

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

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Summary of Major Points

Primary Concern

We note that the Singapore Government announced in March 2000 the reform of the Gas Industry. The Gas Act 2001, Chapter 116A (the "Gas Act"), which sets the legal framework for the new gas industry, was passed by Parliament on 16 March 2001, assented to by the President on 26 March 2001 and will come into force at the start of the new gas industry framework.

For this reason, we believe that any proposed amendment to the Gas Act should only apply to contracts and agreements signed after March 2000. The sanctity of contracts especially cross border ones where "***Government to Government***" contact is involved must be upheld. Any amendments to the Gas Act should not deviate from this principle. All agreements and contracts entered into before March 2000 should be granted exemptions from the Gas Act. Hence, we propose a specific exemption provision to be incorporated to the Gas Act for legacy contracts and agreements that may have terms and conditions inconsistent with the Gas Act and/or Gas Network Code.

In particular, we do not agree to the proposed inclusion of Section 63D – Prohibition of terms or conditions in contracts, agreements, inconsistent with the Gas Network Code, etc. This provision is drafted very widely and has substantial adverse impact to the sanctity of contracts and the way business is conducted in Singapore. Section 63D ought to be revised to exclude legacy contracts signed before March 2000.

Other areas of concern

We refer you to Section 3 of this paper which sets out our primary concern as well as other areas of concern.

Statement of Interest

We provide this feedback in our capacity as a importer of gas with cross border contracts, 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.

SembGas' Comments

| | Specific Provisions of Proposed Amendments | Revised Amendments | Detailed Reasons for Revised Amendments |
|---|---|---|---|
| 1 | <p>Section 38(6A) – Rights of access to relevant facility</p> <p>EMA may exercise its discretion to allocate gas in offshore pipes in the absence of any agreement.</p> | <p>N/A.</p> <p>SembGas requests for clarification by EMA.</p> | <p>We would like to clarify with EMA that for the West Natuna Network, SembGas owns the 9 km portion of the sub-sea pipeline (“the SembGas Line”) in Singapore waters (but operated by ConocoPhillips). Under the terms of the GSA/Coordination Agreement, the agreement of SembGas will required if third parties wish to use the SembGas Line to transport gas. As for the rest of the sub-sea pipeline system from West Natuna Indonesia (“the West Natuna Pipeline System”), it is completely owned, operated and controlled by Pertamina.</p> <p>Hence, SembGas objects to this proposed provision as it will destroy the sanctity of contracts entered into before March 2000. This kind of legislation will increase regulatory risk in Singapore.</p> <p>Kindly advise what provisions will be made in the Gas Act to protect cross-border contractual arrangements between parties.</p> |

| | Specific Provisions of Proposed Amendments | Revised Amendments | Detailed Reasons for Revised Amendments |
|---|--|---|---|
| 2 | <p>Section 63B – Penalties under Gas Network Code</p> <p>This is to complement the penalties under the Network Code.</p> | <p>N/A.</p> <p>SembGas requests for clarification by EMA.</p> | <p>Item 17 of the consultation paper states 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”.</p> <p>Section 63B refers to the Gas Network Code regulating the imposition of financial penalties on gas transporter and gas shippers. However, <i>the Gas Network Code will not bind the gas consumers because gas consumers are not parties to it.</i> Section 63B did not provide the circumstance in which shippers can pass the penalty costs to the gas consumers. SembGas would like to seek clarification from EMA if a mechanism will be added to the Gas Act allowing the shippers to pass penalty costs to the gas consumers.</p> |

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|---|--|---|--|
| 3 | <p>Section 63D – Prohibition of terms or conditions in contracts, agreements, inconsistent with Gas Network Code, etc.</p> <p>In short all legacy contracts which give rise to a conflict of the Network Code, EMA has the power to carry out specific action at its absolute discretion.</p> | <p>We would like to seek EMA’s clarification on whether the intent of this Section 63D is meant to nullify all legacy arrangements contracted before the announcement for gas industry liberalization.</p> <p>We propose to include specific provisions to exclude from Section 63D all legacy contracts signed before announcement by the Government on the liberalization of the gas industry, i.e. March 2000.</p> | <p>SembGas raised the implications of legacy contracts with EMA in many previous occasions.</p> <p>We would like EMA to clarify the rationale of having to legislate Section 63D prohibiting terms or conditions in contracts inconsistent with Network Code and what is the implication to those who are not parties to the Network Code.</p> <p>SembGas proposes that all legacy agreement signed before the announcement by the Government on the liberalization of the gas industry, i.e. March 2000 to be granted exemption by way of an exemption order from the Minister.</p> |
| 4 | <p>Section 63J – Appointment of chief executive officer, director, and chairman, of a designated gas licensee</p> <p>All future appointments of the CEO, directors, chairman of a designated gas licensee will have to be approved by EMA.</p> <p>EMA has the power to remove the CEO, directors, chairman of the designated gas licensee if their appointment is done without EMA’s approval.</p> | <p>N/A.</p> <p>SembGas requests for clarification by EMA.</p> | <p>We would like EMA to clarify if this criteria will be retrospectively applied, i.e. Section 63J does not apply to all appointment of CEO, director and chairman which took place before the passing of Section 63J.</p> |

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|---|--|---|--|
| 5 | <p>Section 63K – Control of disposal or acquisition of gas pipeline network</p> <p>Approval from EMA shall be obtained for:</p> <p>(i) dispose, transfer any gas pipeline; (ii) create or acquire any interest in a gas pipeline; (iii) enter into any lease or contract for hire of a gas pipeline network.</p> | <p>N/A.</p> <p>SembGas requests for clarification by EMA.</p> | <p>We would like EMA to clarify if this applies to the current process for the SembGas asset transfer.</p> |

Conclusion

SembCorp Gas remains committed to the liberalization of the gas industry and will endeavour to the best of its ability to support this move. We request a meeting with the EMA to discuss our comments herein.

Please advise a suitable date.