

PUBLIC FEEDBACK ON AMENDMENTS TO THE GAS ACT

1. A public feedback exercise on proposed amendments to the Gas Act was held from 13 February to 26 February 2006 to obtain feedback on the proposed amendments.
2. The proposed amendments put up for feedback were aimed at enhancing EMA's regulatory oversight of the gas market.
3. Feedback was received from 14 respondents, viz. Mr Yip Pak Ling (Energy Market Company Pte Ltd), Tuas Power Ltd, Island Power Company Pte Ltd, ExxonMobil, Premier Oil Indonesia, City Gas Pte Ltd, PowerGas Ltd, Keppel Energy Pte Ltd, PowerSeraya Ltd, Temasek Holdings Pte Ltd, Gas Supply Pte Ltd, Senoko Power Ltd, Baker Botts L.L.P., and SembCorp Gas Pte Ltd.
4. Common concerns raised were on provisions governing the licensing regime for the agent/contractor to the gas transporter; provisions pertaining to control over the ownership and appointment of key personnel with respect to the gas transporter and its agent/contractor; measures to open access of the gas pipelines especially on prohibition of terms or conditions in contracts that are inconsistent to the Gas Network Code and EMA imposing allocation agreements to relevant parties.
5. A summary of the key concerns, and EMA's responses are tabulated in the Appendix. Feedback from eight of the respondents are also published for general information. Six respondents have requested for their feedback to be kept confidential.
6. EMA thanks all the respondents for their comments.

EMA's Assessment on Feedback on the Proposed Amendments to the Gas Act

(Unless otherwise noted, references to "sections" in this table are to sections of the Gas Act)

Feedback	EMA's Assessment
Licensing Regime [Sections 2, 6, 7, 8, 9, 27, 33 & 34]	
The definition of "shipping" needs clarity. Inclusion of words like 'contracting' and 'paying' creates confusion towards the relevant party to be licensed as a "shipper". Currently, there are cases where companies pay either directly or indirectly to the gas transporter. Moreover, there are existing arrangements which define one party as introducing gas, and the other paying the gas transporter. Hence, the provision may end up applicable to no one.	This feedback is noted. The concept of "contracting" and "paying" will be removed. "Shipping" is the activity of arranging with a gas transporter for gas to be introduced into, conveyed by and taken out of a gas pipeline network operated by the gas transporter. This is clearly stated in the Gas Act and will be retained.
The term "offshore pipelines" was not defined.	This feedback is accepted. However, there is no need to define "offshore pipelines" as the term "gas pipeline" includes all pipes within Singapore, both onshore and offshore.
Concerns were raised that the proposed amendments to Section 6 and 7 were too wide. The reference to a "contractor" would, in practice, capture a wide realm of persons and create unnecessary need to license almost anyone who has contractual arrangements with the gas transporter to perform any service or work. Therefore, it was proposed that the provision be tightened to reflect the actual intent of the amendments. Another feedback suggested widening the range of penalties in Section 8.	This feedback is accepted. We will tighten the drafting of the relevant sections.
Feedback also proposed licensing the import of natural gas. This will allow control on fuel imports to achieve the desired Singapore's energy mix, and prevent over dependence on certain fuel.	This feedback is accepted. We will amend the Act to enable licensing the import of natural gas and liquefied natural gas for implementation of an energy policy.
Comments received for Section 9 highlighted that there is no corresponding provisions for the town gas producer's licence and onshore receiving facility operator's licence.	Section 9 applies to all gas licensees including town gas producer and onshore receiving facility operator, where applicable.
Directions for or with respect to codes of practice [Section 63]	
There is a suggestion to extend EMA's powers under section 63 to cover giving directions to the preparation of the initial Gas Network Code and other codes of practice and any subsequent modifications.	This feedback is not accepted. There is a separate part in the Act covering establishment, operation and subsequent modifications of the Gas Network Code.
Measures to Ensure Open Access to Gas Network [Sections 38 & 63A – 63E]	
Some respondents commented that they had underwritten the costs for construction of the existing offshore pipeline and had to be compensated for allowing open access to these pipelines.	This comment is not relevant to the proposed amendment to the Act to ensure open access. Having said that, we will amend the Act to empower EMA to require the owner of the relevant facility to make such adjustments to charges imposed by the owner on existing users of the relevant facility, as EMA considers appropriate.

Feedback	EMA's Assessment
<p>There were concerns that imposition of gas allocation arrangements by the EMA under the proposed amended Section 38 may potentially create adverse impact on the existing contractual arrangements. Hence, they proposed a 'reasonable grace period' for the existing parties to re-negotiate their existing agreements or a route for appeal.</p> <p>On the other hand, some other respondents agreed with the proposed amendments. One respondent commented, <i>inter alia</i> that these provisions are fair and reasonable for the purpose of regulating the gas market.</p>	<p>The proposed amendment allows parties sharing the use of the offshore pipeline to enter into a mutually agreeable allocation agreement, failing which EMA would require them to enter into an arrangement for allocation of gas to ensure open access to the pipeline.</p>
<p>There should be a transparent process in modifying of the Gas Network Code under the proposed Section 63A. The proposed provision would over-empower the gas transporter in giving them the rights to modify the codes as they deem fit.</p>	<p>This feedback on the concerns of over-empowering the gas transporter is accepted. We would make it explicit that any modifications to the Gas Network Code by the gas transporter would be subject to EMA's approval.</p>
<p>There is a suggestion to amend section 63A(4) to make it the duty of a licensed onshore receiving facilities operator to comply with the Gas Network Code.</p>	<p>This feedback is not accepted. The Gas Network Code does not apply to onshore receiving facility operator.</p>
<p>Some respondents proposed that section 63B should, in addition to enabling imposition of financial penalty on gas transporter and gas shippers under the Gas Network Code, also enable imposition of such financial penalty on gas consumers. This is because the Gas Network Code does not bind gas consumers.</p>	<p>This feedback is not accepted. It is not appropriate to make provision for imposition of financial penalty under the Gas Network Code on consumers who are not the contracting parties.</p>
<p>Some respondents sought clarification on relevant parties' right to appeal to the courts under section 63C.</p>	<p>Parties have a right to appeal to the courts for judicial review for any decision of the Authority made in respect of the Gas Network Code.</p>
<p>There were concerns that existing contracts are likely to be in conflict with the Gas Network Code. The proposed section 63D would give rise to possible legal uncertainty and contractual chaos especially when the provision has retrospective effect. The respondents proposed to include a reasonable time period for them to re-negotiate the contracts especially those terms that are potentially in conflict with the Gas Network Code. If not, they should be compensated for not fulfilling their contractual obligations due to legislative changes.</p>	<p>The Gas Network Code was developed in consultation with industry since early 2001. The relevant parties should make the necessary arrangements to migrate from their existing contracts to the Gas Network Code regime. The provision on voiding contracts retrospectively has been deleted, based on the assessment of the Authority that existing contracts should not be made void retrospectively in this context.</p>
<p>Most respondents commented on Section 63E proposed to delete this provision as the payment to be imposed on consumers relates to ensuring the reliability, availability and continuity of the supply of gas, not towards their existing contractual obligations. As such, it was argued by some respondents that the "shipper" may abuse this provision by requesting for payment on the basis of achieving "reliability", "availability" and "continuity". There were also suggestions to include a recourse for the consumer to appeal against the EMA's decision; transparent procedures in determining the charges; as well as arbitration for relevant parties to align existing contracts with the structure of the Gas Network Code.</p>	<p>The feedback that the "shipper" might take advantage of legislation change is accepted. We will amend the Act such that the relevant gas shipper will have to provide justifications and seek EMA's determination before it can impose such payments on the consumers. Parties aggrieved by EMA's decision can appeal to Minister.</p>

Feedback	EMA's Assessment
<p>Strengthening Regulatory Powers</p> <p>Power to Obtain Information [Sections 4, 5 & 19]</p>	
<p>Respondents expressed that EMA should only request for information within its functions and duties stated in the Act. Some respondents proposed that EMA compensate relevant parties the cost of providing such information, and that EMA should keep only copies of documents requested for, rather than originals.</p>	<p>It is agreed that EMA's request for information should be kept to purposes relevant to its duties and functions under the Act. For the purposes of the Act, EMA will need to be empowered to pass on such information as needed to the Minister or persons acting under the direction of the Minister for fulfilling obligations under the Act. In practice EMA will inform the provider of the information on the intent of the request for such information.</p> <p>The feedback that persons required by the law to provide such information should be reimbursed is not accepted. EMA applies the Act to safeguard the interests of the market which in turn benefits all market participants.</p>
<p>Respondents stated that EMA should hold commercially sensitive information it obtained under the Act strictly confidential and EMA should notify the information provider before disclosure of such confidential information to any person appointed or engaged by the Minister.</p>	<p>The feedback that additional provisions in the Act are needed to further bind EMA officers to confidentiality requirements is not accepted. Existing provisions already provide that EMA shall give notice to the provider of the information should it need to disclose the information. EMA officers are already subject to the Official Secrets Act.</p>
<p>As for the enforcement provisions under Section 19, some respondents proposed not to use annual turnover as the basis of determining financial penalty. It was argued that most utilities companies would have high turnover, yet low margins. Some also proposed to have a transparent process when the EMA issues any directions.</p>	<p>EMA is of the view that penalties must be sufficiently heavy to deter breaches of licences, codes and standards of performance considering, <i>inter alia</i>, the potential gains from such breaches. EMA will continue to have a transparent process when it issues a direction.</p>
<p>Safeguarding Security of Gas Transportation System in a Multiple Shipper Environment [Sections 63F – 63L]</p>	
<p>Some respondents commented that the terminologies used in the proposed control provisions under Section 63F were unclear and it was suggested that where possible, the amendments should utilise terms defined in the Companies Act. Feedback indicated sentiments that the proposed control regime was overly restrictive and that the regime under the Telecommunications Act should be adopted instead. It was suggested that to avoid over-regulation, <i>pro-forma</i> transactions should be excluded. It was requested that the legislation make clear on what grounds ownership changes could be disallowed. Some suggested that EMA already has sufficient controls over the designated licensees and that there was no need to have additional controls over the appointment of key personnel.</p>	<p>This feedback on need for clarity is accepted. The draft of Part VIIA has been revised.</p>
<p>Feedback also indicated that the drafting was not clear on whether existing shareholders would require approval upon the enactment of the proposed amendments.</p>	<p>EMA clarifies that these controls are not intended to be retrospective.</p>

Feedback	EMA's Assessment
There were comments that the provisions on control of disposal of gas pipeline network (Sections 63K and 63L) were excessive and unduly restrictive.	The feedback that there is no need for the provisions in the proposed sections 63K and 63L at this time is accepted. The proposed sections 63K and 63L will be removed.
Revised Appeal Process [Sections 78, 83 & 93]	
Feedback received suggested that it may be difficult to reverse actions or decisions once taken. In addition, it was suggested that the person appealing against EMA's decision be allowed to apply to the Appeal Panel for a stay of the decision or direction. It was also suggested that appeals can eventually be brought to the High Court for determination.	<p>The Gas Act allows companies to appeal against EMA's decisions.</p> <p>The feedback that EMA's decisions be stayed until the appeal process is concluded is not accepted. The implementation of government policies to have pipeline open access and a competitive market framework is a necessary one and should not be hindered.</p> <p>This follows similar provisions in the Competition Act that do not allow for a stay of the relevant decision/direction unless the appeal is against the imposition of a financial penalty or quantum, so as not to subject the appellant to financial burden.</p> <p>The feedback that appeals be made to the High Court is also not accepted. Nevertheless, parties can always apply to the High Court for judicial review if they feel that EMA has not acted reasonably.</p>
Comments on the revised appeal process suggested that the Appeal Panel be made a permanent body. It was further suggested that the right of appeal to the Appeal Panel should be extended to most, if not all, EMA decisions.	<p>The feedback on the revised appeal process that the Appeal Panel be made a permanent body and that the right of appeal to the Appeal Panel be extended to cover all EMA decisions is not accepted. EMA does not envisage that appeals will be of such frequency, nor of such similar nature, as to warrant the setting up of a permanent Appeal Panel.</p> <p>In the proposed amendments, the Minister will have the discretion to refer an appeal of a technical nature to an Appeal Panel for review and determination.</p>
There was also suggestion extending the period for lodging appeals as it was felt that 14 days is too short for persons to adequately prepare for an appeal over complicated issues.	The feedback that 14 days is insufficient time to lodge an appeal is not accepted.
Protection of Underground pipelines [Sections 42A & 42B]	
Feedback received proposed to include the definition of the term "earthworks" used in Section 42A and 42B.	The feedback on the need for the definition of "earthworks" is accepted.

Feedback	EMA's Assessment
Penalty to be Imposed for Contravening the Minister's Direction [Section 101]	
It was suggested that the maximum amount of fines should be based on the relevant company's gas business prior to the asset transfer for any contravention of Section 98, since the asset transfer will result in a change in nature of the company's gas business.	The intent of the proposed amendment to this section is to ensure the effective enforcement of any direction of the Minister. We will amend the Act accordingly to clarify our intent.
Grace Period for Application of License [Section 102]	
Feedback suggested that the EMA replace existing licence(s) with new licence(s) to eliminate the need for existing licensee(s) to reapply for new licence(s) after the appointed day of the Act. Other suggested that the failure to comply with the grace period should not result in an offence.	<p>The feedback on replacing existing licences with new ones is not accepted. We do not see any significant burden that would be imposed on existing or new gas licensees.</p> <p>The feedback on failure to comply with the grace period of 14 days not b be an offence is not accepted. Engaging in licensable activities without a valid licence is a serious matter.</p>