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Legal Update



Fake news law passed in Singapore: Protection from Online Falsehoods and Manipulation Act

May 2019

Hot on the heels of France and Germany, Singapore is the latest country to jump on the bandwagon of countries which have enacted fake news laws. Following a spate of public consultations to gather feedback on the approach that Singapore should take to tackle fake news and the publication of the report of the Select Committee (available at <https://www.parliament.gov.sg/sconlinefalsehoods>) on the issue, the Protection from Online Falsehoods and Manipulation Act (POFMA) was passed by Parliament on 8 May 2019.

This follows from our earlier update "New Measures to Tackle Online Harassment and Online Falsehoods" [here](#).

The new law

POFMA gives the Government broad powers to issue a variety of directions in order to break the virality of online falsehoods, blacklist sites which repeatedly publish fake news, and introduce codes of practice to require technology companies to put in place measures to fight the scourge. Notably, falsehoods that are shared on closed platforms like chat groups and social media groups are also covered, no matter if they may be private, as these are seen as ideal platforms for spreading falsehoods.

The Government's powers are only triggered when spread of the fake news threatens the public interest, which is defined in the POFMA to include interests in Singapore's security, public safety, friendly relations with other countries, and preventing influence on the outcome of an election or referendum, incitement of ill-feelings between different groups in the community, or diminution of public confidence in the function of Government institutions.

The new law is seen as controversial and has generated much debate amongst media companies, political activists, academics and the public alike. The new law is seen as putting too much power in the Government's hands, as ministers are given the first-say in deciding

what is a falsehood and how it should be addressed.

There are also concerns that it may stifle free speech and political debate not the least because it may not always be clear what is fact or opinion. However, the Bill has vigorously defended by the Law Minister both in the press and in Parliament and has been passed by a 72-9 majority.

The highlights of the new law are summarised below:

- When a falsehood that threatens the public interest is identified, the primary response will be to direct the site to put up a correction alongside the falsehood. The site may also be required to ensure that the correction is disseminated to all users who had accessed the falsehood. In more serious cases, take-down will be required. Additionally, social media platforms may disable fake accounts or bots responsible for spreading the falsehood. Any minister can issue a direction. Additionally, ISPs may be ordered to block sites that do not comply with directions. Non-compliance with any direction is an offence that can attract criminal sanctions.
- A person to whom a direction is issued may apply to the minister to cancel the order and, if this is unsuccessful, he may file an appeal in court. Critics

have pointed out that the option of an appeal to court is not a realistic one, particularly for individuals, given the time and expense involved. However, the Law Minister has given the assurance that the appeal process will be made simple (a form-filling exercise), fast and inexpensive for individuals. The process will also be expedited for companies. The suggestion that the powers current given to ministers should be given to the courts instead was rejected on the basis that the courts would not be able to act fast enough to quash online falsehoods that could go viral in a matter of minutes.

- Criminal sanctions may be imposed on those who deliberately spread falsehoods to undermine the public interest. Acts carried out both in and outside of Singapore may be caught. For companies, the sanctions carry a fine of up to S\$500,000, or up to S1 million where fake online accounts or bots are used to spread falsehoods. For individuals, the possible sanctions include jail terms.
- An online site which publishes 3 or more different falsehoods that were the subject of a Government direction in the last 6 months may be blacklisted. It is a criminal offence both to profit from operating a blacklisted site, including from online advertisements, and to provide financial support to the site. ISPs may be directed to disable access by users in Singapore to blacklisted sites.
- Finally, the Bill introduces binding codes of practice for technology companies which target 3 areas: to enhance transparency of any paid online content "directed towards a political end"; to detect and counter the use of fake online accounts and bots; and to require deprioritisation of online site which have been found to carry falsehoods. The codes of practice will require

technology companies to implement due diligence measures targeted at these areas, with concomitant record-keeping and reporting requirements. Non-compliance with the codes of practice is an offence which carries a fine of up to \$1 million. For continuing offences, a further fine of up to \$100,000 for every day during which the offence continues after conviction may be imposed.

The POFMA casts much of the burden and costs of dealing with fake news on ISPs, social media companies and other internet intermediaries, in terms of compliance with both correction or take-down directions and the codes of practice. Technology giants like Facebook and Twitter have expressed concerns about the anticipated high compliance costs.

More clarity on how the new law will work is expected in the coming months when the draft subsidiary legislation is tabled.

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