

# ALLEN & OVERY

FLAME

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*Stichting Gas Storage*

*Bergermeer/Gas Foundation*

## The rule of law

- Article 3.3 of the Mining Act:
  - legal title to gas withdrawn from an underground gas storage vests with the owner of the gas at the moment before injection (or its successor in title).
- So under Dutch law and the Mining Act it may be assumed that the legal title to the gas stored or present in the GSB reservoir is held jointly by:
  - TAQA Onshore or, alternatively, the State of the Netherlands in respect of the native gas present in the reservoir;
  - Gazprom Export in respect of the cushion gas that it has provided to the GBS Facility and its working gas; and
  - Each storage customer in respect of the working gas that is stored in the GSB Facility upon the request of a storage customer

## The dilemma

- The dilemma was how to create a workable structure for the group of joint owners of the gas stored in the GSB reservoir
- Knowing that:
  - different types of gas are stored in the reservoir (native gas, cushion gas, working gas)
  - there will be different owners with different interests (long term vs short term, cushion gas vs working gas)
  - there will be incoming and outgoing owners on a continuous basis
  - a simple contractual structure is required to ensure a marketable reservoir

## The solution

- A foundation (*stichting*) is set up to act as trustee for the storage customers
- It has become the legal owner of the working gas stored in the reservoir upon the request of a storage customer
- The storage customers retain beneficial ownership through the gas foundation
- The foundation is holding the gas for the benefit, and for the purpose of protecting the beneficial interest in the gas of, the storage customers

## The foundation

- The Stichting Gas Storage Bergermeer/Gas Foundation is a foundation under Dutch law – *stichting*
- A foundation does not have shareholders and is not allowed to make profits
- Its board effectively controls the foundation and its assets
- It is set up as a bankruptcy remote special purpose vehicle by having:
  - a limited object clause
  - it bound by a set of restrictive covenants
- The use of a foundation under Dutch law is done to most closely resemble the trust as it is known under common law jurisdictions – this is common for different types of transactions

## The governance

- Stichting Gas Storage Bergermeer/Gas Foundation has a board of at least 2 and not more than 5 members
- These are appointed by the board itself upon the instruction of the general meeting of storage customers
- The board will be assisted by an administrator
- The administrator is appointed by TAQA and forms the linking pin between the storage customers and the GSB Facility

## The governance

- The board decides with a simple majority and may only act upon instruction of the general meeting of shareholders, except:
  - in urgent matters
  - upon the instruction of a single storage customer if it relates to injecting or withdrawing its gas only, but only to the extent this will not result in any irreversible damage to the GSB Facility
- The general meeting of shareholders is established as a body of the foundation under its articles
- The general meeting decides with a simple majority, with no quorum being required as long as the meeting is duly convened

## The governance

- A majority of 80% is required:
  - if a meeting is not duly convened
  - for any amendment of the articles or the Gas Foundation Deed
  - for a legal merger or demerger
  - for a dissolution of the foundation
- A storage customer in the general meeting has the following voting rights:
  - storage customers with long term capacity (in excess of 1 year) have 2 votes per Kwh contracted storage capacity
  - storage customers with short term capacity have 1 vote per Kwh contracted storage capacity

## The Gas Foundation Deed

- The Stichting Gas Storage Bergermeer/Gas Foundation has accepted its appointment to act as trustee for the storage customers by its entry into of the Gas Foundation Deed
- Under this deed and for that purpose the foundation has certain rights, powers and duties
- The foundation is dormant in a going concern situation
- Its rights and powers come to life in an insolvency situation of either TAQA Gas Storage or TAQA Onshore
- It has a licence to use the TAQA Gas Storage's IT system, step in rights in the agreements with TAQA Onshore and authorities granted to the TAQA entities to use the working gas will fall away upon their insolvency

## Questions?

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