words “or the gas transporter’s agent”, in subsection (2).

Amendment of section 38

5 **18.** Section 38 of the Gas Act is amended —

- (a) by inserting, immediately after subsection (6), the following subsections;

“(6A) The Authority may, in the absence of any agreement relating to the allocation of gas in any gas pipeline or gas pipeline network located offshore, impose on such persons such arrangements relating to the allocation of gas as it
10 thinks fit by notice in writing.

(6B) Any subsequent agreement entered into by such persons relating to the allocation of gas in any gas pipeline or gas pipeline network located offshore shall supersede any arrangement imposed by the Authority in subsection (6A) provided that such agreement shall allow for non-discriminatory access to such
15 gas pipeline or gas pipeline network.”; and

- (b) by deleting the words “exempt gas transporter” in sub-paragraph (i) of the definition of “relevant facility” in subsection (9) and substituting the words “exempt person”.

Amendment of section 39

20 **19.** Section 39 is amended by inserting, immediately after the words “ Where any”, the words “gas transmission pipeline or” in subsection (1).

New sections 42A and 42B

20. The Gas Act is amended by inserting, immediately after section 42, the following sections:

“Carrying out of earthworks within vicinity of gas pipe

25 **42A.**—(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 underground gas pipe in the gas pipeline network which belongs to or which is under the
30 management or control of a gas transporter unless the person —

- (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; and
(b) has obtained from the gas transporter the necessary information on the location of the gas pipe and has consulted the gas transporter on the
35 steps to be taken to prevent the gas pipe from being damaged while the earthworks are being carried out.

(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.

(3) It shall be the duty of the person who carries out any earthworks referred to in subsection (1) —

- (a) to comply with all reasonable requirements of the gas transporter for the prevention of damage to the gas pipe;
- (b) to ensure that reasonable precautions are taken when carrying out such earthworks to prevent any damage to the gas pipe; and
- (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 pipe.

(4) It shall be the duty of the gas transporter to whom a notice under subsection (1)(a) has been given —

- (a) to promptly inform the person who has given him the notice of the location of the gas pipe and to provide the person with any other information as may be necessary to enable him to ascertain the exact location of the gas pipe;
- (b) to advise the person who has given him the notice on the precautions to be taken to prevent damage to the gas pipe;
- (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 dangers that can arise from any damage to the gas pipe.

(5) Nothing in subsection (1) shall prohibit a person from commencing or carrying out any earthworks where he has reasonable cause to believe that it is necessary to do so in the interest of public or private safety except that the person shall, not more than 7 days 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.

(6) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

(7) Subject to subsection (8), in any proceedings for an offence under subsection (6), it shall be a defence for the person charged to prove —

- (a) that he took all reasonable steps to discharge his duty under subsection (1) or (3), as the case may be; or
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(8) If in any proceedings for an offence under subsection (6), the defence involves acting on information supplied by a gas transporter, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within 14 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession

identifying or assisting in the identification of the person who supplied him with the information.

Damage to property of gas transporter

5 **42B.**—(1) Notwithstanding section 32(2), any person who, in the course of carrying out any earthworks, damages or suffers to be damaged any underground gas pipe in the gas pipeline network belonging to 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.

10 (2) Where an offence under subsection (1) 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
15 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.

20 (3) Any person may apprehend any other person if the other person within his view commits an offence under this section and shall hand over the person so apprehended to a police officer without unreasonable delay.

(4) In any proceedings for an offence under subsection (1), it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

25 (5) If in any proceedings for an offence under subsection (1), the defence involves acting on information supplied by a gas transporter, the person charged shall not, without leave of the court, be entitled to rely on that defence unless he has, within 14 clear days before the hearing, served on the prosecutor a notice in writing giving such information as was then in his possession
30 identifying or assisting in the identification of the person who supplied him with the information.”.

Amendment of heading to Part VII

21. Part VII of the Gas Act is amended by inserting, immediately after the word “PRACTICE” in the Part heading, the words “AND GAS NETWORK CODE”.

Repeal and re-enactment of sections 62 and 63

35 **22.** Sections 62 and 63 of the Gas Act are repealed and the following sections substituted therefor:

“Codes of practice

62.—(1) The Authority may issue or approve one or more codes of practice and other standards of performance for the regulation of activities and conduct in the gas industry.

5 (2) Any person who undertakes any gas service work or other work on a gas pipeline or gas pipeline network belonging to a gas transporter, and any other person designated by the Authority for the purposes of this section, shall, prior to carrying out such work, produce and comply with a code of practice approved by the Authority, setting out its methodology for complying with
10 the regulations which relate to safety.

(3) The person referred to in subsection (2) shall also comply with any other code of practice issued or approved by the Authority which is applicable to the person.

15 (4) A code of practice issued or approved under this section may be modified by the Authority by notice in writing, published in such manner as will secure adequate publicity.

20 (5) If any provision in any code of practice issued or approved by the Authority is inconsistent with the any regulations made under this Act, such provision shall, to the extent of the inconsistency, either have effect subject to such regulation or, where appropriate, having regard to such regulation, shall not have effect.

(6) Any code of practice issued or approved by the Authority under this section shall be deemed not to be subsidiary legislation.

25 (7) Every gas licensee shall comply with the relevant codes of practice and standards of performance issued, approved or modified by the Authority under this section.

(8) Every exempt person shall comply with the relevant codes of practice issued, approved or modified by the Authority under this section.

30 (9) The Authority may, in any gas licence or exemption, exempt any gas licensee or exempt person from any provision in any code of practice issued, approved or modified by the Authority generally or for such time as the Authority may specify.”

Directions for or with respect to codes of practice

35 **63.**—(1) The Authority may give directions for or with respect to codes of practice and other standards of performance and procedures to be observed by gas licensees and other persons —

(a) to ensure the reliability of the supply of gas to the public;

(b) to ensure the security and reliability of the supply of gas to the public;

(c) in the interests of public safety; or

(d) as may be necessary to allow the Authority to carry out its functions and duties under section 3.

(2) Any person who fails to comply with any direction given under subsection (1) shall be guilty of an offence.”

5 **New sections 63A to 63E**

23. The Gas Act is amended by inserting, immediately after section 63, the following sections:

“Gas Network Code

10 **63A.** —(1) The Authority shall issue or approve the initial Gas Network Code establishing and governing, amongst other things —

(a) agreements and arrangements in connection with transportation of gas to enable non-discriminatory access to a gas transporter’s gas pipeline or gas pipeline network;

15 (b) the activities of a gas transporter and a gas shipper in relation to transportation of gas; and

(c) the principles and methodologies relating to the operation of any gas pipeline network.

(2) The Gas Network Code, including modifications made in accordance with this subsection, may be modified:

20 (a) in accordance with the code modification rules of the Gas Network Code; and

(b) by a gas transporter in compliance with directions issued by the Authority.

(3) The Gas Network Code issued or approved by the Authority or modified in accordance with this section shall be published by the gas transporter in such manner as will secure adequate publicity.

(4) It shall be the duty of a gas transporter and a gas shipper to comply with the Gas Network Code, including any modifications to the Gas Network Code made in accordance with this section, at all times.

(5) The Gas Network Code shall be deemed not to be subsidiary legislation.

30 **Penalties under Gas Network Code**

35 **63B.** Without limiting the generality of section 63A (1), the Gas Network Code may include provisions authorising and governing the imposition of financial penalties on a gas transporter and gas shippers.

Limitation of actions under Gas Network Code

63C. —(1) If the Gas Network Code include a provision —

(a) that regulates the manner in which disputes under the Gas Network Code or referred to in the Gas Network Code are to or may be resolved; and

5 (b) that restricts recourse to the courts until such time as the dispute resolution process in the Gas Network Code has been exhausted,

recourse to the courts shall be limited in the manner prescribed by the Gas Network Code, including a restriction against appeals to a court except in relation to matters of law and jurisdiction.

10 (2) Nothing in this section is to be read or construed as sanctioning the right of any person to seek injunctive or other relief from the courts in respect of the issue or implementation of the Gas Network Code.

Prohibition of terms or conditions in contracts, agreements, inconsistent with Gas Network Code, etc.

15 **63D.** —(1) Any term or condition in a contract, agreement, arrangement or document implemented before, on or after the appointed day which provides for the conveyance of gas through the gas pipeline network of a gas transporter whether located onshore or offshore which:

20 (a) prevents or restricts any person from gaining access to the gas pipeline network of the gas transporter whether located onshore or offshore; or

(b) gives rise to a conflict with the Gas Network Code; or

(c) excludes the application of the provisions of this Act or the regulations, shall not be lawful, and shall not be or cease to be enforceable.

25 (2) If the Authority is satisfied that any person is a party to any contract, agreement, arrangement or document which contravenes subsection (1), the Authority may by notice in writing to such person do one or more of the following—

(a) direct the person to do or not to do such things as are specified in such direction;

30 (b) direct the person to cease or procure the cessation of conveyance of gas through any gas pipeline or gas pipeline network of a gas transporter;

(c) require the payment of a financial penalty of an amount not exceeding 10% of the annual turnover of the person's gas business, or an amount not exceeding \$1 million, whichever is higher.

35 (3) Any person who fails to comply with any direction or make any payment under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of an amount not exceeding \$1 million, and in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

Direction for or with respect to Gas Network Code

5 **63E.** —(1) The Authority may give directions for or with respect to Gas Network Code to be observed by any person or consumer or any class of persons or consumers to do or not to do such things, or pay such fees or other charges under the Gas Network Code as may be determined by the Authority to the relevant gas shipper to ensure the reliability, availability and continuity of the supply of gas.

(2) Any person who fails to comply with any direction given under subsection (1) shall be guilty of an offence.”

10 **New Part VIIA**

24. The Gas Act is amended by inserting, immediately after section 63E, the following Part:

“PART VIIA

CONTROL OF GAS LICENSEES AND GAS PIPELINE NETWORK

15 **“Control of acquisition of equity interest in designated gas licensee, etc.**

20 **63F.**—(1) A designated gas licensee, a designated entity or the trustee-manager of a designated business trust shall give notice to the Authority if any person acquires equity interest in the licensee, the entity or the business trust, respectively, whether by a series of transactions over a period of time or otherwise, that would result in that person holding 5% or more but less than 12% of the total equity interest in the licensee entity or the business trust, respectively.

(2) A notice under subsection (1) shall be given in writing, in the prescribed manner and within the prescribed period.

25 (3) No person shall, whether through a series of transactions over a period of time or otherwise, become a 12% controller, a 30% controller or an indirect controller of a designated gas licensee, a designated entity or a designated business trust without obtaining the prior written approval of the Authority in the prescribed manner and within the prescribed period.

30 (4) No person shall acquire as a going concern the business of a designated gas licensee (conducted pursuant to its licence) or the business of a designated entity (which relates to its gas pipeline network or any part thereof), unless the person and, the licensee or the entity, as the case may be, obtain the prior written approval of the Authority in the prescribed manner and within the prescribed period.

35 (5) Any approval by the Authority under this section may be given subject to such conditions as the Authority considers appropriate.

(6) Any condition imposed by the Authority under this section shall have effect notwithstanding the provisions of any other written law or anything contained in the memorandum or articles of association, or other constitution, of the licensee, the entity or the business trust.

5 (7) Any approval granted by the Authority under this section shall be without prejudice to the operation of Part IX.

(8) In this section —

“12% controller” means a person who, alone or together with his associates —

10 (a) holds 12% or more of the total equity interest; or

(b) is in a position to control voting of power of 12% or more, in the licensee, the entity or the business trust;

“30% controller” means a person who, alone or together with his associates —

15 (a) holds 30% or more of the total equity interest; or

(b) is in a position to control voting of power of 30% or more, in the licensee, the entity or the business trust;

“business trust” has the same meaning as in section 2 of the Business Trust Act (Cap. 31A);

20 “corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“designated business trust” means a business trust that is established wholly or partly in respect of a gas pipeline network (or any part thereof);

25 “designated gas licensee” means a person who has been granted a licence or whose licence has been extended under section 7(3)(a) or 7(3)(aa);

“designated entity” means an entity which owns a gas pipeline network (or any part thereof), not being a designated gas licensee, and which has been declared by the Authority, by notification in the *Gazette*, to be a designated entity for the purposes of this section;

30 “entity” includes a corporation and a limited liability partnership;

“equity interest” —

(a) in relation to a corporation, means a voting share in that corporation;

35 (b) in relation to an entity other than a corporation, means any right or interest, whether legal or equitable, in that entity, by whatever name called, which gives the holder of that right or interest, voting power in that entity; and

(c) in relation to a business trust, means a unit in that business trust;

“indirect controller” means any person, whether acting alone or together with any other person, and with or without holding equity interest or controlling voting power in the licensee, the entity or the business trust, as the case may be —

(a) in accordance with whose directions, instructions or wishes the directors of the licensee, the directors or other officers of the entity or the trustee-manager of the business trust, are accustomed or under an obligation, whether formal or informal, to act; or

(b) who is in a position to determine the policy of the licensee, entity or business trust,

but does not include any person —

(i) who is a director, executive officer or the chairman of the board of directors of the licensee whose appointment has been approved by the Authority under section 63J; or

(ii) in accordance with whose directions, instructions or wishes the directors of the licensee, the directors or other officers of the entity or the trustee-manager of the business trust, are accustomed to act by reason only that they act on advice given by him in his professional capacity;

“limited liability partnership” means a limited liability partnership formed under section 4(1) of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

“trustee-manager” has the same meaning as in section 2 of the Business Trust Act;

“unit” has the same meaning as in section 2 of the Business Trust Act;

“voting share” has the same meaning as in section 4(1) of the Companies Act.

(9) For the purposes of the definitions of 12% controller and 30% controller in subsection (8), a person, A, is an associate of another person, B, if —

(i) A is the spouse or a parent, step-parent or remoter lineal ancestor, or a son, step-son, daughter, step- daughter or remoter issue, or a brother or sister, of B;

(ii) A is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B, or where B is a corporation, of the directors of B;

(iii) B is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A, or where A is a corporation, of the directors of A;

- (iv) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;
- (v) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;
- (vi) A is a related corporation of B;
- (vii) A is a corporation in which B, alone or together with other associates of B as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 30% of the voting power in A;
- (viii) B is a corporation in which A, alone or together with other associates of A as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 30% of the voting power in B; or
- (ix) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of equity interests in, or with respect to the exercise of their voting power in relation to, the licensee, the entity or the business trust.

Power to issue directions

63G.—(1) The Authority may issue any direction to a person under subsection (2) or (3) if the Authority is satisfied that —

- (a) the person has contravened section 63F (3) or (4);
- (b) any condition of approval imposed on the person under section 63F has not been complied with;
- (c) the person has furnished false or misleading information or documents in connection with an application under section 63F; or
- (d) the Authority would not have granted its approval under section 63F had it been aware, at that time, of circumstances relevant to the person's application for approval.

(2) Where a person has acquired an equity interest in a designated gas licensee, designated entity or designated business trust, the Authority may —

- (a) direct the transfer or disposal of all or any of the equity interest held by the person or any of his associates (referred to in this section as the specified equity interest) within such time and subject to such conditions as the Authority considers appropriate;
- (b) restrict the transfer or disposal of the specified equity interest; or
- (c) make such other direction as the Authority considers appropriate.

(3) Where a person has acquired as a going concern the business of a designated gas licensee or a designated entity, the Authority may —

(a) direct the person to transfer or dispose of all or any part of the business within such time and subject to such conditions as the Authority considers appropriate; or

(b) make such other direction as the Authority considers appropriate.

5 (4) Before issuing any direction to a person under subsection (2) or (3), the Authority shall, unless the Authority decides that it is not practicable or desirable to do so, cause to be given to the person notice in writing of the Authority's intention to serve the direction, specifying a date by which the person may make written representations with regard to the proposed direction.

10 (5) Upon receipt of any written representation referred to in subsection (4), the Authority shall consider it for the purpose of determining whether to issue the direction.

(6) Any person to whom a direction is issued under this section shall comply with the direction.

15 (7) The Authority may vary or revoke any direction issued under this section.

(8) In this section, the words "associate", "designated business trust", "designated gas licensee", "designated entity" and "equity interest" have the same meanings as in section 63F.

Effect of directions

20 **63H.**—(1) Any direction issued to a person under section 63G shall take effect notwithstanding the provisions of any other written law or anything contained in the memorandum or articles of association, or other constitution, of the designated gas licensee, the designated entity or the designated business trust, as the case may be, or that of the person.

25 (2) Without prejudice to the generality of subsection (1), in the case of any direction issued under section 63G (2)(a) or (b), until the direction is complied with or is revoked, notwithstanding the provisions of any other written law or anything contained in the memorandum or articles of association, or other constitution, of the licensee, the entity or the business trust, as the case may be, —

30 (a) no voting rights shall be exercisable in respect of the specified equity interest unless the Authority expressly permits such rights to be exercised;

35 (b) no equity interest of the licensee, the entity or the 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

40 (c) except in a winding up of the licensee, the entity or the business trust, no payment shall be made by the licensee, the entity or the 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.

Offences penalties and defences

63I. —(1) Any person who contravenes sections 63F or 63G(6) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$1 million or to imprisonment for a term not exceeding 3 years or to both 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; or

(b) in any other case, to a fine not exceeding \$2 million and, in the case of a continuing offence, to a further fine not exceeding \$200,000 for every day or part thereof during which the offence continues after conviction.

(2) Where a person is charged with an offence in respect of a contravention of section 63F, it shall be a defence for the person to prove that —

(a) he was not aware that he had contravened section 63F; and

(b) he has, within 14 days of becoming aware that he had contravened section 63F, notified the Authority of the contravention and, within such time as may be determined by the Authority, taken such actions in relation to his holding of equity interest or control of voting power in the licensee, the entity or the business trust, as the Authority may direct.

(3) Where a person is charged with an offence in respect of a contravention of section 63F, it shall also be a defence for the person to prove that, even though he was aware of the contravention —

(a) the contravention occurred as a result of an increase in the holding of equity interest or in the voting power controlled by any of his associates;

(b) he has no agreement or arrangement, whether oral or in writing and whether express or implied, with that associate with respect to the acquisition, holding or disposal of equity interest in, or under which they act together in exercising their voting power in relation to, the licensee, the entity or the business trust; and

(c) he has, within 14 days of the date of the contravention, notified the Authority of the contravention and, within such time as may be determined by the Authority, taken such action in relation to his holding of equity interest or control of voting power in the licensee, the entity or the business trust, as the Authority may direct.

(4) Except as provided in subsections (2) and (3), it shall not be a defence for a person charged with an offence in respect of a contravention of section 63F to prove that he did not intend to or did not knowingly contravene section 63F.

Appointment of chief executive officer, director, etc., of designated gas licensee

63J.—(1) No designated gas licensee shall appoint a person as its chief executive officer, its director or the chairman of its board of directors unless it has obtained the written approval of the Authority.

(2) Where a person has been appointed by a designated gas licensee as its chief executive officer, its director or the chairman of its board of directors without the approval of the Authority in contravention of subsection (1), the Authority may issue a direction to the licensee to remove the person as its chief executive officer, its director or the chairman of its board of directors, as the case may be.

(3) This section shall have effect notwithstanding the provisions of any other written law or of the memorandum or articles of association, or other constitution, of the designated gas licensee.

(4) In this section —

“chief executive officer”, in relation to a designated gas licensee, means any person, by whatever name described, who is —

(a) in the direct employment of, or acting for or by arrangement with, the licensee; and

(b) principally responsible for the management and conduct of any type of business of the licensee,

and includes any person for the time being performing all or any of the functions or duties of a chief executive officer;

“designated gas licensee” has the same meaning as in section 30A;

“director” has the same meaning as in section 4(1) of the Companies Act (Cap. 50).

Control of disposal or acquisition of gas pipeline network, etc.

63K.—(1) No person shall —

(a) dispose of, transfer or acquire a gas pipeline network, or any part thereof;

(b) create or acquire any interest in a gas pipeline network or any part thereof by way of security; or

(c) enter into any lease or contract for hire in relation to a gas pipeline network or any part thereof,

without obtaining the prior written approval of the Authority in the prescribed manner and within the prescribed period.

(2) Any approval by the Authority under this section may be given subject to such conditions as the Authority considers appropriate.

(3) Any condition imposed by the Authority under this section shall have effect notwithstanding the provisions of any other written law or anything contained in the memorandum or articles of association, or other constitution, of any person referred to in subsection (1).

Power of Minister to issue written order relating to gas pipeline network

63L.—(1) The Minister may issue a written order to any person who owns a gas pipeline network (or any part thereof) or any person who has entered into any one or more of the transactions specified in section 63K(1), directing the person to —

- (a) transfer or dispose of the gas pipeline network or any part thereof;
- (b) transfer or dispose of any interest created by way of security in the gas pipeline network or any part thereof; or
- (c) terminate any lease or contract for hire in relation to the gas pipeline network or any part thereof,

within such time and subject to such conditions as the Minister considers appropriate, if the Minister is satisfied that —

- (i) the person has contravened section 63K;
- (ii) any condition of approval imposed on the person under section 63K has not been complied with;
- (iii) the person has furnished false or misleading information or documents in connection with an application under section 63K;
- (iv) it is in the interest of the security and reliability of the supply of gas to the public to do so; or
- (v) it is in the public interest to do so.

(2) Before issuing the written order under subsection (1), the Minister shall, unless he decides that it is not practicable or desirable to do so, cause to be given to the person referred to in subsection (1) notice in writing of his intention to issue the written order, specifying the date by which written representations may be made to the Minister with regard to the written order.

(3) Upon receipt of any written representation, the Minister shall consider it for the purpose of determining whether to issue the written order.

(4) The Minister may vary or revoke any written order issued under this section.

(5) Any person to whom a written order is issued under subsection (1) shall comply with the written order and the written order shall take effect notwithstanding the provisions of any other written law and anything

contained in the memorandum or articles of association, or other constitution, of the person.

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction —

5 (a) in the case of an individual, to a fine not exceeding \$1 million or to imprisonment for a term not exceeding 3 years or to both 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; or

10 (b) in any other case, to a fine not exceeding \$2 million and, in the case of a continuing offence, to a further fine not exceeding \$200,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 78

15 **25.** Section 78 of the Gas Act is amended by inserting, immediately after subsection (5), the following subsection:

“(5A) Where any appeal is made against any decision or direction of the Authority under this Part, that decision or direction shall be complied with until such time as the Appeal Panel decides the appeal.”.

Amendment of section 83

20 **26.** Section 83 of the Gas Act is amended —

(a) by inserting, immediately after subsection (3), the following subsections:

25 “(4) Where the Minister considers that an appeal lodged under section 93 involves issues of such nature or complexity that it ought to be considered and determined by persons with particular specialised knowledge or experience, he may establish by direction an Appeal Panel which consists of or includes one or more such persons to consider and determine the appeal.

30 (5) The decision, direction or other thing appealed against in an appeal referred to subsection (4) shall be complied with until such time as the Appeal Panel decides the appeal.”; and

(b) by deleting the words “Request to establish” in the section heading.

Amendment of section 84

35 **27.** Section 84(2) of the Gas Act is amended by inserting, immediately after the words “section 83(3)”, the words “or (4)”.

Amendment of section 85

28. Section 85 of the Gas Act is amended by inserting, immediately after subsection (9), the following subsection:

5 “(9A) In the case of an appeal under section 93, the Appeal Panel that is established by the Minister to consider and determine the appeal under section 83(4) may determine the appeal by confirming, varying or reversing any decision or direction of the Authority or by amending any code of practice or standards of performance issued, approved or modified by the Authority, and the decision of the Appeal Panel shall be final.”.

Amendment of section 93

29. Section 93 of the Gas Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

10 “(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 sections 27(9) and 27(12);

15 (b) anything contained in any code of practice or standards of performance issued, approved or modified by the Authority under section 62;

(c) any direction issued by the Authority under this Act; or

(d) any notice issued by the Authority under section 5(2),

20 may appeal to the Minister, together with adequate details of the grounds for the appeal.

25 (1A) 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 of the Authority or the issue, approval or modification of the code of practice or standards of performance by the Authority.

(1B) Any person who has lodged an appeal under subsection (1) shall provide such information as may be required by the Minister in such manner and within such period as may be specified by the Minister.”;

30 (b) by inserting, immediately after the word “provided” in subsection (2), the words “in this Act”;

(c) by deleting the word “approved” in subsection (3) and substituting the words “or standards of performance issued, approved or modified”;

(d) by inserting, immediately after subsection (4), the following subsection:

“(5) This section is subject to Part X.”.

Amendment of section 101

35 **30.** Section 101 of the Gas Act is amended by inserting, immediately after subsection (2), the following subsection:

5 “(3) If a gas company referred to in subsection (1) contravenes any regulations made or direction issued under this section, it shall be guilty of an offence and shall be liable on conviction to a fine of an amount not exceeding 10% of the annual turnover of its gas business ascertained from its latest audited accounts, or an amount not exceeding \$1 million, whichever is the higher, 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.”.

New section 102

10 **31.** The Gas Act is amended by inserting, immediately after section 101, the following section:

“Grace period for application of licence

15 **102.** —(1) Any person carrying on any activity referred to in section 6(1) immediately before the appointed day shall not continue to do so, unless he has applied for a licence in accordance with section 7 within 14 days from the appointed day.

20 (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million, and in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.”

FORMAT FOR SUBMISSION OF COMMENTS ON THE PROPOSED AMENDMENTS TO THE GAS ACT

Specific Provision(s) of Proposed Amendments	Revised Amendments	Detailed Reasons for Revised Amendments