

Contact Persons:

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TMT

Bahari Yeow Tien Hong
Partner
DID: +603 6208 5856
Fax: +603 6201 0122
Email: yth@lh-ag.com

Adlin Abdul Majid
Partner
DID: +603 6208 5816
Fax: +603 6201 0122
Email: aam@lh-ag.com

Eunice Chan Wei Lynn
Partner
DID: +603 6208 5872
Fax: +603 6201 0122
Email: cwl@lh-ag.com

G Vijay Kumar
Partner
DID: +603 6208 5870
Fax: +603 6201 0122
Email: vkq@lh-ag.com

Ang Hean Leng
Partner
DID: +603 6208 5809
Fax: +603 6201 0122
Email: ahl@lh-ag.com

New Restrictions on Free Speech

The Proposed Anti-Fake News Act 2018

| by Ang Hean Leng |

The much-anticipated Bill for the [Anti-Fake News Act 2018](#), which was tabled in the Dewan Rakyat for its first reading on Monday (26 March), seeks to provide for certain offences and measures to curb the dissemination of fake news. The Bill is expected to be tabled for a second reading today.

The proposed Act penalises any person in any part of the world “who, by any means, knowingly creates, offers, publishes, prints, distributes, circulates or disseminates any fake news or publication containing fake news”, regardless of the intention of that person, with a maximum fine of RM500,000 or a jail term of up to 10 years or both, with a further fine of up to RM3,000 daily during which the offence continues after conviction.

“Fake news” is defined as “any news, information, data and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas”.

The Act, however, does not explain what amounts to “false”. According to a [Frequently Asked Questions sheet on the Bill](#) issued by the Office of the Minister in the Prime Minister’s Department, the government has decided to allow the court to decide if an information or news is fake by due process of law.

Further, anyone who provides financial assistance for the purposes of committing or facilitating the above offence, who fails to immediately remove any publication containing fake news which is “within his possession, custody or control” after “knowing or having reasonable grounds to believe that such publication contains fake news”, or who abets the commission of any offence under this Bill could be indicted as well.

If a body corporate commits an offence under this proposed Act, any person “responsible for the management of any of the affairs of the body corporate”, such as the director, chief executive officer, manager or secretary may be charged separately or jointly in the same proceedings with the body corporate.

The Act also states that one can be arrested without a warrant for any offence in violation of this Act while the power to decide on prosecution lies with the Public Prosecutor.

Besides, the court is empowered to order the convicted person to apologise to the person affected. Failure to comply will be deemed contempt of court.

The Act also includes provisions to allow for any person affected by a publication containing fake news to make an *ex parte* application to the Court for an order for the removal of such publication. The service of this order can be done by sending it to a person's email address or to his social media account. Although this order can be challenged in court, no application for the setting aside of such order can be made if this order is obtained by the Government on the grounds of public order or national security.

Conclusion

While proponents of the Act believe that it is timely to restrict the spreading of fake news that may threaten public order and national security, taking into account the rapid and complex development of information and communications technology, the broad definition of fake news and vague wording of the Act have raised concerns that it could suppress freedom of press, free speech and expression.

It is therefore hoped that the Act will be debated thoroughly and improved on before it is implemented to clearly define its application.

Ang Hean Leng (ahl@lh-ag.com)

If you have any queries, please contact the author.

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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