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GAS SUPPLY ACT 1993

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GAS SUPPLY ACT 1993

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LAWS OF MALAYSIA**Act 501****GAS SUPPLY ACT 1993**

An Act to provide for the licensing of the import into regasification terminal, regasification, shipping, transportation, distribution, retail or use of gas in the supply of gas through pipelines and related matters, the supply of gas at reasonable prices, the control of gas supply pipelines, installations and appliances with respect to matters relating to safety of persons in the distribution, retail or use of gas and for purposes connected therewith.

[17 July 1997, P.U. (B) 278/1997]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I**PRELIMINARY****Short title, commencement and application**

1. (1) This Act may be cited as the Gas Supply Act 1993 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) This Act shall apply throughout Malaysia; however the Minister may by order suspend the operation of the whole or any of the provisions of this Act in any State.

(3) This Act shall apply to the delivery of gas—

(a) in relation to—

- (i) liquefied natural gas, from the connection flange of the loading arm at the regasification terminal;
- (ii) natural gas received from a gas processing plant or an onshore gas terminal, from the last flange of the gas processing plant or onshore gas terminal;
- (iii) natural gas imported into Malaysia through pipelines excluding pipelines upstream of a gas processing plant or an onshore gas terminal, from the international border,

to the transmission or distribution pipelines, or a piping system and to any gas appliance in the premises of a consumer; and

(b) from the filling connection of a storage tank or cylinder specifically used for reticulation or delivery of gas to any gas appliance in the premises of a consumer.

(3A) This Act shall apply to, in respect of safety and technical matters, the delivery of gas to consumers—

- (a) from the distribution pipelines or piping system to any gas appliance in the premises of a consumer; or
- (b) from the filling connection of a storage tank or cylinder specifically used for reticulation or delivery of gas to any gas appliance in the premises of a consumer.

(4) *(Deleted by Act A1515).*

***Application for State of Sarawak**

1A. Notwithstanding subsection 1(2), this Act shall apply to the State of Sarawak, upon prior approval of the Yang di-Pertua Negeri Sarawak, on the date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires—

“area of supply” means the area within which a person is licensed to regasify, ship, transport, distribute, retail or use gas;

**“authorized officer” means any public officer or officer of the Commission who is authorized in writing by the Minister for the purposes of this Act;

**“Chairman” means the Chairman of the Energy Commission appointed by the Minister under the Energy Commission Act 2001 [*Act 610*];

“Chief Executive Officer” means the Chief Executive Officer of the Commission;

“city gate station” means a station with gas measurement and pressure regulating devices where gas is received directly from the transmission pipeline and subsequently delivered through the distribution pipeline for the delivery of gas to the consumer;

* *NOTE*—See subsection 4A(2) of Gas Supply (Amendment) Act 2016 [*Act A1515*].

** *NOTE*— see Section 27 of Gas Supply (Amendment) Act 2001 [*Act 1126*].

*“Commission” means the Energy Commission established under the Energy Commission Act 2001;

“competent person” means a person who holds a certificate of competency issued by the Commission or any other equivalent certificate issued by any government body to perform work in accordance with the restrictions, if any, stated in the certificate;

“consumer” means any direct or indirect user of gas, facilities or services provided by a licensee in the course of business, and includes another licensee that uses the gas, facilities or services thus provided as an input to its own business including as a shipping, retail or private gas licensee, a consumer whose premises receive gas through a transmission or distribution pipeline or a consumer of a retail licensee;

“danger” means danger to health or to human life or limb from shock, burn, or other injury and includes danger to property, pipeline or installation resulting from distribution, retail or use of gas;

“dishonestly” has the meaning assigned thereto in the Penal Code [Act 574];

“distribution” means the activity carried out by a distribution licensee to operate and maintain the distribution pipeline to deliver gas through the distribution pipeline;

“distribution licensee” means a person licensed under section 11 to distribute gas;

“distribution pipeline” means those parts of the gas pipeline including installations connected downstream of the last flange of a city gate station to the last flange of a regulating or metering station at the premises of consumers or a retail licensee;

* NOTE— see Section 27 of Gas Supply (Amendment) Act 2001 [Act 1126].

“District Land Administrator” has the meaning assigned to “Land Administrator” by section 5 of the National Land Code [*Act 56 of 1965*], to “Collector” by section 4 of the Land Ordinance of Sabah [*Sabah Cap. 68*] and to “the Director” by section 2 of the Land Code of Sarawak [*Sarawak Cap. 81*];

“equipment” includes a valve, filter, meter, pressure regulator or any other functioning item used in a gas system;

“facility” means—

- (a) in the case of a regasification licensee, a facility including the related pipeline and installation located onshore or in Malaysian territorial waters which is used to receive, store or regasify liquefied natural gas which are designated as such by the regasification licensee with the approval of the Commission;
- (b) in the case of a transportation licensee, the transmission pipelines together with the related installation used for the transportation of gas which are designated as such by the transportation licensee with the approval of the Commission;
- (c) in the case of a distribution licensee, the distribution pipelines together with the related installation used for the distribution of gas from the last flange of city gate station and which are designated as such by the distribution licensee with the approval of the Commission;

“gas” means natural gas, liquefied natural gas or liquefied petroleum gas;

“gas appliance” means an appliance designed for use or to be used by a consumer of gas for heating, burning, motive power or other purposes for which gas can be used and includes a gas appliance regulator;

“gas delivery system” means the physical delivery of gas from the connection flange of the loading arm at the regasification terminal or the last flange of the gas processing plant or the last flange of the onshore gas terminal to the transmission pipeline, distribution pipeline and piping system;

“gas processing plant” means a facility to process natural gas in order to meet gas specifications to be used in or delivered through the gas delivery system;

“import into regasification terminal” means the activity of bringing or causing to be brought liquefied natural gas into or within Malaysia by any means other than by transshipment;

“import into regasification terminal licensee” means a person licensed under section 11 to import gas into regasification terminal;

“infringement” means an infringement of any prohibition under section 28C or 28G;

“installation” means all parts of those physical facilities involved in regasification, transportation, distribution, retail or use of gas including equipment, appliance, pump, vaporizer, compressor, any appurtenance attached to pipelines or piping system and any other assembly;

“licence” means a licence issued under section 11;

“licensee” means a person licensed under section 11;

“liquefied natural gas” means natural gas in its liquefied state;

“liquefied natural gas carrier” means a tank ship designed for transporting liquefied natural gas;

“liquefied petroleum gas” means a mixture of hydrocarbon gases primarily propane and butane at various proportions and stored in liquid form;

“Minister” means the Minister for the time being charged with the responsibility for matters relating to petroleum;

“natural gas” means hydrocarbon gas mixture consisting primarily of methane;

“onshore gas terminal” means a facility to receive natural gas from offshore and delivered to the transmission pipelines;

“pipelines” means all parts of those physical facilities including installations, through which gas moves for purpose of regasification, transportation or distribution of gas;

“piping system” means all parts of those physical facilities including installations, through which gas moves, from the last flange of a regulating or metering station connected to the distribution pipeline or from the filling connection of a storage tank or cylinder for purposes of reticulation or delivery in respect of retail or use of gas through a piping system to any gas appliance in any premises;

“prescribed” means prescribed by regulations made under this Act;

“private gas licensee” means a person licensed under section 11 to use gas through a piping system—

(a) from a storage tank or cylinder on his own property or premises or the property or premises of the owner or occupier; or

(b) from gas delivered through a distribution pipeline,

but does not include a person obtaining the supply of gas from a retail licensee;

“prohibition” means any prohibition under Part VIA of this Act;

“regasification” means the activity of operating and maintaining a regasification terminal to regasify the liquefied natural gas into natural

gas carried out by the regasification licensee at the regasification terminal and includes receiving, storing and after the regasification, delivering the gas through the regasification terminal pipeline;

“regasification licensee” means a person licensed under section 11 to regasify gas;

“regasification terminal” means a facility located onshore or in Malaysia waters which is used to regasify or store liquefied natural gas which is received from a liquefied natural gas carrier;

“Registrar” means the Registrar as defined in the National Land Code, the Land Ordinance of Sabah or the Land Code of Sarawak, as the case may be;

“reserved land” means land reserved for a public purpose, railway reserves and forest reserves;

“retail” means the activity of sale or use of gas through the retail licensee’s piping system to consumers’ premises where the gas is either—

- (a) received from a storage tank or cylinder on the retail licensee’s own property or premises or on the property or premises of the owner or occupier; or
- (b) received through distribution pipelines;

“retail licensee” means a person licensed under section 11 to retail gas;

“safety” means the obviation of danger to the general public or to property in respect of distribution pipelines or piping system;

“shipping” means the activity of a shipping licensee making an arrangement with a regasification, transportation or distribution licensee for gas to be processed or delivered through a regasification terminal, transmission pipeline or distribution pipeline to consumers’ premises;

“shipping licensee” means a person licensed under section 11 to ship gas;

“State land” does not include reserved land and alienated land;

“supply of gas” means the delivery of gas to the premises of a consumer of a retail licensee;

“third party access” means access to the regasification terminal, transmission pipeline and distribution pipeline by a person other than the owner or operator of such facilities for purposes of delivery of gas to the consumers.

“transmission pipeline” includes installations and pipelines transporting gas either from—

- (a) the last flange of the gas processing plant;
- (b) the last flange of the onshore gas terminal;
- (c) the tie-in point of the regasification terminal; or
- (d) the international border,

to the last flange of the city gate station or the last flange of a regulating or metering station;

“transportation” means the activity carried out by a transportation licensee for the delivery of gas through the transmission pipeline under an arrangement with a shipping licensee;

“transportation licensee” means a person licensed under section 11 to transport gas;

“transshipment”, in relation to liquefied natural gas, means to bring or cause to be brought into or stored in a regasification terminal in Malaysia the liquefied natural gas by any means solely for the purpose of taking it out of Malaysia by any means except through pipeline;

“use of gas” means the activity of using gas as a private gas licensee.

PART II

ESTABLISHMENT

3. *(Deleted by Act A1126).*

PART III

FUNCTIONS AND DUTIES OF COMMISSION

Functions and duties

4. (1) The Commission shall have the following functions and duties:

- (a) to secure that a licensee authorized by or under this Act to import into regasification terminal, ship or retail gas through pipelines satisfies all reasonable demands for gas;
- (b) to ensure that a regasification, transportation or distribution licensee satisfies all reasonable demands for access to the facility;
- (c) without prejudice to the generality of paragraphs (a) and (b), to ensure that such licensee is able to finance the import into regasification terminal, shipping or retail or the provision of facility of regasification, transportation or distribution of gas;
- (d) to protect the interests of consumers of gas supplied through pipelines in respect of—
 - (i) the terms of supply and the utilization of facility;
 - (ii) the continuity of supply; and
 - (iii) the quality of the gas, facility and services provided;

- (e) to develop and issue codes, guidelines and directions pertaining to matters as provided in this Act;
 - (f) to regulate the quality of gas delivered in the gas delivery system and pressure of gas delivered through the distribution pipeline or the piping system;
 - (g) to promote efficiency and economy on the part of licensees or other persons to import into regasification terminal, utilize a regasification terminal, regasify, ship, transport, distribute, retail or for the use of gas;
 - (h) to ensure that the public is protected from dangers arising from the distribution, retail, or use of gas;
 - (i) to enable licensees or other persons to compete effectively in the import into regasification terminal, utilization of regasification terminal, shipping or retail of gas;
 - (j) to investigate any accident or fire involving any gas distribution pipeline or piping system;
 - (k) to inspect or cause to be inspected any installation, pipeline or piping system;
 - (l) to carry out or cause to be carried out audit of a licensee, institution, manufacturer or importer, gas contractor or any other person as determined by the Commission; and
 - (m) to carry on all such other activities as may appear to the Commission requisite, advantageous or convenient for the purpose of carrying out the provisions of this Act.
- (2) The functions and duties of the Commission may at any time be carried out by any officer of the Commission duly appointed in writing by the Commission for such purpose.

PART IV

POWERS OF ENTRY, INVESTIGATION
AND PROSECUTION**Authorized officer**

4A. (1) The Minister may in writing authorize any public officer or officer of the Commission to exercise the powers of enforcement under this Act.

(2) Any such officer shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

(3) In exercising any of the powers of enforcement under this Act, an authorized officer shall on demand produce to the person against whom he is acting the authority issued to him by the Minister.

Power of entry by warrant or otherwise, inspection, examination, seizure, etc.

5. (1) An authorized officer may, for the purposes of discharging any of his duties or carrying out any of his functions under this Act or any regulation made thereunder, enter at any reasonable time upon any land, house or building to inspect and examine any pipeline or piping system or part thereof, or for other proper cause including the investigation of any infringement or offence under this Act.

(2) In exercising his powers under subsection (1) an authorized officer may—

- (a) take samples of any gas from the premises entered and require the occupier or his agents or servants present in the premises to show him every place and any pipeline, piping system, storage tank or cyclinder in his premises;
- (b) test or cause to be tested, at any convenient place and at

such reasonable time as he may appoint, any sample so obtained by him.

(3) If upon such inspection or examination the authorized officer finds any defect, which he has reasonable cause to believe is likely to cause danger, he may—

- (a) by notice in writing require the rectification of the defect;
- (b) cause the discontinuation of the gas supply; or
- (c) remove or seal any pipeline, piping system or part thereof.

(4) In every case where information is given on oath to any Magistrate that there is reasonable cause for suspecting that there is in any land, house or building any article, thing, book, document, pipeline, piping system or part thereof which has been used to commit or is intended to be used to commit any offence under this Act or any regulation made thereunder, he shall issue a warrant under his hand by virtue of which any authorized officer named or referred to in the warrant may enter the land, house or building at any reasonable time by day or night, and search for and seize or seal any such article, thing, book, document, pipeline, piping system or part thereof:

Provided that if the authorized officer is satisfied upon information received that he has reasonable grounds for believing that by reason of delay in obtaining a search warrant, any article, thing, book, document, pipeline, piping system or part thereof used to commit or intended to be used to commit an offence under this Act or any regulation made thereunder is likely to be removed or destroyed, he may enter such land, house or building without a warrant and seize or seal any such article, thing, book, document, pipeline, piping system or part thereof found therein:

Provided further that it shall be an offence for any person without lawful authority to break, tamper with or damage such seal or remove

any such article, thing, book, document, pipeline, piping system or part thereof or to attempt so to do.

(5) Any authorized officer may in the exercise of his powers under subsection (4), if it is necessary so to do—

- (a) break open any outer or inner door of the dwelling-house or any other premises and enter thereinto;
- (b) forcibly enter the place and every part thereof;
- (c) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect; and
- (d) detain every person found in the place until the place has been searched.

(6) The authorized officer seizing any article, thing, book, document, pipeline, piping system or part thereof under subsection (4) shall prepare a list of the things seized and forthwith, or as soon as is practicable, deliver a copy signed by him to the occupier, or his agents or servants present in the premises and if the premises are unoccupied, such authorized officer shall, wherever possible, post a list of the things seized on the premises.

(7) An authorized officer shall at all times carry an official identification card or badge in such form as may be prescribed, and no person shall be obliged to admit to his land, house or building any person purporting to be an authorized officer except upon production of the identification card or badge.

Power to investigate

6. (1) The authorized officer shall have the power to conduct an investigation where there is reason to suspect that an offence or infringement of any prohibition has been or is being committed in

relation to this Act or under any of its subsidiary legislation or any codes, guidelines or directions issued by the Commission.

(2) The authorized officer shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593] in relation to police investigation, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.

(3) In the case of an offence committed under this Act or under any of its subsidiary legislation or any codes, guidelines or directions issued by the Commission, upon completion of his investigation, the authorized officer shall immediately give all information relating to the commission of the offence to an officer in charge of a police station and a police officer may, arrest any person who may have committed an offence.

(4) In the case of an infringement of any prohibition under this Act, upon completion of his investigation, the authorized officer shall immediately give all information relating to the infringement of any prohibition to the Commission for the purposes of sections 28L and 28O.

Power to require attendance of person acquainted with case

7. (1) An authorized officer making an investigation under section 6 may by order in writing require the attendance before himself of any person who appears to the authorized officer to be acquainted with the circumstances of the case, and such person shall attend as so required.

(2) In the case of an offence committed under this Act, if any such person fails to attend as so required, the authorized officer may report such failure to a Magistrate who shall issue a summons to secure the attendance of such person as required by such order aforesaid.

(3) In the case of an infringement of any prohibition under this Act, if any such person fails to attend as so required, the authorized officer

may report such failure to the Commission for further action under sections 28L and 28O.

Examination of person acquainted with case

8. (1) An authorized officer making an investigation under section 6 may obtain information from any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be legally bound to answer all questions relating to such case put to him by the authorized officer:

Provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) The authorized officer obtaining information from a person shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

Prosecution

9. No prosecution shall be instituted for an offence under this Act or any regulations made under this Act except by or with the consent in writing of the Public Prosecutor.

Reward for information

10. In the case of a conviction involving a fine, the court imposing the fine may, on the application of the officer conducting the prosecution, direct the payment of any part of the fine but not exceeding one half of such fine in such proportion as the court deems fit to the person who gave the information leading to the conviction.

PART V

LICENCE

Activities to be licenced

11. No person shall carry out any activity of—

(a) import into regasification terminal;

(b) regasification of gas;

(c) shipping of gas;

(d) transportation of gas;

(e) distribution of gas;

(f) retail of gas; or

(g) use of gas,

unless such person is licensed under this Act.

Application for grant of licence

11A. (1) A person may apply to the Commission for a licence for the activities mentioned in section 11 subject to such prescribed fee as may be imposed by the Commission.

(2) Any person applying for a licence under subsection (1) shall provide to the Commission the following details:

(a) in the case of a licence for distribution, retail or use of gas:

- (i) area of supply;
- (ii) site location plan showing the proposed location of the premises to be installed with the pipeline and its neighbouring area;
- (iii) piping layout showing details of pipeline routes including the location of any storage tank or cylinder, site boundary, deflection wall and the nearest sources of ignition;
- (iv) technical specifications of the pipeline or piping system;
- (v) certification of the pipeline or piping system; and
- (vi) any other information as may be required by the Commission; and

(b) in the case of a licence for import into regasification terminal, regasification, shipping or transportation of gas, any details as required by the Commission.

(3) All persons applying for a licence under this Act shall comply with the principles and procedures as may be prescribed by the codes or guidelines issued by the Commission for the purpose of making such application.

Grant of licence

11B. (1) The Commission may grant—

- (a) a licence for the regasification or distribution of gas, with the approval of the Minister; or
- (b) a licence for the transportation of gas, to a person designated by the Minister; or
- (c) a licence for the import into regasification terminal, shipping, retail or use of gas,

on such terms and conditions as may appear to be requisite or expedient having regard to the duties imposed by section 4 and on payment of such prescribed fee as may be imposed by the Commission.

(2) A licence shall not be granted to any person—

- (a) if the grant of the licence may, in the opinion of the Commission, give rise to a conflict of interest in the discharge of any duty imposed on the person under this Act or any other licence granted to him under this section; or
- (b) who is not incorporated in Malaysia or does not have a place of business in Malaysia, except for a licence for the import into regasification terminal.

(3) For the purpose of granting a licence under this section, the Commission may grant more than one licence to any person as the Commission deems fit.

(4) No licence shall be capable of being transferred, assigned, sub-assigned or otherwise disposed of unless the written consent of the Minister or the Commission has been obtained.

(5) Licences may be for such periods as the Commission may in each case approve.

(6) Any licence granted under this section may extend to the determination of the area of the licensed activity by the Commission.

(7) Subject to the approval of the State Authority, any licence granted under this section may authorize the licensee to lay, place or carry on, under or over State land, to the extent and in the manner specified in the licence, such pipelines and piping system and to erect and maintain in or upon State land such other equipment as may in the opinion of the Commission be necessary or proper for the purposes of the licence, and subject always to the approval of the State Authority, the said authorization may be given or added to at any time during the currency of the licence.

Power to impose additional terms or conditions

11c. (1) The Commission may at any time—

(a) impose any additional terms or conditions on a licence, including existing licences; or

(b) amend any terms or conditions previously imposed on any licence,

in accordance with the procedure as may be prescribed.

Security, suspension or revocation of the licence

12. (1) Before the issue of any licence the Commission may require a security, either in the form of cash or bank guarantee as the Commission may specify, to be furnished for the due observance of the terms and conditions of the licence. The amount of the said security shall be based on the licensee's construction costs or operational costs or both, as the case may be, as determined by the Commission and such amount may be reviewed from time to time.

(2) A licence may at any time be suspended or revoked by the Commission upon breach of any of the conditions thereof or in default of payment of any moneys accrued due thereunder, or if the licensee ceases to construct or operate the pipeline or piping system which he was authorized to do under the licence granted to him or on any other ground determined by the Commission to be necessary or expedient:

Provided that where a licence has been suspended or revoked under this subsection the licensee may, if he considers that he has suffered or may suffer undue hardship by reason of the suspension or revocation, appeal to the Minister against the suspension or revocation, as the case may be, and the decision of the Minister on the appeal shall be final.

(3) The licensee shall not be entitled to compensation for any loss of revenue caused to him by the suspension or revocation of a licence under this section.

(4) Upon the suspension of a licence, the Commission may—

- (a) require the licensee to rectify any breach of any condition of the licence or to pay any moneys accrued due thereunder within a certain specified period; and/or
- (b) in the interest of the public, authorize another person to continue operating the pipeline or piping system if the pipeline or piping system or part thereof has been in operation for the period of suspension.

(5) If the Commission is satisfied that the licensee has complied with the requirement under paragraph (4)(a) the suspension may be lifted and the licensee may be allowed to continue the construction or operation of the pipeline or piping system, as the case may be. If the Commission is not satisfied, the Commission may revoke the licence.

(6) Upon revocation of a licence, the Commission may—

- (a) require the licensee, within a reasonable period of time, to remove his pipeline or piping system or part thereof at the licensee's costs;
- (b) acquire the pipeline or piping system or part thereof on payment of adequate compensation to the licensee, and appoint another licensee to complete the construction of the pipeline or piping system or delivery of gas through the acquired pipeline or piping system, as the case may be; or
- (c) authorize another licensee, on payment of adequate compensation, to acquire the pipeline or piping system or part thereof and complete its construction or delivery of gas through the acquired pipeline or piping system, as the case may be.

(7) If a licence is revoked under this section the security shall be forfeited as the Commission deems fit.

(8) In subsection (1)—

“operational costs” means all costs calculated by the Commission to be the costs of operating the gas delivery system including wages, costs of fuel, spare parts, labour charges and lubricants but not including capital costs or loans.

PART VI

PROVISIONS RELATING TO THE LICENSEE, SUPPLY OF GAS, ENTRY INTO LAND, *ETC.*

Power to fix tariffs and charges

13. (1) The Commission, with the approval of the Minister, may determine tariffs and charges to be levied, by—

- (a) a regasification, transportation or distribution licensee in respect of the utilization of their facilities for regasification, transportation or distribution of gas; and
 - (b) a retail licensee in respect of the sale or use of gas through the retail licensee's piping system to the premises of a consumer.
- (2) The Commission may issue guidelines on tariffs and charges including—
 - (a) the methodology, principles or category of tariffs and charges;
 - (b) the duration for the imposition of tariffs and charges and for the review of the tariffs and charges; and
 - (c) the submission of any information as the Commission deems requisite and necessary.
- (3) A regasification, transportation, distribution or retail licensee shall submit a proposal on tariffs and charges to the Commission in accordance with the guidelines issued by the Commission under subsection (2).
- (4) The approved tariffs and charges shall be published by the regasification, transportation, distribution or retail licensee in such manner as in the opinion of the Commission will secure adequate publicity for it.
- (5) In levying tariffs and charges under subsection (1), a regasification, transportation, distribution or retail licensee shall not show undue preference or discrimination as among the consumers.

Obligation to submit business plan

13A. (1) Subject to the terms and conditions of a licence, the Commission may request a regasification, transportation or distribution licensee to submit a five year, or such other period as determined by the Commission, rolling business plan relating to licensed activities updated on an annual basis or any other time period as determined by the Commission according to procedures provided in the guidelines issued by the Commission.

(2) Any licensee referred to in subsection (1) who contravenes this section commits an offence.

Standards of performance of supply of gas and services by licensee

13B. (1) The Commission may issue guidelines on such standards of performance in connection with the—

- (a) supply of gas and provision of services to consumers by retail licensee; and
- (b) services in relation to the activities of regasification, transportation or distribution licensee.

(2) The standards referred to in subsection (1) include such consumer service standards to be implemented by the licensee and procedures for—

- (a) reasonably meeting consumer requirements;
- (b) the handling of consumer complaints and disputes;
- (c) procedures for the compensation of consumers in case of a breach of the standards of performance, consumer service standards or for a breach of any of its obligations under the Act that affects consumers; and

(d) the protection of consumer information.

(3) The licensees referred to in subsection (1) shall publish their own consumer service standards in accordance with the guidelines issued by the Commission under this section.

(4) Any action taken by the Commission under this section in respect of any failure by any licensee to meet the published standards shall not prejudice or affect any other remedy which may be available in respect of the act or omission of such licensee which constituted that failure under any other law including the Consumer Protection Act 1999 [*Act 599*].

(5) Any licensee who contravenes this section commits an offence and shall, on conviction, be liable for a fine—

(a) in the case of a retail licensee, not exceeding three hundred thousand ringgit and a further fine of one thousand ringgit for every day the offence is continued after conviction, and compensation for any loss incurred for the amount of which to be fixed by the court under section 30D; and

(b) in the case of regasification, transportation or distribution licensee, not exceeding one million ringgit and to a further fine not exceeding ten thousand ringgit for every day or part of a day during which the offence continues after conviction, and compensation for any loss incurred for the amount of which to be fixed by the court under section 30D.

Separate account for activities under the licence

13c. (1) In respect of its licensed activities, a licensee shall maintain proper annual accounts separate from the licensee's other business and the Commission may request the licensee to submit such report to the Commission from time to time.

(2) Such separate accounts shall contain sufficient details of any revenues, costs, assets, liabilities, reserves, provisions or any other matter which have been either—

(a) charged from or to any other business; or

(b) determined by allocation or apportionment attributable and identifiable to the licensed activity or activities,

or any other information deemed necessary by the Commission.

(3) Any licensee who contravenes this section commits an offence and shall, on conviction, be liable to a fine of not exceeding five hundred thousand ringgit and a further fine of one thousand ringgit for every day the offence is continued after conviction.

Requirements on licensing

13D. (1) Notwithstanding any other provisions of this Act, if at any time it appears to the Commission that a licensee has failed to comply with any requirement of or to meet any of its duties or obligations under this Act or under any of its subsidiary legislation or the terms or conditions of the licence, the Commission may issue a direction requiring the licensee to rectify the failure or to comply with the requirements, duties or obligations or terms or conditions of the licence within a specified period as the Commission may determine.

(2) The licensee shall take all reasonable measures to comply and submit periodic compliance reports on the measures taken to the satisfaction of the Commission.

(3) Any licensee who contravenes subsection (2) commits an offence.

Duty of retail licensee to supply gas to consumers upon request or duty of the regasification, transportation or distribution licensee to allow utilization of their facilities by third parties

14. (1) Subject to the following provision of this Part and terms and conditions of a licence imposed under section 11B, regulations, codes or guidelines made under this Act, a—

(a) retail licensee shall upon request of a consumer supply gas to the consumer's premises; and

(b) regasification, transportation or distribution licensee shall upon request of a shipping licensee allow the utilization of his facility.

(2) Where any person requires a supply of gas under paragraph (1)(a), he shall give to the retail licensee a notice specifying—

(a) the premises in respect of which the supply is required;

(b) the day on which the supply is required to commence;

(c) the quantity which may be required at any time;

(d) the minimum period for which the supply is required to be given; and

(e) the pressure at which the supply is required.

(3) Where a shipping licensee requires the utilization of—

(a) a regasification licensee's facility, he shall give to the regasification licensee a notice specifying the date of commencement, the period of utilization of the facility and the capacity required;

- (b) a transportation licensee's facility, he shall give to the transportation licensee a notice specifying the date of commencement, the period of utilization of the facility, the capacity and the entry and exit points for the transportation of gas; or
- (c) a distribution licensee's facility, he shall give to the distribution licensee a notice specifying the date of commencement, the period of utilization of the facility, the capacity and the entry and exit points for the distribution of gas.

(4) Where a licensee receives from any person a notice under subsection (2) or (3) requiring him to give a supply of gas to any premises or to allow the utilization of his facility and—

- (a) he has not previously given supply of gas to those premises or allowed the utilization of his facility;
- (b) except for a regasification licensee, the giving of the supply of gas or allowing the utilization of facility requires the provision of pipelines or piping system; or
- (c) other circumstances exist which make it necessary or expedient for him to do so,

the licensee shall, as soon as practicable after receiving that notice, give to the person a notice under subsection (5).

(5) A notice under this subsection shall—

- (a) state the extent to which the proposals specified in the notice under subsection (2) or (3) are acceptable to the licensee and specify any counter proposals made by the licensee;

- (b) state whether the prices to be charged by the licensee will be determined by a tariff under section 13 and specify the tariff;
 - (c) specify any payment which the person will be required to make under subsection 16(1); and
 - (d) specify any security which the person will be required to give under section 17.
- (6) In this section and in sections 15 to 17 of this Part—
 - (a) any reference to giving a supply of gas or allowing the utilization of facility includes a reference to continuing to give such a supply or allowing such utilization; and
 - (b) any reference to requiring a supply of gas or allowing the utilization of facility includes a reference to continuing to require such supply or allowing such utilization.
- (7) Without prejudice to subsection (2) or (3), the party requiring the supply of gas or allowing the utilization of facility shall notify to the relevant licensee of any other information that such licensee may reasonably require.

Exceptions to duty to supply gas or to allow utilization of facility

- 15.** (1) Nothing in subsection 14(1) shall require a retail licensee to supply gas to consumers or a regasification, transportation or distribution licensee to allow the utilization of his facility, if —
- (a) it is contrary to any law;
 - (b) under the agreement, he is so exempted;
 - (c) he is prevented from doing so by the malfunction or failure of any pipeline or piping system beyond his

control, or as a result of fire, flood, landslide, explosion, accident, industrial disturbance on a national level, emergency, riot, civil disturbance or war, or any other similar event not within the control of the licensee;

- (d) the supply of gas or the utilization of facility is already being granted; or
- (e) the Commission is of the opinion that it is not reasonable in all the circumstances for him to be required to do so.

(2) Nothing in the agreement referred to in paragraph (1)(b) shall provide for any exception from the duty to supply gas or to allow utilization of facility other than—

- (a) a situation where he is prevented from supplying gas or allowing the utilization of his facility by reason of fire, flood, landslide, explosion, accident, industrial disturbance on a national level, emergency, riot, civil disturbance or war, or any other similar event not within the control of the licensee; or
- (b) where the said agreement provides for such exception for reasons of safety which directly affects or which will affect his ability to supply gas or to allow utilization of his facility.

Power of licensee to recover expenses

16. (1) Where any pipeline or piping system is provided by a licensee for the purposes of supplying gas or allowing the utilization of his facility under subsection 14(1), the licensee may, with the Commission's approval, require any expenses reasonably incurred by the licensee to be defrayed by the person requiring the supply of gas or the utilization of facility to such extent as is reasonable having regard to the circumstances.

(2) The expenses reasonably incurred in providing any pipeline or piping system under subsection (1) include the capitalized value of any expenses likely to be so incurred in maintaining it, if such expenses cannot be recovered by the licensee as part of the tariffs subject to section 13, where applicable, levied by him for the supply of gas or such utilization of facility.

(3) The expenses incurred in providing any pipeline or piping system within the premises of a consumer shall be borne by such consumer.

Power of licensee to require security

17. (1) A shipping or retail licensee may require any person who requires supply of gas to give him reasonable security for all monies which may become due to him—

(a) in respect of the shipping or retail of gas; and

(b) in respect of any necessary work to be done for the retail of gas,

and if the person fails to give such security, the shipping licensee may refuse to ship or in the case of a retail licensee, to supply the gas or provide the piping system until the security has been given.

(1A) A regasification, transportation or distribution licensee may require any person who intends to utilize his facility under paragraph 14(1)(b) to give him reasonable security for all monies which may become due to him in respect of the utilization of the facility, and if the person fails to give the security, the licensee may refuse to allow the utilization of the facility until the security has been given.

(2) Where the person has not given the security in subsection (1) or the security given by the person has become insufficient, the licensee may by notice require the person, within seven days after the

service of the notice, to give him reasonable security for the payment of all moneys which are due to him in respect of shipping or retail of gas and if the person fails to give such security, the licensee may, if he thinks fit, discontinue the shipping or retail of gas until the security is given.

(2A) Where a person fails to give security in subsection (1A) or the security given by the person has become insufficient, the licensee may by notice require the person, within seven days after the service of the notice, to give him reasonable security for the payment of all monies which are due to him in respect of the utilization of the facility and if the person fails to give such security, the licensee may suspend the utilization of his facility until the security is given.

Return of security with interest

17A. Notwithstanding any other provisions in this Act, a licensee shall pay to a person subject to such conditions and at such rates as may be prescribed, a sum equivalent to the annual interest on the security given under section 17.

18. (*Deleted by Act A1515*).

Charge for regasification, transportation, distribution or retail of gas to be ascertained by appropriate meter

19. (1) Where any person is to be charged—

- (a) as a consumer who receives gas from a shipping or retail licensee;
- (b) as a private gas licensee who receives gas from a shipping licensee;

- (c) as a retail licensee who receives gas from a shipping licensee; or
- (d) for his utilization of the facility of a regasification, transportation or distribution licensee,

by reference to the quantity of gas involved, the gas shall be delivered through, and its quantity shall be ascertained by an appropriate meter including a pre-paid meter, automated metering infrastructure or by telemetering.

(2) The meter, to be provided by the regasification, transportation, distribution or retail licensee whether by way of sale, hire or loan, shall be of the type approved by the Commission or its appointed body or by any other relevant government body for that purpose and complying with the requirements of any regulations made under this Act, codes or guidelines issued under this Act or complying with any other Acts governing such government body.

(3) The meter shall be installed—

- (a) on the premises of consumers of shipping licensee or retail licensee in a position as determined by the said licensees;
- (b) at such facility in a position as determined by the regasification licensee for the import of gas into or utilization of the regasification facility;
- (c) at the city gate station in a position as determined by transportation licensee for the delivery of gas from a transmission pipeline to a distribution pipeline.

(4) If the consumer refuses or fails to have the delivery or supply of gas or utilization of facility through the appropriate meter provided and installed in accordance with subsections (2) and (3), the licensee may refuse to give or may discontinue the delivery or supply of gas or utilization of the facility.

(5) Regulations may be prescribed and codes or guidelines may be issued to regulate the licensee's responsibility in relation to metering in accordance with this Act.

Reduction or cessation of retail of gas: liability

20. (1) Any retail licensee may cease the supply of as or reduce, as he may think fit, the quantity of gas supplied to any consumer under the circumstances stated in section 15.

(2) Without prejudice to any agreement, where the quantity of gas has been reduced as aforesaid—

- (a) no liability shall be incurred by the licensee in respect of any loss or damage caused by the reduction; and
- (b) in appropriate cases, an abatement in the charges for the supply of gas shall be made in proportion to the reduction made.

(3) Any retail licensee shall not be liable for any damage to any person or property for any cessation or reduction of the supply of gas—

- (a) which is directly caused by any negligent act on the part of the consumer including any unauthorized connection of any piping system; or
- (b) which is shown to have resulted from any of the events described in section 15.

(4) The retail licensee shall be liable for any damage to any person or property for any cessation or reduction of the supply of gas which is shown to have resulted from negligence on the part of persons employed by the licensee, his agents or servants, as the case may be, or from his faulty construction of the piping system.

(5) Without prejudice to subsection (4) the retail licensee shall rectify any damage to ensure continuation of the supply of gas within a reasonable period of time and to repair any damage from the outlet of the meter to the internal piping within the consumer's premises if it is shown to have resulted from the negligent act of the retail licensee, his agents or servants, as the case may be.

Disconnection of delivery or supply of gas

21. (1) Where a licensee has reasonable grounds to believe that in respect of any premises an offence under subsection 30(5), 30(6), 30(7) or 30(9) has been committed, the licensee or any person duly authorized by the licensee may, upon giving not less than twenty-four hours' notice, in such form as may be prescribed, discontinue the delivery or supply of gas to such premises.

(2) Upon disconnection under subsection (1), the licensee shall immediately inform the Commission of the disconnection.

(3) Upon receiving the information under subsection (2) the Commission shall immediately direct an authorized officer to inspect such premises and as soon as practicable after such inspection, the Commission shall form an opinion—

- (a) that an offence has been committed and that the delivery or supply of gas shall not be reconnected until an investigation has been completed; or
- (b) that an offence has not been committed and that the delivery or supply of gas shall immediately be reconnected in which case the licensee shall pay compensation for any loss or damage caused by the discontinuation of the supply.

(4) Where the Commission forms an opinion under subsection (3) that an offence has been committed an investigation under sections 5 and 6 shall be carried out. Upon completion of investigation, if it

discloses no commission of any offence, the delivery or supply of gas shall be reconnected immediately and any loss incurred by any party may be referred to the Commission for adequate compensation to be paid pursuant to an inquiry held under section 29.

(5) If an offence has been committed, the licensee may require the consumer to pay him for any loss of revenue due to the offence committed under subsection 30(5), 30(6), 30(7) or 30(9) and any expenses incurred by the licensee under this section including expenses incurred in respect of the reconnection of delivery or supply of gas in the manner and in accordance with guidelines issued by the Commission under this Act.

(5A) Notwithstanding subsection (5) if the licensee does not proceed with a claim for such loss of revenue and expenses in court, the licensee may only claim against the consumer for the said loss of revenue and expenses for a period not exceeding six months retrospectively from the date the offence was discovered under subsection (1).

(6) Subject to subsection (5), a written statement by the licensee or any person authorized by the licensee specifying—

- (a) the amount of loss of units of gas or the expenses incurred by the licensee including the manner of calculation of the loss of revenue and items of expenses; and
- (b) the person liable for the payment thereof,

shall be *prima facie* evidence of the payment that has to be made by the consumer under subsection (5) and such written statement shall be notified to the consumer within fourteen working days or any period as extended with the written approval of the Commission after the disconnection.

(7) The amount stated in the written statement or decided by the Commission shall, within the period specified in the statement, be due and payable to the licensee and in default of payment such amount shall be recoverable by civil action in a court.

Liabilities unaffected

22. Except as provided in section 20, nothing contained in this Act shall operate to relieve any licensee from any civil or criminal liability arising under this Act.

Power to enter on and examine non-State land

23. (1) Whenever it appears to the licensee that it will be necessary for him to exercise the powers conferred upon him by this Act in respect of any land other than State land for the purpose of constructing any pipeline or piping system or part thereof, the licensee or any person authorized by him may, after giving not less than twenty-four hours' notice to the occupier thereof, if any, enter upon the land, survey and take levels and do any other acts necessary to ascertain the suitability of the land, in so far as the same may be possible without causing damage or disturbance.

(2) Nothing herein contained shall be deemed to authorize any person to cut down or clear away any vegetation or any fence or other erection or to enter into any building or upon any enclosure attached to any building.

(3) In the case of reserved land, the notice under subsection (1) may be given to the officer or any other person in charge of the reserved land, or, in the absence of any such officer or person, to the District Land Administrator.

Power to enter on non-State land for purposes of construction

24. (1) Whenever it is necessary for the purpose of installing any—

(a) pipeline for the regasification or transportation of gas; or

(b) pipeline for the distribution of gas or piping system,

a licensee may lay, place or carry on, under or over any land, other than State land, such pipeline or piping system as may be necessary or proper for the purposes of the licence, and may take such other action as may be necessary to render such pipeline or piping system safe and efficient, paying full compensation in accordance with section 28 to all persons interested for any disturbance, damage or disability that may be caused thereby and such compensation may include an annual payment for land used for the purpose of such pipeline or piping system.

(1A) For the purposes of paragraph (1)(a), the regasification or transportation licensee shall comply with the requirements of the relevant authority having jurisdiction over safety of the relevant regasification terminal or transmission pipeline.

(1B) For the purposes of paragraph (1)(b), the distribution, retail or private gas licensee shall comply with the requirements as may be determined by the Commission over safety of the distribution pipeline or piping system.

(2) Before entering on any land for the purpose specified in subsection (1), the licensee shall give a notice stating as fully and accurately as possible the nature and extent of the acts intended to be done. The notice shall be substantially in the form set out in the First Schedule. The District Land Administrator shall specify a date upon which the State Authority shall inquire into any objection that may have been made as hereinafter provided.

(3) The aforesaid notice shall be given—

- (a) in the case of alienated land, to the owner or occupier;
- (b) in the case of reserved land, to the officer or any other person in charge of the reserved land or, in the absence of any such officer or person, to the District Land Administrator,

and may be sent by registered post or be left at the usual or last known place of abode of the person to whom it is to be given or served by the licensee or the District Land Administrator at the expense of the licensee, either in the manner hereinbefore provided or in the manner provided for the service of notices by any written law relating to land in force in the State where the land is situated.

(4) Any of the persons mentioned in subsection (3) may, within fourteen days of the receipt of the notice therein referred to, lodge an objection to the intended acts of the licensee. The objection may be made to the District Land Administrator, either verbally or in writing, and the District Land Administrator shall give notice of the objection to the State Authority and to the licensee.

(5) If no objection is lodged within the time limited for that purpose by subsection (4), the licensee may forthwith enter on the land and do all or any of the acts specified in the notice given under subsection (2).

(6) If an objection is lodged and is not withdrawn before the date fixed for the hearing thereof, the District Land Administrator shall hold an inquiry, giving all parties an opportunity to be heard.

(7) Upon the conclusion of the inquiry the District Land Administrator may, either unconditionally or subject to such terms, conditions and stipulations as he thinks fit, make an order authorizing or prohibiting any of the acts mentioned in the notice given under subsection (2). The order shall be substantially in the form set out in the Second Schedule:

Provided that any party who is dissatisfied with the District Land Administrator's order may within twenty-one days after the order appeal against such an order to the State Authority which may then uphold, set aside or vary the order upon such terms, conditions and stipulations as it thinks fit.

(8) The State Authority may, if it thinks fit, in lieu of making an order under subsection (7), direct the acquisition of any land or part of any land included in a notice given under subsection (2).

(9) The decision of the State Authority under this section shall be final.

(10) Notwithstanding any written law relating to land matters, the Registrar—

(a) upon the production to him of the notice issued by the licensee under subsection (2) together with the statement by the District Land Administrator that no objection had been lodged by any of the persons mentioned in subsection (3); or

(b) upon the production to him of the original order made under subsection (7) and upon the deposit with him of a certified copy of such order,

shall cause to be made on the register document of title relating to the land affected by the notice or order, as the case may be, a note of the existence of the rights under such notice or order.

Maintenance, repair and upgrading of pipeline or piping system

25. (1) Whenever it is necessary for the purpose of maintaining, repairing or upgrading any—

(a) pipeline for the regasification or transportation of gas; or

(b) pipeline for the distribution of gas or piping system,

the licensee, or any person authorized by him in that behalf, may at all reasonable times enter upon any land and may carry out all necessary repairs, and may, in the course thereof, remove vegetation and do all other things necessary to the said purpose, causing as

little damage as possible and paying full compensation in accordance with section 28 to all persons interested for any damage that may be caused thereby for which compensation has not already been assessed under section 24.

(2) For the purposes of paragraph (1)(a), the regasification or transportation licensee shall comply with the requirements of the relevant authority having jurisdiction over safety of the regasification terminal or transmission pipelines.

(3) For the purposes of paragraph (1)(b), the distribution, retail or private gas licensee shall comply with the requirements as may be determined by the Commission over safety of the distribution pipeline or piping system.

Removal or alteration of pipeline or piping system

26. (1) Where any—

(a) pipeline for the regasification or transportation of gas has been installed on land under paragraph 24(1)(a); or

(b) pipeline for the distribution of gas or piping system has been installed on land under paragraph 24(1)(b),

and if any of the persons mentioned in subsection 24(3) desires to use the land in such a manner as to render it necessary or convenient that the pipeline or piping system referred to in paragraphs 24(1)(a) and (b) should be removed to another part of the land, or to land at a higher or lower level, or be altered in form, he may require the licensee to remove or alter such pipeline or piping system accordingly.

(1A) For the purposes of paragraph (1)(a), the regasification or transportation licensee shall comply with the requirements of the relevant authority having jurisdiction over safety of the regasification terminal or transmission pipelines.

(1B) For the purposes of paragraph (1)(b), the distribution, retail or private gas licensee shall comply with the requirements as may be determined by the Commission over safety of the distribution pipeline or piping system.

(2) If the licensee omits to comply with the requisition, the person may apply in writing to the State Authority which may, in its discretion, after inquiring into all the facts of the case, reject the application or make an order, either absolutely or subject to certain conditions, for the removal or alteration of the pipeline or piping system. The order shall provide for the payment of the cost of executing the removal or alteration by the licensee or by the person making the application, as the State Authority may consider equitable in the circumstances of the case.

(3) The State Authority may, instead of itself inquiring into a case under subsection (2) direct the District Land Administrator to make such inquiry on its behalf and to make recommendations to it.

(4) Whenever the State Authority has made an order for the removal or alteration of any pipeline or piping system, the licensee may, instead of removing or altering the pipeline or piping system, apply to the State Authority to direct the acquisition of such land as is required for the purposes of the pipeline or piping system, and the State Authority may direct the acquisition accordingly.

(5) Whenever the State Authority is authorized by this section to direct the acquisition of any land, the pipeline or piping system shall be deemed to be a work for public utility and any written law relating to land acquisition in force in the State where the land is situated shall be enforced accordingly.

(6) Whenever a pipeline or piping system has been installed on State land by a licensee and the land is subsequently alienated to any person, the owner or occupier of the land may, unless the terms of alienation expressly provide otherwise, require the removal of the pipeline or piping system to another part of the land, or to land at a

higher or lower level, or the alteration of the pipeline or piping system, and subsections (1) to (4) shall apply to any such requisition:

Provided that the cost of executing the removal or alteration shall be defrayed by the person making the requisition.

Wayleave agreements

27. (1) Nothing in section 24 or 26 shall affect the right of a regasification, transportation, distribution or retail licensee to enter into an agreement, commonly known as a wayleave agreement, with the owner or occupier of any land for the purpose of constructing a pipeline or piping system.

(2) Notwithstanding any written law relating to land, the Registrar, upon the production to him of the original and the deposit with him of a certified copy of any such wayleave agreement as is referred to in subsection (1), shall cause to be made on the register document of title relating to the land affected by the wayleave agreement a note of the existence of the wayleave agreement.

(3) Where a wayleave agreement relates to land which is a holding included in the Interim Register—

- (a) subsection (2) shall apply as if “Commissioner” and “appropriate folio of the Interim Register” were substituted for “Registrar” and “register document of title” respectively; and
- (c) when final documents of title are issued for the land under section 39 of the National Land Code (Penang and Malacca Titles) Act 1963 [*Act 518*], any note made pursuant to subsection (2) as varied by paragraph (a) shall (if it is still effective immediately before the issue of those documents) be entered by the Commissioner on the register document of title and shall continue to have effect as if it had been entered under that subsection.

(4) So long as there remains on the register document of title or the appropriate folio of the Interim Register a note made pursuant to subsection (2) or (3), all dealings with the land to which the note relates shall be deemed to be subject to the rights of the licensee under and by virtue of the wayleave agreement in respect of which the note has been made.

(5) In this section—

“Commissioner” and “Interim Register” have the meanings assigned thereto respectively by the National Land Code (Penang and Malacca Titles) Act 1963.

Compensation

28. (1) The amount of compensation, if any, payable under section 23, 24 or 25 shall be assessed by the District Land Administrator after such inquiry as he shall deem sufficient. The assessment shall be substantially in the form set out in the Third Schedule:

Provided that no compensation shall be payable by the regasification, transportation, distribution or retail licensee in respect of any tree within fifty feet of the centre line of any road constructed or maintained by the State Government or by any local authority unless it is proved that the tree was in existence prior to the construction of the road.

(2) Any person aggrieved with the District Land Administrator’s assessment may within twenty-one days after the assessment appeal to the State Authority whose decision shall be final.

PART VIA

GENERAL COMPETITION PRACTICES

Chapter 1

Interpretation and application

Interpretation

28A. For the purposes of this Part—

“commercial activity” means any activity of a commercial nature within the scope of the Act but does not include—

- (a) any activity, directly or indirectly in the exercise of governmental authority;
- (b) any activity conducted based on the principle of solidarity; and
- (c) any purchase of gas or services not for the purposes of offering gas or services as part of an economic activity;

“concerted practice” means any form of coordination between persons, including licensees, which knowingly substitutes practical co-operation between them for the risks of competition and includes any practice which involves direct or indirect contact or communication between persons, including licensees, the object or effect of which is either—

- (a) to influence the conduct of one or more persons, including licensees, in the market; or
- (b) to disclose the course of conduct which a person, including a licensee, has decided to adopt or is contemplating to adopt in the market, in circumstances where such disclosure would not have been made under normal conditions of competition;

“dominant position” means a situation in which one or more persons, including licensees, possess such significant power in the market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors;

“person, including a licensee” means any entity carrying on commercial activities and a parent and subsidiary company shall be regarded as a single person, including a licensee if, despite their separate legal entity, they form a single economic unit within which the subsidiary does not enjoy real autonomy in determining its action on the market;

“market” means the gas market in Malaysia or in any part of Malaysia, and when used in relation to facilities or services related to gas, includes a market for such facilities or services and other facilities or services that are substitutable for, or otherwise competitive with, the first-mentioned facilities or services;

“agreement” means any form of contract, arrangement or understanding, whether or not legally enforceable, between any persons, including licensees, and includes a decision by an association and concerted practices;

“horizontal agreement” means an agreement between persons, including licensees, each of whom operates at the same level in the gas value chain;

“vertical agreement” means an agreement between persons, including licensees, each of whom operates at a different level in the gas value chain;

“gas value chain” includes the gas delivery system and the import into regasification terminal, regasification, shipping, transportation, distribution, retail or use of gas through a piping system.

Application of Part VIA

28B. Part VIA applies to any commercial activity, both within and outside Malaysia, which has an effect on competition in the market in Malaysia.

Chapter 2

Anti-competitive agreement

Prohibited agreement

28c. (1) Any horizontal or vertical agreement which in the opinion of the Commission has the object or effect of significantly preventing, restricting or distorting competition in the market is prohibited.

(2) Without prejudice to the generality of subsection (1), a horizontal agreement between persons, including licensees, which has the object to—

- (a) fix, directly or indirectly, a purchase or selling prices of gas or any other trading conditions of gas;
- (b) limit or control—
 - (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment in the gas industry;
- (c) share markets or sources of gas supply; or
- (d) perform an act of bid rigging,

is deemed to have the object significantly preventing, restricting, or distorting competition in the market.

(3) Any person, including a licensee, who is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition.

(4) This section applies only to agreements which have effect in Malaysia on or after the date of coming into operation of this Act.

Relief of liability

28D. Notwithstanding section 28C, a person, including a licensee, who is a party to an agreement may relieve its liability for the infringement of the prohibition under section 28C based on the following reasons:

- (a) there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
- (b) the benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;
- (c) the detrimental effect of the agreement on competition is proportionate to the benefits provided; and
- (d) the agreement does not allow the persons, including licensees, concerned to eliminate competition completely in respect of a substantial part of the activities licensed under section 11.

Individual exemption

28E. (1) A person, including a licensee, may apply to the Commission for an exemption with respect to a particular agreement from the prohibition under section 28C.

(2) The Commission may, by order published in the *Gazette*, grant the exemption if, in the opinion of the Commission, the agreement is one to which section 28D applies.

(3) An exemption granted under this section is referred to as an “individual exemption”.

(4) The individual exemption granted by the Commission may be—

(a) subject to any condition or obligation as the Commission considers it appropriate to impose; and

(b) for a limited duration as specified in the order.

(5) An individual exemption may provide for it to have effect from a date earlier than that on which the order is made.

(6) If the Commission is satisfied that—

(a) there has been a material change of circumstance since the Commission granted an individual exemption; or

(b) or an obligation has been breached,

the Commission may, by order published in the *Gazette*—

(i) cancel the individual exemption;

(ii) vary or remove any condition or obligation; or

(iii) impose additional condition or obligation.

(7) If the Commission is satisfied that—

(a) the information on which the Commission based its decision to grant an individual exemption is false or misleading in a material particular; or

(b) any condition has been breached,

the Commission may, by order published in the *Gazette*, cancel the individual exemption.

(8) Any action taken by the Commission under subsection (6) shall have effect from the date the order is made.

(9) An individual exemption which is cancelled—

(a) by virtue of paragraph (7)(a) shall be void *ab initio*; or

(b) by virtue of paragraph (7)(b) shall have effect from the date the condition is breached.

Block exemption

28F. (1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements to which section 28D applies, the Commission may, by order published in the *Gazette*, grant an exemption to the particular category of agreements.

(2) An exemption granted under this section is referred to as a “block exemption”.

(3) An agreement which falls within a category specified in a block exemption is exempt from the prohibition under section 28C.

(4) The Commission in granting the block exemption may impose any condition or obligation subject to which a block exemption shall have effect.

(5) A block exemption may provide that—

(a) if there is a breach of a condition imposed by the block exemption, the Commission may, by notice in writing,

cancel the block exemption in respect of the agreement from the date of the breach;

- (d) if there is a failure to comply with an obligation imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement;
- (c) if the Commission considers that a particular agreement is not one to which section 28D applies, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from such date as the Commission may specify;
- (d) the block exemption shall cease to have effect at the end of a period specified in the order; or
- (e) the block exemption is to have effect from a date earlier than that on which the order is made.

Chapter 3

Abuse of dominant position

Abuse of dominant position

28G. (1) Any conduct on the part of one or more persons, including licensees, which amounts to the abuse of a dominant position in the market is prohibited.

(2) Without prejudice to the generality of subsection (1), an abuse of dominant position may include—

- (a) directly or indirectly imposes unfair purchase or selling price or other unfair trading condition on any party pertaining to the delivery of gas or utilization of facility in the market;

- (b) limits or controls production, market access, technical or technological developments, or investments in the gas industry to the prejudice of persons, including licensees;
- (c) applies different conditions to equivalent transactions with other trading parties which places the other trading parties at a competitive disadvantage; or
- (d) makes the conclusion of agreements conditional upon acceptance by the other parties of obligations which, by their nature or by commercial usage, have no connection with the subject of the agreement.

(3) This section does not prohibit a person, including a licensee, in a dominant position from taking any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor.

(4) The fact that the market share of any person, including a licensee, is above or below any particular level shall not in itself be regarded as conclusive as to whether that person, including a licensee, occupies, or does not occupy, a dominant position in that market.

Commission may issue directions to a person, including a licensee, in a dominant position

28H. The Commission may issue a direction to a person, including a licensee, in a dominant position in the market to cease a conduct which has, or may have, the effect of significantly preventing, restricting or distorting competition or which amounts to an abuse of its dominant position in the market.

Chapter 4

Market review

Power to conduct market review

28I. (1) The Commission may, on its own initiative or upon the request of the Minister, conduct a review into the market in order to determine whether any feature or combination of features of the market prevents, restricts or distorts competition in the market.

(2) The market review includes a study into—

(a) the structure of the market concerned;

(b) the conduct of persons, including licensees, in the market;

(c) the conduct of suppliers and consumers to persons, including licensees, in the market; or

(d) any other relevant matters.

(3) Upon conclusion of the market review, the Commission may publish a report of its findings and recommendations and the report may be made available to the public.

Chapter 5

Decision by the Commission

Interim measures

28J. (1) This section applies if the Commission has commenced but not completed an investigation under section 6.

(2) If the Commission has reasonable grounds to believe that any prohibition under section 28C or 28G has been infringed or is likely to be infringed and the Commission considers that it is necessary for the

Commission to act under this section as a matter of urgency for the purpose of—

- (a) preventing serious and irreparable damage, economic or otherwise, to a particular person or category of persons; or
- (b) protecting the public interest,

the Commission may give such direction as the Commission considers to be appropriate and proportionate for that purpose in accordance with section 37C.

(3) A direction given under subsection (2) may include requiring or causing any person—

- (a) to suspend the effect of, and desist from acting in accordance with, any agreement which is suspected of infringing any prohibition under section 28C or 28G;
- (b) to desist from any conduct which is suspected of infringing any prohibition under section 28C or 28G; or
- (c) to do, or refrain from doing, any act, but which shall not require the payment of money.

(4) The Commission shall, before giving a direction under subsection (2)—

- (a) serve a written notice to the person to whom the Commission proposes to give the direction; and
- (b) give that person an opportunity to make written representations within a period of at least seven days from the date of the written notice.

(5) A notice under subsection (4) shall indicate the nature of the direction which the Commission proposes to give and its reasons for giving the direction.

(6) The Commission may at any time withdraw any direction given under subsection (2).

(7) Without prejudice to subsection (6), any direction given under subsection (2) shall cease to have effect—

(a) on the date of the decision by the Commission upon completion of its investigation; or

(b) twelve months from the date the direction was given,

whichever is the earlier.

Proposed decision by the Commission

28K. (1) If, after the completion of the investigation, the Commission proposes to make a decision to the effect that one of the prohibitions under section 28C or 28G has been or is being infringed, the Commission shall give written notice of its proposed decision to each person, including a licensee, that may be directly affected by the decision.

(2) The notice shall—

(a) set out the reasons for the Commission's proposed decision in sufficient detail to enable the person, including a licensee, to whom the notice is given to have a genuine and sufficient prospect of being able to comment on the proposed decision on an informed basis;

(b) set out any penalties or remedial action that the Commission proposes to apply; and

(c) inform each person, including a licensee, to whom the notice is given that the person, including a licensee, may, within such reasonable period as may be specified in the notice—

- (i) submit written representations to the Commission; and
- (ii) indicate whether the person, including a licensee wishes to make an oral representation before the Commission.

Oral representation

28L. If a person, including a licensee, informs the Commission, within the period specified in the notice given under section 28K that he wishes to make an oral representation, the Commission shall, before taking any relevant decision—

- (a) convene a session for the oral representation to be held at a date, time and place determined by the Commission; and
- (b) give written notice of the date, time and place to—
 - (i) the person, including licensee, concerned;
 - (ii) any person who had lodged a complaint with the Commission concerning the practice that was the subject of the Commission's investigation; and
 - (iii) any other person whose presence at the session of the oral representation is considered necessary by the Commission.

Conduct of hearings

28M. (1) Notwithstanding section 28L, the Commission may at any time conduct a hearing for the purpose of determining whether a person, including a licensee, has infringed or is infringing any prohibition under section 28C or 28G.

(2) If the Commission determines that a hearing is to be held, the Commission shall give at least fourteen days' notice in writing to the person, including a licensee, concerned and to other interested third parties—

- (a) recording its decision to convene the hearing;
- (b) specifying the date, time and place for the holding of the hearing; and
- (c) stipulating the matters to be considered at the hearing.

(3) When the Commission decides to hold a hearing, the Commission shall also decide—

- (a) whether to hold individual hearings with each of the person, including a licensee, and any other interested third parties separately or to hold a single hearing attended by all the persons, including a licensee, involved and the interested third parties; and
- (b) whether to hold a hearing—
 - (i) in public; or
 - (ii) in a closed session, for the purpose of protecting confidential information.

(4) The hearing shall be governed by and conducted in accordance with the procedural rules for the time being in effect, as published by the Commission.

(5) The Commission shall keep a record of the hearing as is sufficient to set out the matters raised by any person participating in the hearing.

(6) A person, including a licensee, may be represented at a hearing by—

- (a) any of its authorized officers or employees;
- (b) any advocate and solicitor;
- (c) any person falling within the description specified for that purpose in the Commission's procedural rules; or
- (d) any other person, with the consent of the Chief Executive Officer.

Decision of Commission

28N. (1) Where the Commission has made a decision that there is no infringement of a prohibition under section 28C or 28G, the Commission shall, without delay, give notice of the decision to any person who is affected by the decision stating the facts on which the Commission bases the decision and the Commission's reason for making the decision.

(2) If the Commission decides that there is an infringement of a prohibition under section 28C or 28G, the Commission—

- (a) shall require that the infringement to be ceased immediately;
- (b) may specify steps which are required to be taken by the infringing person, including a licensee, which appear to the Commission to be appropriate for bringing the infringement to an end;
- (c) may impose a financial penalty; or
- (d) may give any other direction as the Commission deems appropriate.

(3) The Commission shall, within twenty-one days of its making a decision under this section, notify any person affected by the decision.

(4) The Commission shall prepare and publish reasons for each decision made under this section.

(5) A financial penalty shall not exceed—

(a) in a case of a person carrying on a business or a licensee, ten per cent of its worldwide turnover; or

(b) in a case of any other person, five hundred thousand ringgit,

over the period during which an infringement occurred.

Leniency regime

28o. (1) There shall be a leniency regime, with a reduction of up to a maximum of one hundred per cent of any penalties which would otherwise have been imposed, which may be available in the cases of any person, including a licensee, which has—

(a) admitted its involvement in an infringement of any prohibition under subsection 28c(2); and

(b) provided information or other form of co-operation to the Commission which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of any prohibition by any other persons, including licensees.

(2) A leniency regime may permit different percentages of reductions to be available to a person, including a licensee, depending on—

- (a) whether the person, including a licensee, was the first person to bring the suspected infringement to the attention of the Commission;
- (b) the stage in the investigation at which—
 - (i) an involvement in the infringement was admitted; or
 - (ii) any information or other co-operation was provided; or
- (c) any other circumstances which the Commission considers appropriate to have regard to.

Enforcement of direction or decision of Commission

28P. (1) The Commission may bring proceedings before the High Court against any person who fails to comply with a direction given by the Commission under sections 28H, 28J or a decision under section 28N.

(2) If the High Court finds that the person referred to in subsection (1) has failed to comply with the direction or decision, the High Court shall make an order requiring the person to comply with the direction or decision.

(3) For the purposes of subsection (2), where the High Court finds that the failure to comply with the decision includes a failure to pay a penalty within the specified period, the High Court shall, in addition to ordering that person to pay the penalty, order the person to pay interest at the normal judgment rate running from the day following that on which the payment was due.

(4) Any breach of an order of the High Court made under this section shall be punishable as contempt of court.

Power to accept undertaking

28Q. (1) The Commission may, subject to the conditions that the Commission may impose, accept from a person, including a licensee, an undertaking to do or refrain from doing anything as the Commission considers appropriate.

(2) If the Commission accepts an undertaking under subsection (1), the Commission shall, in relation to an infringement, close the investigation without making any finding of infringement and shall not impose a penalty on the person, including a licensee.

(3) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.

(4) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the person, including a licensee, providing that undertaking under section 28N.

Chapter 6

Gas Competition Appeal Tribunal

Establishment and constitution of the Gas Competition Appeal Tribunal

28R. (1) A Gas Competition Appeal Tribunal is established which shall have exclusive jurisdiction to review any decision made by the Commission under sections 28J and 28N.

(2) The Gas Competition Appeal Tribunal shall consist of the following members:

(a) a President; and

(b) five other members appointed by the Minister.

(3) The Minister shall, upon nomination by the Chief Justice of the Federal Court, appoint a judge of the High Court to be the President of the Gas Competition Appeal Tribunal.

(4) The Minister shall appoint persons who, in his opinion, have relevant expertise in industry, commerce, economics, law, accountancy or consumer affairs to be members of the Gas Competition Appeal Tribunal.

(5) The Minister may consider proposals and recommendations by any Government agency or any other body having expertise in any matter referred to in subsection (4).

(6) The President and members of the Gas Competition Appeal Tribunal shall hold office for a term not exceeding six years.

Allowances

28s. The President and members of the Gas Competition Appeal Tribunal appointed under section 28R may be paid—

(a) a daily sitting allowance during the sitting of the Gas Competition Appeal Tribunal;

(b) a lodging, travelling and subsistence allowance; and

(c) such fixed allowances or other allowances,

as the Minister may determine.

Resignation and revocation of appointment

28t. (1) The President or any other member of the Gas Competition Appeal Tribunal may resign his office by giving sixty days' written notice to the Minister.

(2) The Minister may, at any time, revoke the appointment of the President or any other member of the Gas Competition Appeal Tribunal if such President or member—

- (a) is of unsound mind or otherwise incapable of performing his duties or managing his affairs;
- (b) becomes bankrupt or insolvent;
- (c) has been proved against him, or he has been convicted on, a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption; or
 - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (d) is guilty of serious misconduct in relation to his duties;
- (e) fails to comply with his obligations under section 28v; or
- (f) has been performing unsatisfactorily for a significant period of time.

Vacation of office and new or temporary appointment

28u. (1) The office of the President or any other member of the Gas Competition Appeal Tribunal shall be vacated if—

- (a) he dies;
- (b) he resigns or otherwise vacates his office before the expiry of the term for which he is appointed; or
- (c) his appointment is revoked under section 28τ.

(2) The Minister shall appoint another person in accordance with section 28R to replace the President or any other member of the Gas Competition Appeal Tribunal during the vacancy in the office of the President or member of the Gas Competition Appeal Tribunal.

(3) The Minister may appoint temporarily another person in accordance with section 28R to act as the President or any other member of the Gas Competition Appeal Tribunal—

- (a) during any period when the President or a member is absent from duty or from Malaysia; or
- (b) if the President or a member is, for any other reason, unable to perform the duties of his office temporarily.

(4) No act done or proceedings taken by the Gas Competition Appeal Tribunal in exercise of its powers or the performance of its functions shall be affected on the ground of any vacancy in the membership of the Gas Competition Appeal Tribunal.

Disclosure of interest

28v. (1) A member of the Gas Competition Appeal Tribunal shall disclose, as soon as practicable, to the President any interest, whether substantial or not, which may be in conflict with the member's duties as a member of the Gas Competition Appeal Tribunal in a particular matter.

(2) If the President is of the opinion that the member's interest is in conflict with the member's duties as a member of the Gas

Competition Appeal Tribunal, the President shall inform all the parties to the matter of the conflict.

(3) If none of the parties to the matter objects to the conflict, the member may continue to execute duties as a member of the Gas Competition Appeal Tribunal in relation to that matter.

(4) If a party to the matter objects to the conflict, the member of the Gas Competition Appeal Tribunal shall not continue to execute his duties as a member of the Gas Competition Appeal Tribunal in relation to that matter.

(5) If the member is prohibited from executing his duties under subsection (4), the President shall appoint another member of Gas Competition Appeal Tribunal to execute the duty in relation to that matter.

(6) If the President has any interest, whether substantial or not, which may be in conflict with his duty as the President of the Gas Competition Appeal Tribunal in a particular matter, he shall refrain from executing his duty as the President in relation to that matter.

(7) The failure of the President to refrain from executing his duty under subsection (6) or the failure of a member to disclose his interest shall—

- (a) invalidate the decision of the Gas Competition Appeal Tribunal unless all parties agree to be bound by the decision; and
- (b) subject the President or the member to the revocation of his appointment under section 28t.

Secretary to the Gas Competition Appeal Tribunal and other officers

28w. (1) The Minister shall appoint a Secretary to the Gas Competition Appeal Tribunal.

(2) The Minister may designate such number of public officers as the Minister thinks fit to assist the Secretary.

(3) For the purpose of this Act, the Secretary and the officers designated under subsection (2) shall be deemed to be officers of the Gas Competition Appeal Tribunal.

Appeal to the Gas Competition Appeal Tribunal

28x. (1) A person aggrieved or whose interest is affected by a decision of the Commission under sections 28J and 28N may appeal to the Gas Competition Appeal Tribunal by filing a notice of appeal to the Gas Competition Appeal Tribunal.

(2) A notice of appeal shall be made in writing to the Gas Competition Appeal Tribunal within thirty days from the date of the decision of the Commission and the appellant shall give a copy of the notice to the Chief Executive Officer.

(3) The notice of appeal shall state in summary form the substance of the decision of the Commission appealed against, shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate and shall be signed by the appellant or his advocate.

Record of decision of the Commission

28y. (1) The aggrieved person or the person whose interest is affected referred to in section 28x may, on his own initiative, request in writing to the Commission for a statement of the grounds of the decision of the Commission.

(2) Subject to subsection (3), the Commission shall, upon receiving the written request under subsection (1), provide a copy of the statement of its grounds to the aggrieved person or the person whose interest is affected upon payment of the prescribed fee.

(3) When a notice of appeal has been filed with the Gas Competition Appeal Tribunal under section 28x, the Commission shall, if the Commission had not already written its grounds for its decision on the matter stated in the notice as requested by the appellant under subsection (1), record in writing its grounds for its decision and the written grounds shall form part of the record of the proceedings before the Gas Competition Appeal Tribunal.

Stay of decision pending appeal

28z. (1) Pending the decision of an appeal by the Gas Competition Appeal Tribunal, a decision of the Commission shall be valid, binding and enforceable except where a stay of the decision of the Commission has been applied for by the appellant and granted by the Gas Competition Appeal Tribunal.

(2) An application for a stay of decision shall be in writing and shall be made to the Gas Competition Appeal Tribunal on or after the day on which the notice of appeal has been filed with the Gas Competition Appeal Tribunal.

Composition and sitting of the Gas Competition Appeal Tribunal

28AA. (1) Every proceeding of the Gas Competition Appeal Tribunal shall be heard and disposed of by three members of the Gas Competition Appeal Tribunal as the President may in any particular case determine.

(2) The Gas Competition Appeal Tribunal shall sit on such dates and at such places as the President may from time to time determine.

(3) The President may cancel or postpone any sitting of the Gas Competition Appeal Tribunal and may change the place of the sittings which has been determined under subsection (2).

(4) Any change to the date or place of any sitting of the Gas Competition Appeal Tribunal shall be informed to the parties to the appeal by a written notice.

Procedure and powers of the Gas Competition Appeal Tribunal

28AB. (1) The Gas Competition Appeal Tribunal shall decide its own procedure.

(2) The Gas Competition Appeal Tribunal shall have the power—

- (a) to summon parties to the proceedings or any other person to attend before it to give evidence in respect of an appeal;
- (b) to procure and receive evidence on oath or affirmation, whether oral or documentary, and examine all such persons as witnesses as the Gas Competition Appeal Tribunal considers necessary;
- (c) where a person is so summoned, to require the production of any information, document or other thing in his possession or under his control which the Gas Competition Appeal Tribunal considers necessary for the purposes of the appeal;
- (c) to administer any oath, affirmation or statutory declaration, as the case may require;
- (e) where a person is so summoned, to allow the payment for any reasonable expenses incurred in connection with his attendance;
- (f) to admit evidence or reject evidence adduced, whether oral or documentary, and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence; and

- (g) to generally direct and do all such matters as may be necessary or expedient for the expeditious decision of the appeal.

(3) The Gas Competition Appeal Tribunal shall have the powers of a subordinate court under the Subordinate Courts Act 1948 [Act 92] with regard to the enforcement of attendance of witnesses, hearing evidence on oath or affirmation and punishment for contempt.

Decision of the Gas Competition Appeal Tribunal

28AC. (1) The decision of the Gas Competition Appeal Tribunal, on any matter, shall be decided on a majority of the members.

(2) The Gas Competition Appeal Tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may—

- (a) remit the matter to the Commission;
- (b) impose or revoke, or vary the amount of, a financial penalty;
- (c) give such direction, or take such other step as the Commission could itself have given or taken; or
- (d) make any other decision which the Commission could itself have made.

(3) A decision of the Gas Competition Appeal Tribunal is final and binding on the parties to the appeal.

Enforcement of decision of the Gas Competition Appeal Tribunal

28AD. A decision given by the Gas Competition Appeal Tribunal may, by leave of the High Court, be enforced in the same manner as a

judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the decision.

Chapter 7

General

Rights of private action

28AE. (1) Any person who suffers loss or damage directly as a result of an infringement of any prohibition under section 28C or 28G shall have a right of action for relief in civil proceedings in a court under this section against any person, including a licensee, which is or which has at the material time been a party to such infringement.

(2) The action may be brought by any person referred to in subsection (1) regardless of whether such person dealt directly or indirectly with the person, including a licensee.

Regulations pertaining to competition matters under Part VIA made by Minister

28AF. (1) The Minister may make such regulations as may be necessary or expedient for—

- (a) giving full effect to the provisions of Part VIA;
- (b) carrying out or achieving the objects and purposes of Part VIA; and
- (c) providing for any supplemental, incidental, or consequential matters in relation to Part VIA.

(2) The Minister may, before making such regulations—

- (a) publish a notice of his intention to make the proposed regulations;
- (b) give at least thirty days from the date of the notice to allow any submission to be made by members of the public in relation to the proposed regulations; and
- (c) give due consideration to any submission made.

PART VII

INQUIRY

Procedure in inquiry

29. (1) Where a dispute arises between the licensee and the consumer with respect to matters falling under sections 13, 14 to 21 or between licensees on matters other than that pertaining to Part VIA, the dispute may be referred to the Commission.

(2) The Commission shall—

- (a) determine the dispute and make an order accordingly or, where the dispute is a contractual dispute under any terms of any agreement, may decide that it be determined according to any provision for determination of dispute under the agreement or be determined by the court accordingly; or
- (b) determine that, with the approval of the Minister, a committee of inquiry be formed to inquire into the dispute.

(2A) The practice and procedure to be followed in the determination of any dispute under paragraph (2)(a) may be such as the Commission considers appropriate.

(3) A committee of inquiry referred to in paragraph (2)(b) shall consist of three members led by a person appointed by the Minister.

(4) For the purposes of such inquiry, the committee may summon any person to attend any meeting of the said committee to give evidence on oath or produce any document or thing in his possession related to matters which are the subject matter of such inquiry and to examine him as a witness.

(5) Any person who, under subsection (4)—

- (a) having been summoned to attend any such inquiry, fails to do so;
- (b) offers any act of disrespect or any insult or threat to the committee or any member thereof during an inquiry; or
- (c) having been required by the committee to give evidence on oath or to produce any document or thing, refuses to do so or gives false evidence or produces a document or thing which he knows to be false,

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(6) The committee shall, on completion of the inquiry, determine the dispute and make an order accordingly.

(7) Pending the determination of any dispute under this section, the licensee shall, unless otherwise directed by the Commission, continue to deliver or supply gas or allow the utilization of his facility until the determination of the dispute.

(8) Any person who feels aggrieved by a decision of the Commission under subsection (2) or a decision by the committee under subsection (6) may apply to the Minister for reconsideration of the matter in dispute.

(9) The application to the Minister shall be made in writing within twenty-one days from the date of the decision of the Commission, or within such further period as the Minister may in special circumstances allow, and shall contain the grounds of grievance.

(10) The Minister shall then determine the dispute and make an order accordingly and his decision shall be final.

PART VIII

OFFENCES AND PENALTIES

Offences

30. (1) Any person who, in contravention of section 11, carries out any activity of retail or use of gas through a piping system without any licence commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit, or to imprisonment for a term not exceeding three years or to both and to a further fine not exceeding one thousand ringgit for every day or part of a day during which the offence continues after conviction, and any piping system or part thereof used or intended to be used in the commission of the offence shall be liable to forfeiture.

(1A) Any person who, in contravention of section 11, carries out any activity of import into regasification terminal, regasification, shipping, transportation or distribution of gas through pipelines without any licence commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit, or to imprisonment for a term not exceeding five years or to both and to a further fine not exceeding one thousand ringgit for every day or part of a day during which the offence continues after conviction.

(2) For the purposes of subsections (1) and (1A), any licensee who, without the express authority from the Commission, carries on the activity of transportation, distribution, retail or use of gas or lays down any pipeline or constructs any piping system outside the area of

supply specified in his licence shall be deemed to be operating without a licence and commits offences under subsections (1) and (1A) accordingly.

- (3) Any person who—
- (a) refuses any authorized officer access to any place pursuant to his power under section 5;
 - (b) assaults, obstructs, hinders or delays any authorized officer in effecting any entry which he is entitled to effect under section 5, or in the execution of any duty imposed or power conferred by this Act;
 - (c) refuses to give to any authorized officer (subject to the proviso in subsection 8(2)) any information relating to an offence or suspected offence under this Act or any other information which may reasonably be required of him and which he has in his knowledge or power to give under section 8; or
 - (d) knowingly or recklessly gives false information to an authorized officer under section 8,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(4) Any import into regasification terminal, shipping, retail or private gas licensee who without lawful excuse fails to comply with any term or condition expressed in the licence commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit and to a further fine not exceeding one thousand ringgit for every day or part of a day during which the offence continues after conviction.

(4A) Any regasification, transportation or distribution licensee who without lawful excuse fails to comply with any term or condition

expressed in the licence commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit and to a further fine not exceeding five thousand ringgit for every day or part of a day during which the offence continues after conviction.

(5) Any person who by any wilful, dishonest or negligent act or omission extends, adjusts, alters, removes, destroys or damages any pipeline or piping system or part thereof commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

(6) Any person who by any dishonest, rash or negligent act or omission tampers with or damages any pipeline, piping system or part thereof so as to cause or to be likely to cause injury to human life or limb or damage to any property commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to pay compensation for the loss incurred for the amount of which to be fixed by the court under section 30D.

(7) Any person who—

- (a) causes any pipeline or piping system or part thereof to be diverted from its proper course for the purpose of abstracting, consuming, using or wasting gas therefrom;
- (b) dishonestly alters the index of any meter or other instrument used on or in connection with any pipeline or piping system or part thereof belonging to any licensee or any other person for recording the output or consumption of gas;
- (c) prevents any meter or other instrument from duly recording the output or consumption of gas;
- (d) damages any meter or other instrument used on or in connection with any pipeline or piping system or part thereof for recording the output or consumption of gas; or

(e) dishonestly abstracts or consumes or uses gas,

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both, and shall also be liable to pay compensation for the loss incurred for the amount of which to be fixed by the court under section 30D.

(8) No person shall, without the lawful authority of the licensee, undertake any work or engage in any activity in the vicinity of any gas pipeline or piping system or part thereof in a manner likely to interfere with such pipeline or piping system or part thereof or to cause danger to any person or property unless the licensee has taken all reasonable steps to give proper notice on the existence of any pipeline or piping system or part thereof and measures as prescribed by the Commission for the protection of such pipeline or piping system or part thereof.

(9) Any person who contravenes subsection (8) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both, and shall also be liable to pay compensation for the loss incurred for the amount of which to be fixed by the court under section 30D.

Tipping off

30A. (1) Any person who—

(a) knows or has reasonable grounds to suspect that an authorized officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Part and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or

- (b) knows or has reasonable grounds to suspect that a disclosure has been made to an authorized officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence and shall, on conviction, be liable—

- (i) if such person is a body corporate, to a fine not exceeding one million ringgit, and for a second or subsequent offence, to a fine not exceeding five million ringgit; or
- (ii) if such person is not a body corporate, to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both, and for a second or subsequent offence, to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or
- (b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

(a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

Threat and reprisal

30B. (1) No person shall—

(a) coerce or attempt to coerce any person to refrain from doing any act referred to in subsection (3); or

(b) subject any person to any commercial or other disadvantage as a reprisal against the person for doing any act referred to in subsection (3).

(2) For the purposes of and without prejudice to the generality of paragraph (1)(b), the commercial or other disadvantage may include a threat of late payment of amounts properly due to the person, the unreasonable bringing or conduct of litigation against the person, the cancellation of orders with the person, or the diversion of business from, or refusal to trade with, the person.

(3) The acts referred to in subsection (1) are as follows:

(a) making a complaint to the Commission; and

(b) co-operating with, or offering or agreeing to co-operate with, the Commission in connection with any investigation by the Commission.

(4) Any person who contravenes this section commits an offence and shall, on conviction, be liable—

(a) if such person is a body corporate, to a fine not exceeding one million ringgit, and for a second or subsequent offence, to a fine not exceeding five million ringgit; or

(b) if such person is not a body corporate, to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both, and for a second or subsequent offence, to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

Confidentiality

30c. (1) Any person who discloses or makes use of any confidential information with respect to a particular person, including a licensee, or the affairs of an individual obtained by virtue of any provision of this Act commits an offence and shall, on conviction, be liable—

(a) if such person is a body corporate, to a fine not exceeding one million ringgit, and for a second or subsequent offence, to a fine not exceeding five million ringgit; or

(b) if such person is not a body corporate, to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both, and for a second or subsequent offence, to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Nothing in subsection (1) shall operate to prevent the disclosure of information where—

(a) the disclosure is made with the consent of the person from whom the information was obtained;

- (b) the disclosure is necessary for the performance of the functions or powers of the Commission;
- (c) the disclosure is reasonably made during any proceedings under this Part VIA or this Act provided that such disclosure is not made against any direction by the Commission or the Gas Competition Appeal Tribunal before which the proceedings are taking place;
- (d) the disclosure is made in connection with an investigation of an infringement or an offence under this Act; or
- (e) the disclosure is made with the authorization of the Commission to any competition authority of another country in connection with a request by that country's competition authority for assistance.

(3) For the purposes of this section, “confidential information” means trade, business or industrial information that belongs to any person, that has economic value and is not generally available to or known by others.

Order for payment of costs of prosecution and compensation

30D. (1) The court before which a person is convicted of any offence under this Act may, in its discretion, make either or both of the following orders against that person, namely:

- (a) an order for the payment by that person of the costs of his prosecution or any part thereof as may be agreed by the Public Prosecutor;
- (b) an order for the payment by that person of a sum to be fixed by the court as compensation to any person who is the victim of the offence committed by that person in respect of the injury to his person or character, or loss of his income or property, as a result of the offence committed.

(2) Where a person who is the victim of the offence is deceased, the order of compensation shall be made to a representative of the deceased person.

(3) The court shall, in making an order under paragraph (1)(b), take into consideration the following factors:

- (a) the nature of the offence;
- (b) the injury sustained by the victim;
- (c) the expenses incurred by the victim;
- (d) the damage to, or loss of, property suffered by the victim;
- (e) the loss of income incurred by the victim;
- (f) the ability of the person convicted of any offence under this Act to pay; and
- (g) any other factors which the court deems relevant.

(4) For the purpose of making an order under paragraph (1)(b), the court may hold an inquiry as the court thinks fit.

(5) The court shall specify the person to whom any sum in respect of costs or compensation as aforesaid is to be paid, and section 30E, except paragraph (1)(d), shall be applicable to any order made under this section.

(6) The court may direct that an order for payment of costs or an order for payment of compensation, shall have priority, and, if no direction is given, an order for payment of costs shall have priority over an order for payment of compensation.

(7) To the extent of the amount which has been paid to a person, or to the representatives of a person, under an order for compensation, any claim of such person or his representatives for damages sustained

by reason of the offence shall be deemed to have been satisfied, but the order for payment shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order.

- (8) Every order made under this section shall be appealable.

Provisions as to money payable as costs or compensation

30E. (1) Subject to the provisions of this Act where any person is, under this Act, for any reason whatsoever, ordered to pay any sum of money by way of costs or compensation, the court making the order may in its discretion do all or any of the following things, namely:

- (a) allow time for the payment of that sum;
- (b) direct payment of that sum to be made not exceeding twelve monthly instalments;
- (c) issue a warrant for the levy of that sum by distress and sale of any property belonging to that person;
- (d) direct that in default of payment or of a sufficient distress to satisfy such sum, that person shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of sentence:

Provided that where time is not allowed for the payment of that sum an order for imprisonment in default of payment shall not be issued in the first instance unless it appears to the Court that that person has no property or insufficient property to satisfy the money payable or that the levy of distress will be more injurious to him or his family than imprisonment;

(e) direct that such person be searched and that any money found on him when so searched or which in the event of his being committed to prison, may be found on him when taken to prison shall be applied towards the payment of that sum, the surplus, if any, being returned to him:

Provided that such money shall not be so applied if the court is satisfied that the money does not belong to the person on whom it was found or that the loss of the money will be more injurious to his family than his imprisonment.

(2) The term for which the court directs that person to be imprisoned in default of payment or of a sufficient distress to satisfy any sum shall not exceed the following scale:

When the money to be paid does not exceed RM500.....	One month
When the money to be paid exceeds RM500 but does not exceed RM1000.....	Two months
In any other case.....	Six months

(3) Subject to the provisions of this Act the imprisonment which the court imposes under this section shall terminate whenever the money is paid or levied by process of law.

(4) If before the expiration of the time of such imprisonment such a proportion of the money is paid or levied that the time of imprisonment suffered is not less than proportional to the part of the money still unpaid, the imprisonment shall terminate.

(5) A warrant for the levy of any such sum may be executed at any place in Malaysia but if it is required to be executed outside the State in which it is issued it shall be endorsed for that purpose by a

Judge or a First Class Magistrate having jurisdiction in the State in which it is to be executed.

General penalty

31. Any person who by any act or omission contravenes any provision under this Act or any regulation made thereunder commits an offence and if no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit and, in the case of a continuing offence, to a fine not exceeding two thousand ringgit for every day or part of a day during which the offence continues after conviction.

Offences committed by body corporate: officers deemed to be guilty

32. (1) Where a person convicted in respect of any offence under this Act or any regulation made thereunder is a body corporate, it shall only be liable to the imposition of any fine provided therein.

(2) Where a person charged with an offence under this Act or any regulation made thereunder is a body corporate, every person who at the time of the commission of the offence is a director or officer of the body corporate may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such director or officer shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he took reasonable precautions to prevent its commission.

(3) Any person who would be liable under this Act or any regulation made thereunder to any penalty for anything done or omitted if the thing had been done or omitted by him personally shall be liable to the same penalty if the thing had been done or omitted by his agent, unless he proves that he took reasonable precautions to prevent the doing or omission of the thing.

Offence of attempt and abetment

32A. (1) Where any person—

- (a) aids, abets, assists, incites or induces any other person to make or makes on behalf of another person an incorrect return, account, statement or declaration or to commit any offence punishable under this Act; or
- (b) attempts to make or to make on behalf of another person an incorrect return, account, statement or declaration or to commit any offence punishable under this Act,

that person commits an offence and shall, on conviction, be punishable with the punishment provided for such offence under this Act provided that any term of imprisonment imposed shall not exceed one-half of the longest term provided for the offence.

Onus of proof

33. In any prosecution for an offence under section 30 proof of—

- (a) the existence of artificial means which, either alone or in conjunction with additional artificial means not found, could be used for altering, or facilitating the alteration, of the index of any meter or instrument used for registering the quantity of gas supplied;
- (b) the existence of artificial means which, either alone or in conjunction with additional artificial means not found, would prevent, or facilitate the prevention of, any meter or instrument from duly registering the quantity of gas supplied, or would facilitate the dishonest abstraction, consumption, or use of gas; or
- (c) (i) the fitting of any artificial, mechanical or any other part or connection to;

(ii) the absence or removal of any part or connection from; or

(iii) the interference with any part or connection of,

any apparatus in the circumstances that the fitting, absence, removal or interference would prevent or facilitate the prevention of any meter or other instrument from duly registering the quantity of gas supplied, or would facilitate the dishonest abstraction, consumption or use of gas,

shall be *prima facie* evidence that there has been dishonest alteration of the index of any meter or instrument, or prevention, abstraction, consumption or use of gas, as the case may be, and that the dishonest alteration, prevention, abstraction, consumption or use, as the case may be, has been carried out by—

- (aa) the person fitting the artificial, mechanical or any other such part or connection as aforesaid;
- (bb) the person removing any such part or connection as aforesaid;
- (cc) the person interfering with any such part or connection as aforesaid;
- (dd) the consumer using the meter or instrument;
- (ee) the person having control of the pipeline or piping system or part thereof where it is fixed; or
- (ff) the occupiers of the premises on which the meter or instrument is installed.

Compounding

34. (1) The Minister may, by order in the *Gazette*, prescribe any offence under this Act or any regulation made thereunder as an offence which may be compounded.

(2) The Chief Executive Officer may, with the consent in writing of the Public Prosecutor, compound any offence prescribed under subsection (1) by collecting from the person reasonably suspected of having committed the offence a sum of money not exceeding fifty per cent of the amount of the maximum fine for that offence.

(3) All sums of moneys received by the Commission under this section shall be paid into and form part of the Consolidated Fund.

Register

34A. (1) The Commission shall maintain a register in both non-electronic and electronic form of all matters which are required to be registered under this Act and under any of its subsidiary legislation.

(2) Any person may on payment of any prescribed fee—

(a) inspect the register; and

(b) make a copy of, or take extracts from, the register.

(3) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information—

(a) on a data processing device; or

(b) by way of electronic transmission.

PART IX

GENERAL

Competent person

35. Unless otherwise exempted, no work in respect of installing, constructing, maintaining, repairing or operating any gas distribution pipeline or piping system or part thereof shall be carried out except by or under the supervision of and certified by a competent person.

Audit of licensee, etc.

35A. (1) The Commission may—

- (a) carry out or cause to be carried out audit of any licensee, institution, manufacturer or importer, gas contractor or any other person as determined by the Commission on any licensed activity, any information furnished to the Commission or on any other matters as directed by the Commission;
- (b) require a licensee to appoint, at their own cost, an independent expert, with qualifications as may be stated by the Commission to review or audit on any licensed activity, any information which a licensee furnishes to the Commission or on any other matters as directed by the Commission.

(2) For the purpose of subsection (1), the review or audit shall be carried out in accordance with any codes, guidelines, directions issued under this Act, or as may otherwise be determined by the Commission.

(3) A licensee, institution, manufacturer or importer, gas contractor or any other person as determined by the Commission who—

- (a) fails to furnish any information as may be required by the Commission;
- (b) intentionally alters, suppresses or destroys any document or information which he has been required by written notice to produce; or
- (c) refuses to assist or facilitate, or obstructs the Commission, its authorized officers or appointed consultants in conducting the audit,

under this section, commits an offence and shall, on conviction, be liable to a fine of not exceeding five hundred thousand ringgit and to a further fine of not exceeding ten thousand ringgit for every day or part of the day during which the offence continues after conviction.

Serious accidents to be reported

36. (1) Whenever any accident or fire causing or resulting in loss of life or hurt to any person or serious damage to property has occurred in connection with any distribution pipeline or retail or use of gas through piping system or part thereof, the consumer or the licensee, as the case may be, shall report the accident or fire to the Commission by the quickest means available, and subsequently with the least possible delay shall report in writing the facts of the matter so far as they are known to them respectively.

(2) Any person who, without lawful excuse, contravenes or fails to comply with subsection (1) commits an offence.

Protection of Commission and authorized officers

37. No action or prosecution shall be brought, instituted or maintained in any court against the Commission or the officers duly appointed or authorized to act under this Act, the President, members, Secretary, officers of the Gas Competition Appeal Tribunal or any

person authorized to act for and on behalf of the Gas Competition Appeal Tribunal in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his functions, powers and duties under this Act or any regulations made thereunder.

Public Authorities Protection Act 1948

37A. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Commission, the Chairman, Chief Executive Officer, any member, officer, servant or agent of the Commission, the President, any member, the Secretary, officer, servant or agent of the Gas Competition Appeal Tribunal in respect of any act, neglect or default done or committed or any omission by it or him in good faith, in such capacity.

Development of codes by Commission and compliance of codes

37B. (1) The Commission may, with the approval of the Minister, develop and issue codes relating to the use of regasification terminal, transmission or distribution pipelines together with the approval of any access arrangements, or for the retail or use of gas or for the metering of gas and in respect of safety in the distribution, retail or use of gas.

(2) The Commission may develop and issue such additional codes as the Commission deems fit and expedient or as the Minister may direct, as the case may be.

(3) All codes developed and issued under this section shall only be effective upon registration by the Commission.

(4) All licensees and any other parties who have entered into any agreement shall comply with the codes.

(5) Unless otherwise determined by the Commission, in ensuring reliability, safety and security of the gas delivery system, the codes

issued under this section shall take precedence over any agreement that may exist between the parties mentioned in subsection (4).

- (6) Any person who contravenes this section commits an offence.

Guidelines or directions by Commission

37c. (1) The Commission may issue guidelines or directions on any matter as provided under this Act or as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may issue and publish guidelines on the economic and legal analysis to be used in determining cases related to competition including the principles to be used in determining any penalty or remedy imposed under Part VIA of this Act.

(3) The Commission may issue directions in writing to any licensee, competent person or any person on the compliance or non-compliance of this Act or its subsidiary legislation, conditions of licences issued, including the remedying of a breach of a licence condition or on any other matter requiring the making of a direction or specifically to be made the subject of a direction in accordance with such procedures as may be prescribed.

(4) The guidelines or directions issued by the Commission under this section shall be registered and shall be effective from the date of such registration or such later date as the Commission may specify in the guidelines or directions.

(5) A licensee, competent person or any person shall comply with the guidelines and directions.

(6) A licensee, competent person or any person who fails to comply with any guideline or direction of the Commission commits an offence.

Modification, variation, review or revocation of code, guideline or direction by Commission

37D. (1) The Commission may modify, vary, review or revoke any code, guideline or direction issued under this Act.

(2) The procedures set out in subsections 37B(2), (3), (4) and (5) shall apply in respect of any modification, variation, review or revocation of the codes, guidelines or directions.

Power of the Commission to obtain information

37E. (1) The Commission may by notice require any person to furnish within a reasonable period specified in the notice, all information and documents relating to such matters as may be reasonably be required by the Commission to carry out its functions or duties under this Act, which are within the knowledge of that person or in his custody or under his control.

(2) Any person who fails without any reasonable excuse to do anything required of him by notice under subsection (1) commits an offence.

(3) Any person who—

(a) intentionally alters, suppresses or destroys any information or documents which he has been required by any notice under subsection (1) to furnish; or

(b) in furnishing any documents required by any notice under subsection (1), makes any statement which he knows to be false in a material matter or recklessly make such a statement,

commits an offence and shall on conviction, be liable to a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding two years or to both.

(4) If any person fails to comply with the notice under subsection (1), the court may, on the application of the Commission, make such order as the court thinks fit to secure compliance with such notice.

(5) Any order referred to in subsection (4) may provide that all the cost and expenses of and incidental to the application shall be borne by such person or by any officer of a company or other association who is responsible for the failure.

Disclosure of information obtained

37F. (1) This section applies to—

- (a) any information or document given by any person to the Commission under this Act; and
- (b) such information or document given whereby the person giving it notifies the Commission in writing that it is of a confidential or commercially sensitive nature.

(2) The Commission shall not disclose to any person the information or the contents of a document to which this section applies unless—

- (a) the Commission is of the opinion that—
 - (i) the disclosure of the information or the contents of the document would not cause detriment to the person supplying it or to any other person who is aware of the information or document; or
 - (ii) although the disclosure of the information or the contents of the document would cause detriment to the person supplying it or to any other person who is aware of the information or the contents of the

document, the public benefit in disclosing outweighs that detriment;

(b) the Commission gives written notice to—

- (i) the person who supplied the information or document; and
- (ii) any other person whom the Commission is aware has supplied the information or document to the person referred to in subparagraph (i), where the identity of such other person is known to the Commission, stating that the Commission wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and detailed reasons why the Commission wishes to make the disclosure and setting out a copy of this section; and

(c) no appeal is made to the Minister under subsection (3) within twenty-one days of the date of notice.

(3) A person aggrieved by a notice under paragraph (2)(b) may appeal to the Minister within twenty-one days of the date of the notice.

(4) Subsection (2) shall not prevent the Commission from disclosing any information or the contents of any document—

- (a) to any member, officer or employee of the Commission or any agent, consultant, committee or panel acting for or under the direction of the Commission;
- (b) to the Minister or any agent, consultant, committee or panel acting for or under the direction of the Minister;
- (c) when required to do so by any court or under this Act or any other written law; or

(d) for the purposes of any criminal proceedings.

(5) For the purposes of this section, the disclosure of any information or the contents of a document already in the public domain at the time the Commission wishes to disclose it cannot cause detriment to any person referred to in paragraph (2)(a).

Licensees' infrastructure information security

37G. (1) Any licensee as directed by the Commission shall be responsible for the preservation of confidentiality, integrity and availability of the licensees' information, information systems and supporting network infrastructure pertaining to its licensed activity, duties and other matters as provided under this Act.

(2) The licensee shall—

(a) take the necessary measures, establish and implement standards and employ the relevant information security controls to prevent, avoid, remedy, recover or restore its information, document, instrument or records stored in its computers and for its operational system by its computers from any risk of—

(i) threat or unauthorized access; and

(ii) intrusion or removal;

(b) take necessary measures to ensure the resiliency of its supporting network infrastructure to minimize business impact against various threats to its licensed activities; and

(c) ensure that the reliability, continuity and quality of gas delivery system, its performance of duties and conformity to the provisions of this Act and any regulations made thereunder shall not be jeopardized thereby,

and shall, within the time specified by the Commission, submit such information as required by the Commission and in the event of any incident which may interfere or affect the performance of the licensed activity, report to the Commission and other relevant authorities.

(3) Any licensee who fails, neglects to comply with or contravenes any provision of this section commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(4) For the purposes of this section—

“supporting network infrastructure” refers to relevant connection, network devices, hardware and software that provides network services in supporting business functions;

“information security controls” refers to means of managing risk, including policies, procedures, guidelines, practices or organizational structures, which can be administrative, technical, management or legal in nature;

“resiliency” means an ability of an organization to resist being affected by an incident.

Special powers in emergency

38. (1) The Yang di-Pertuan Agong may, on the occurrence of any industrial unrest, strike, lock-out or any other event which gives rise to an emergency, or in the interest of public safety, authorize the Commission to—

- (a) suspend the licence of any licensee, take temporary possession of any pipeline or piping system of such licensee and operate it in such manner as the Commission deems fit; or

- (b) withdraw either partially or totally the use of any pipeline or piping system from any person or class of persons or from the public at large.

(2) If any doubt arises as to the existence of an emergency or whether any act done under subsection (1) was in the interest of public safety, a certificate signed by the Yang di-Pertuan Agong and exhibited at such places as the Minister deems fit shall be conclusive proof on the point.

(3) Where the Commission takes possession of any pipeline or piping system of any licensee under paragraph (1)(a) the licensee shall be paid adequate compensation which shall be determined by the Commission after giving an opportunity to the licensee to be heard on the matter.

PART X

POWER TO MAKE REGULATIONS

Power to make regulations

39. The Minister may make regulations in respect of any matter which may be prescribed under this Act and in particular—

- (a) the procedures for the Commission in the exercise of its functions, duties and powers under this Act;
- (b) the limits of variation of the quality of gas in the gas delivery system and pressure of the gas delivered involving its distribution, retail or use of gas;
- (c) the management of any pipeline or piping system under section 11;
- (d) the method by which gas may be stored for purposes of distribution through pipelines;

- (e) the fees to be paid for licences which are required to be prescribed under this Act;
- (f) the measures to be taken and the regulation of equipment, appliances and fittings together with payment of fees for their approval, to be supplied and used in connection with distribution pipelines and piping system in the retail or use of gas in order to secure public and private safety;
- (fa) the regulation of meters together with payment of fees for their approval, to be supplied and used in connection with pipelines and piping system in respect of economic regulation purposes;
- (g) the manner of service and the form of notices;
- (h) the standard and methods for the construction of and the materials to be used for pipelines, piping system, equipment or appliances involved in the distribution, retail or use of gas through a piping system;
- (i) the nature of training, examinations and tests for the award of the certificates under section 35, the form of such certificates, the manner and issue thereof, the fees to be paid for such examination and certificates and the manner and circumstances in which the certificates may be modified, suspended or cancelled;
- (j) the means to be adopted, whether by forbidding or otherwise, to prevent or abate any nuisance likely to arise or arising from the working of any pipeline, piping system, equipment or appliances;
- (k) the regulation of the licensee and consumer relationship such as provisions on the recovery of charges for gas supply, the annual interest payable by a licensee to any person for any security given and any rates or conditions connected thereto, connection, disconnection or

restoration of supply by the licensee, entry into any premises by the licensee or his authorized officers for purposes related to the supply, connection, disconnection or restoration of supply, entry for purposes of replacing, repairing or altering any pipeline, piping system, equipment or appliance and the form of any notice required;

- (l) the method and procedure for compounding offences specified in section 34;
- (m) the method and procedure for the investigation of any serious accident reported pursuant to section 36;
- (n) the interval, time and manner for any pipeline or piping system to be inspected, the notice (if any) to be given in relation to any inspection and the preparation to be made by the licensee or any owner or occupier of any premises for such inspection;
- (na) the registration and classification of competent persons and contractors involved in the distribution, retail or use of gas and to prescribe fees for such registration;
- (o) the fees payable in respect of the inspection and testing of installations involved in the distribution, retail or use of gas and in respect of any other service properly rendered on account of consumers;
- (oa) the fees payable in respect of inspection of register or for the extraction of copies of documents kept in such register; and
- (p) any other matter generally to give effect to the provisions of this Act.

PART XI

MISCELLANEOUS

Certain sections of Act not applicable to factories

40. In this Act, sections 5, 35 and 36 and matters relating to paragraphs 39(c), 39(d), 39(f), 39(i), 39(j), 39(m) and 39(n) shall not apply to the delivery of gas through pipelines within factories as defined under the Factories and Machinery Act 1967 [Act 139].

Provisions to the contrary

41. Notwithstanding any provisions to the contrary in the Petroleum Development Act 1974 [Act 144], Petroleum (Safety Measures) Act 1984 [Act 302] or Factories and Machinery Act 1967 relating to the delivery of gas through the distribution pipeline or the piping system.

Exemption

42. The Minister may, by notification in the *Gazette*, exempt—

(a) any person or class of persons from—

(i) being licensed under section 11 of this Act; and/or

(ii) the provisions of section 35 of this Act,

and may, by similar notification, cancel any exemption so notified.

***Transitional and saving provision**

43. (1) Subject to subsection (2) any person who immediately before the date of commencement of this Act was supplying gas through pipelines in any premises may continue to do so during the period of six months from the commencement of this Act:

Provided that during that period such person shall make an application for a licence or an exemption from having to hold a licence under this Act:

Provided further that if such person has already made the application then he may continue to supply gas through pipelines in the same premises until his application is finally disposed of, withdrawn, allowed or exempted under this Act.

(2) Any existing pipeline or piping system or part thereof in the premises referred to in subsection (1) may continue to be used for such purpose until such time as when it is determined by the Commission or any public officer authorized by him that such use shall be discontinued.

* See section 46 of Gas Supply (Amendment) Act 2016 [Act A1515] w.e.f 16 January 2017 except for section 4A w.e.f 9 September 2016.

FIRST SCHEDULE

[Subsection 24(2)]

MALAYSIA

STATE OF

GAS SUPPLY ACT 1993

NOTICE OF INTENTION TO ENTER AND DO WORK ON LAND UNDER SECTION 24

To:

Title or other description of land

Take notice that I/we
of being the
holder of a licence dated under
the Gas Supply Act 1993 am/are desirous of entering the above-mentioned land for
the purpose of
.....
(here set out as fully and accurately as possible what is intended to be done)

Within fourteen days from the date of receipt of this notice you may lodge an
objection either verbally or in writing with the District Land Administrator
at.....

The District Land Administrator has appointed..... as the
day upon which objection will be heard.

Unless you lodge an objection within the specified time it will be presumed that
you have consented to my/our entering on the land on the terms of this notice.

You will be paid proper compensation for any damage done.

Dated this day of..... 20

.....
Licensee



SECOND SCHEDULE

[Subsection 24(7)]

MALAYSIA

STATE OF

GAS SUPPLY ACT 1993

*ORDER OF THE DISTRICT LAND ADMINISTRATOR IN RESPECT OF
OBJECTION ON THE ENTRY ON LAND*

To:

In the matter of an inquiry held under subsection 24(6) of the Gas Supply Act 1993 between the licensee and the owner of the land situated on Lot No....., Title No., Mukim.....

An inquiry has been held on before the District Land Administrator in the presence of on behalf of the licensee and on behalf of the land owner.

After holding the inquiry it is hereby ordered as follows:

- *(a) the licensee is allowed to enter the said land to do the works as specified in the notice issued under subsection 24(2) of the Gas Supply Act 1993;
- *(b) the licensee is allowed to enter the said land to do the works as specified in the notice issued under subsection 24(2) of the Gas Supply Act 1993 subject to the following conditions:
 - (i)
 - (ii)
 - (iii)
 - (iv)
 - (State the conditions)
- *(c) the licensee is not allowed to enter the said land to do the works specified in the notice issued under subsection 24(2) of the Gas Supply Act 1993.

Dated this day of..... 20

.....
District Land Administrator

*Delete whichever is not applicable



THIRD SCHEDULE

[Subsection 28(1)]

MALAYSIA

STATE OF.....

**GAS SUPPLY ACT 1993
ASSESSMENT**

To:

In the matter of inquiry for the payment of compensation under section 23*, 24* or 25* of the Gas Supply Act 1993 between the licensee and the owner of the land situated on Lot No., Title No. Mukim

An inquiry was held on before the District Land Administrator in the presence of on behalf of the licensee and on behalf of the land owner.

After having the inquiry it is hereby ordered that the compensation payable by the licensee to the land owner is as follows:

Dated this day of..... 20.....

.....
District Land Administrator

**Delete whichever is not applicable*

LAWS OF MALAYSIA**Act 501****GAS SUPPLY ACT 1993****LIST OF AMENDMENTS**

Amending law	Short title	In force from
Act A1126	Gas Supply (Amendment) Act 2001	02-01-2002
Act A1515	Gas Supply (Amendment) Act 2016	16-01-2017 except for section 4A 09-09-2016

LAWS OF MALAYSIA**Act 501****GAS SUPPLY ACT 1993****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
Long title	Act A1126 Act A1515	02-01-2002 16-01-2017
1	Act A1126 Act A1515	02-01-2002 16-01-2017
1A	Act A1515	16-01-2017
2	Act A1126 Act A1515	02-01-2002 16-01-2017
Part II	Act A1126	02-01-2002
Part III	Act A1126	02-01-2002
4	Act A1126 Act A1515	02-01-2002 16-01-2017
4A	Act A1126 Act A1515	02-01-2002 09-09-2016
5-6	Act A1515	16-01-2017
7	Act A1515	16-01-2017
9	Act A1126	02-01-2002
11	Act A1126 Act A1515	02-01-2002 16-01-2017
12	Act A1126 Act A1515	02-01-2002 16-01-2017

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Section	Amending authority	In force from
13	Act A1126 Act A1515	02-01-2002 16-01-2017
13A-D	Act A1515	16-01-2017
14	Act A1515	16-01-2017
15	Act A1126 Act A1515	02-01-2002 16-01-2017
16	Act A1126 Act A1515	02-01-2002 16-01-2017
17	Act A1515	16-01-2017
17 A	Act A1126	02-01-2002
18	Act A1126 Act A1515	02-01-2002 16-01-2017
19	Act A1126 Act A1515	02-01-2002 16-01-2017
20	Act A1515	16-01-2017
21	Act A1126 Act A1515	02-01-2002 16-01-2017
23 -28	Act A1515	16-01-2017
New Part VIA	Act A1515	16-01-2017
28A - 28Z	Act A1515	16-01-2017
28AA -28AF	Act A1515	16-01-2017
29	Act A1126 Act A1515	02-01-2002 16-01-2017
30	Act A1126 Act A1515	02-01-2002 16-01-2017

Section	Amending authority	In force from
30A – 30E	Act A1515	16-01-2017
31	Act A1515	16-01-2017
32A	Act A1515	16-01-2017
34	Act A1126 Act A1515	02-01-2002 16-01-2017
34A	Act A1515	16-01-2017
35	Act A1515	16-01-2017
35A	Act A1515	16-01-2017
36	Act A1126 Act A1515	02-01-2002 16-01-2017
37	Act A1126 Act A1515	02-01-2002 16-01-2017
37A – 37G	Act A1515	16-01-2017
38	Act A1126	02-01-2002
39	Act A1126 Act A1515	02-01-2002 16-01-2017
40 - 41	Act A1515	16-01-2017
43	Act A1126	02-01-2002
