



LAWS OF MALAYSIA

Act A1515

GAS SUPPLY (AMENDMENT) ACT 2016

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LAWS OF MALAYSIA

Act A1515

GAS SUPPLY (AMENDMENT) ACT 2016

An Act to amend the Gas Supply Act 1993.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Gas Supply (Amendment) Act 2016.

(2) This Act comes into operation on a 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 in different parts of Malaysia.

(3) 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.

(4) Section 4A comes into operation on the date this Act is published in the *Gazette*.

Substitution of long title

2. The Gas Supply Act 1993 [*Act 501*], which is referred to as the “principal Act” in this Act, is amended by substituting for the long title the following long title:

“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.”.

General amendment

3. The principal Act is amended—

- (a) in the English language text, by substituting for the words “shall be guilty of” wherever appearing the word “commits”; and
- (b) by substituting for the word “installation” wherever appearing the words “piping system” except for section 2, subsections 12(8), 20(3) and (4), 30(1) and 36(1).

Amendment of section 1

4. Section 1 of the principal Act is amended—

(a) by substituting for subsection (3) the following subsection:

“(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.”;

(b) by inserting after subsection (3) the following subsection:

“(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.”; and

(c) by deleting subsection (4).

New section 1A

4A. (1) The principal Act is amended by inserting after section 1 the following section:

“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.”.

(2) The operation of the principal Act is deemed to be suspended for the State of Sarawak from 17 July 1997, and for that purpose it shall be treated as if an order has been made under subsection 1(2) of the principal Act, until a date is appointed by the Minister under section 1A of the principal Act as introduced in subsection 4A(1) of this Act.

Amendment of section 2

5. Section 2 of the principal Act is amended—

(a) in the English language text, in the definition of “supply of gas”, by substituting for the full stop at the end of the paragraph a semicolon;

(b) by inserting after the definition of “supply of gas” the following definition:

‘ “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;’;

(c) in the definition of “danger”, by substituting for the words “installation resulting from transmission, distribution or utilization of gas” the words “installation resulting from distribution, retail or use of gas”;

(d) by inserting after the definition of “piping system” the following definition:

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

(e) by substituting for the definition of “gas” the following definition:

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

(f) by inserting after the definition of “Minister” the following definition:

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

- (g) by inserting after the definition of “licensee” the following definition:

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

- (h) by inserting after the definition of “liquefied natural gas carrier” the following definition:

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

- (i) by substituting for the definition of “area of supply” the following definition:

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

- (j) by inserting after the definition of “District Land Administrator” the following definition:

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

- (k) by inserting after the definition of “equipment” the following definition:

‘ “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;’;
- (l) in the definition of “safety”, by inserting after the word “property” the words “in respect of distribution pipelines or piping system”;
- (m) by inserting after the definition of “Chairman” the following definition:
- ‘ “Chief Executive Officer” means the Chief Executive Officer of the Commission;’;
- (n) by inserting after the definition of “private gas licensee” the following definition:
- ‘ “prohibition” means any prohibition under Part VIA of this Act;’;
- (o) by inserting after the definition of “gas delivery system” the following definition:
- ‘ “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;’;
- (p) by inserting after the definition of “import into regasification terminal licensee” the following definition:
- ‘ “infringement” means an infringement of any prohibition under section 28c or 28g;’;
- (q) by inserting after the definition of “liquefied natural gas” the following definition:
- ‘ “liquefied natural gas carrier” means a tank ship designed for transporting liquefied natural gas;’;

- (r) by substituting for the definition of “supply of gas” the following definition:

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

- (s) by inserting after the definition of “prescribed” the following definition:

‘ “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;’;

- (t) by inserting after the definition of “distribution” the following definition:

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

- (u) by inserting after the definition of “transportation” the following definition:

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

- (v) by inserting after the definition of “regasification” the following definition:

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

- (w) by inserting after the definition of “import into regasification terminal” the following definition:

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

(x) by inserting after the definition of “shipping” the following definition:

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

(y) by inserting after the definition of “retail” the following definition:

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

(z) by inserting after the definition of “dishonestly” the following definition:

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

(aa) by inserting after the definition of “transportation pipeline” the following definition:

‘ “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;’;

(ab) by inserting after the definition of “prohibition” the following definition:

‘ “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;’;

(ac) by substituting for the definition of “consumer” the following definition:

‘ “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;’;

(ad) by inserting after the definition of “transshipment” the following definition:

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

(ae) by inserting after the definition of “gas processing plant” the following definition:

‘ “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;’;

(af) by inserting after the definition of “safety” the following definition:

‘ “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;’;

(ag) by substituting for the definition of “installation” the following definition:

‘ “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;’;

(ah) by inserting after the definition of “gas” the following definition:

‘ “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;’;

(ai) by inserting after the definition of “reserved land” the following definition:

‘ “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;’;

(aj) by inserting after the definition of “transportation licensee” the following definition:

‘ “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;’;

(ak) by inserting after the definition of “gas appliance” the following definition:

‘ “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;’;

(al) by inserting after the definition of “pipelines” the following definition:

‘ “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;’;

(am) by inserting after the definition of “Chief Executive Officer” the following definition:

‘ “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;’;

(an) in the definition of “pipelines”, by substituting for the words “through which gas moves in transportation” the words “including installations, through which gas moves for purpose of regasification, transportation or distribution of gas”;

(ao) by inserting after the definition of “distribution licensee” the following definition:

‘ “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;’;

(ap) by inserting after the definition of “third party access” the following definition:

‘ “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;’;

(aq) in the national language text, in the definition of “tanah rizab”, by substituting for the full stop at the end of the paragraph a semicolon;

(ar) by inserting after the definition of “natural gas” the following definition:

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

(as) by inserting after the definition of “piping system” the following definition:

‘ “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;’.

Substitution of section 4

6. The principal Act is amended by substituting for section 4 the following section:

“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.”.

Substitution of section 4A

7. The principal Act is amended by substituting for section 4A the following section:

“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.”.

Amendment of section 5

8. Subsection 5(1) of the principal Act is amended by inserting after the word “cause” the words “including the investigation of any infringement or offence under this Act”.

Substitution of section 6

9. The principal Act is amended by substituting for section 6 the following section:

“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.”.

Amendment of section 7

10. Section 7 of the principal Act is amended—

(a) in subsection (2), by substituting for the word “If” the words “In the case of an offence committed under this Act, if”; and

(b) by inserting after subsection (2) the following subsection:

“(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.”.

Substitution of section 11

11. The principal Act is amended by substituting for section 11 the following section:

“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.”.

New sections 11A, 11B and 11C

12. The principal Act is amended by inserting after section 11 the following sections:

“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.”.

Amendment of section 12

13. Section 12 of the principal Act is amended—

- (a) in subsection (2), by inserting after the words “to him” the words “or on any other ground determined by the Commission to be necessary or expedient”;

(b) in subsection (6)—

(i) in paragraph (b)—

(A) by substituting for the words “acquire the pipeline and” the words “acquire the pipeline or”; and

(B) by substituting for the words “to supply gas” the words “delivery of gas”; and

(ii) in paragraph (c), by substituting for the words “supply gas” the words “delivery of gas”; and

(c) in subsection (8), by substituting for the words “supply of gas through any pipeline or installation” the words “gas delivery system”.

Substitution of section 13

14. The principal Act is amended by substituting for section 13 the following section:

“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.”.

New sections 13A, 13B, 13C and 13D

15. The principal Act is amended by inserting after section 13 the following sections:

“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.”.

Substitution of section 14

16. The principal Act is amended by substituting for section 14 the following section:

“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.”.

Amendment of section 15

17. Section 15 of the principal Act is amended—

(a) in the shoulder note, by inserting after the word “**supply gas**” the word “**or to allow utilization of facility**”;

(b) in subsection (1)—

(i) by substituting for the words “Nothing in subsection 14(1) shall require a licensee to supply gas to any premises if —” the words “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 —”;

(ii) in paragraph (b), by deleting the words “or special agreement, as the case may be”; and

(iii) by substituting for paragraph (d) the following paragraph:

“(d) the supply of gas or the utilization of facility is already being granted; or”;
and

(c) by substituting for subsection (2) the following subsection:

“(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.”.

Amendment of section 16

18. Section 16 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(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.”;

(b) in subsection (2), by substituting for the words “levied by him for the supply” the words “subject to section 13, where applicable, levied by him for the supply of gas or such utilization of facility”; and

(c) by substituting for subsection (3) the following subsection:

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

Amendment of section 17

19. Section 17 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(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.”;

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

“(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.”;

(c) in subsection (2)—

(i) by substituting for the words “the supply” the words “shipping or retail of gas”; and

(ii) by substituting for the word “supply” the words “shipping or retail of gas”; and

(d) by inserting after subsection (2) the following subsection:

“(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.”.

Deletion of section 18

20. The principal Act is amended by deleting section 18.

Substitution of section 19

21. The principal Act is amended by substituting for section 19 the following section:

“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.”.

Amendment of section 20

22. Section 20 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “**supply**” the words “**retail of gas**”;
- (b) in subsection (1), by inserting before the word “licensee” the word “retail”;
- (c) in subsection (3)—
 - (i) by inserting before the word “licensee” the word “retail”; and
 - (ii) in paragraph (a), by substituting for the words “pipeline or installation” the words “piping system”;

(d) in subsection (4)—

(i) by inserting before the word “licensee” wherever appearing the word “retail”; and

(ii) by substituting for the words “pipeline or installation” the words “piping system”; and

(e) in subsection (5), by inserting before the word “licensee” wherever appearing the word “retail”.

Amendment of section 21

23. Section 21 of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “**supply**” the words “**delivery or supply**”;

(b) in subsection (1), by substituting for the word “supply” the words “delivery or supply”;

(c) in subsection (3)—

(i) in paragraph (a), by substituting for the word “supply” the words “delivery or supply of gas”; and

(ii) in paragraph (b), by substituting for the word “supply” the words “delivery or supply”;

(d) in subsection (4), by substituting for the word “supply” the words “delivery or supply”;

(e) in subsection (5), by substituting for the words “gas supply” the words “delivery or supply of gas in the manner and in accordance with guidelines issued by the Commission under this Act.”;

(f) by inserting after subsection (5) the following subsection:

“(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).”; and

(g) in subsection (6)—

- (i) by substituting for the word “A” the words “Subject to subsection (5), a”;
- (ii) in paragraph (a), by inserting after the word “licensee” the words “including the manner of calculation of the loss of revenue and items of expenses”; and
- (iii) by inserting after the words “under subsection (5)” the words “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”.

Amendment of section 23

24. Section 23 of the principal Act is amended in the shoulder note by inserting after the word “**examine**” the word “**non-State**”.

Amendment of section 24

25. Section 24 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “**on**” the word “**non-State**”;
- (b) by substituting for subsection (1) the following subsection:

“(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.”; and

- (c) by inserting after subsection (1) the following subsections:

“(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.”.

Substitution of section 25

26. Section 25 of the principal Act is amended—

- (a) by renumbering the existing section as subsection (1);

- (b) by substituting for subsection (1) as renumbered the following subsection:

“(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.”; and

(c) by inserting after subsection (1) as renumbered the following subsections:

“(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.”.

Amendment of section 26

27. Section 26 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(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.”; and

(b) by inserting after subsection (1) the following subsections:

“(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.”.

Amendment of section 27

28. Subsection 27(1) of the principal Act is amended by inserting before the word “licensee” the words “regasification, transportation, distribution or retail”.

Amendment of section 28

29. Subsection 28(1) of the principal Act is amended in the proviso, by inserting before the word “licensee” the words “regasification, transportation, distribution or retail”.

New Part VIA

30. The principal Act is amended by inserting after section 28 the following Part:

“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;

(b) 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 28t.

(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;
- (d) 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.”.

Amendment of section 29

31. Section 29 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(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.”;

(b) by inserting after subsection (2) the following subsection:

“(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.”;

(c) in subsection (5), by substituting for the word “three” the word “ten”; and

(d) in subsection (7), by substituting for the words “on the service of supply of gas between a licensee and a consumer the licensee shall, unless otherwise directed by the Commission, continue to give the supply of gas” the words “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”.

Amendment of section 30

32. Section 30 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “supplies gas through pipelines” the words “carries out any activity of retail or use of gas through a piping system”;

(ii) by substituting for the word “five” the word “three”; and

(iii) by substituting for the words “pipeline or installation” the words “piping system”;

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

“(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.”;

- (c) by substituting for subsection (2) the following subsection:

“(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.”;

- (d) in subsection (3), by substituting for the word “five” the word “fifty”;

- (e) by substituting for subsection (4) the following subsection:

“(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.”;

- (f) by inserting after subsection (4) the following subsection:

“(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.”;

- (g) in subsection (5), by substituting for the word “fifty” the words “one hundred”;

(h) in subsection (6)—

- (i) by substituting for the words “one hundred” the words “five hundred”; and
- (ii) by inserting after the words “to both” the words “, 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”;

(i) in subsection (7)—

- (i) by substituting for the word “five” the words “one hundred”; and
- (ii) by inserting after the words “to both” the words “, 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”;

(j) in subsection (9)—

- (i) by substituting for the word “five” the word “fifty”; and
- (ii) by inserting after the words “to both” the words “, 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”.

New sections 30A, 30B, 30C, 30D and 30E

33. The principal Act is amended by inserting after section 30 the following sections:

“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.”.

Amendment of section 31

34. Section 31 of the principal Act is amended—

(a) by substituting for the word “fifty” the words “one hundred”; and

(b) by substituting for the word “one” the word “two”.

New section 32A

35. The principal Act is amended by inserting after section 32 the following section:

“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.”.

Amendment of section 34

- 36.** Subsection 34(2) of the principal Act is amended by substituting for the word “Chairman” the words “Chief Executive Officer”.

New section 34A

- 37.** The principal Act is amended by inserting after section 34 the following section:

“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.”.

Amendment of section 35

38. Section 35 of the principal Act is amended by inserting before the word “pipeline” the word “distribution”.

New section 35A

39. The principal Act is amended by inserting after section 35 the following section:

“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.”.

Amendment of section 36

- 40.** Subsection 36(1) of the principal Act is amended by substituting for the words “pipeline or installation” the words “distribution pipeline or retail or use of gas through piping system”.

Amendment of section 37

- 41.** Section 37 of the principal Act is amended by inserting before the words “in respect of” the words “, 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”.

New sections 37A, 37B, 37C, 37D, 37E, 37F and 37G

- 42.** The principal Act is amended by inserting after section 37 the following sections:

“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 minimise 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.”.

Amendment of section 39

43. Section 39 of the principal Act is amended—

(a) by substituting for paragraph (b) the following paragraph:

“(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;”;

(b) by substituting for paragraph (f) the following paragraph:

“(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;”;

(c) by inserting after paragraph (f) the following paragraph:

“(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;”;

(d) in paragraph (h), by inserting after the word “appliances” the words “involved in the distribution, retail or use of gas through a piping system”;

(e) in paragraph (j), by substituting for the word “prohibition” the word “forbidding”;

(f) by inserting after paragraph (n), the following paragraph:

“(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;”;

(g) by substituting for paragraph (o) the following paragraph:

“(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;” and

(h) by inserting after paragraph (o), the following paragraph:

“(oa) the fees payable in respect of inspection of register or for the extraction of copies of documents kept in such register; and”.

Amendment of section 40

44. Section 40 of the principal Act is amended by substituting for the word “supply” the word “delivery”.

Amendment of section 41

45. Section 41 of the principal Act is amended by substituting for the words “supply of gas through pipelines” the words “delivery of gas through the distribution pipeline or the piping system”.

Savings and transitional provision

46. (1) Any person who was carrying the activity of import into regasification terminal, regasification, shipping, delivery, transportation, distribution, reticulation, retail or use of gas before the date of coming into operation of this Act, shall make an application for a licence in accordance with this Act within twelve months from the date of coming into operation of this Act.

(2) Where on the date of coming into operation of this Act, requests for the supply of gas are pending before the licensee under the principal Act, the provisions of the principal Act relating to the exceptions to the duty to supply gas as amended by this Act shall apply.

(3) Any registration, act, order, direction, authorization, approval or decision done, made or given before the date of coming into operation of this Act shall be deemed to be done, made or given under this Act and shall continue in full force and effect in relation to whom they apply until revoked or amended.

(4) Where a dispute under sections 13, 14 to 21 of the principal Act arose before the date of coming into operation of this Act, the provisions of the principal Act applicable to the determination of dispute as amended by this Act shall apply.

(5) Any actions or proceedings commenced or pending immediately before the date of coming into operation of this Act shall, after the date of coming into operation of this Act, be continued as if the principal Act had not been amended by this Act.