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21 Feb, 2006 05:35 PM


To Lilian LAU/EMA/SINGOV@SINGOV, Leng Chong
LEOW/EMA/SINGOV@SINGOV

cc

bcc

Subject Gas Act Amendment

History:

 This message has been replied to and forwarded.

Dear Ms Lau & Mr Leow

I read the proposed Gas Act Amendment document with great interest and will like to highlight the following potential operational problems as a result of bad legal drafting.

I will like to highlight to you that Part VIIA needs to be review as there is a potential of legal gap in the current form.

63F (1) in its current form may be interpreted as the obligation on the owner to report to EMA should the sales to one or a group of associated person exceed 5% but not more than 12% of total equity. There is no obligation for the owner to report to EMA should the sales exceed 12%. The correct drafting should simply focus on the obligation to report once the sales exceed 5% regardless of quantum. A separate section on the need to seek prior approval from EMA should the collective sales exceed 12% should be incorporate to complement the original intention of the Act.

63F (3) in its current form may be interpreted as any new buyer needs to seek EMA approval if they become a 12% or 30% owner of the company. This means that new buyer need not seek EMA approval if their purchase is of any ratio that is not 12% or 30%. A more appropriate drafting should simply focus on the approval of any acquisition that exceeds 12%. The 30% holding approval is redundant in this context and can be confusing. If the Authority wants to put in place a further approval process should the eventual holding by this new owner exceed 30%, a separate section should be used to address the issue.

63F (7-9) in its current form attempt to define the term related person in its various relationship to the buyer. A better way to approach the definition is to adopt the various definitions as already provided under the Company Act Chapter 50. These definitions have been widely adopted by various other Acts such as the Futures Trading Act and Industrial Securities Act etc.

63F (4) in its current form requires any buyer of the business to seek approval from EMA if the person is buying a going concern business entity. What is the intention of EMA if the buyer is buying a "Non going concern" business such as that under liquidation. The new buyer may be an undesirable character that bought into a non going concern and subsequently inject fund to make it viable. The current Act does not address this risk.

Ps: I am not legally trained and my comments are mainly derived from my experience in business. I don't intend to make formal recommendation as I have no vested interest in the gas market at this point of time. The above recommendations are purely my personal opinions and do not reflect the position of my company, and do feel free to ignore any or all of the above recommendations if appropriate.

Best regards

Yip Pak Ling

Senior Vice President, Market Operations

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