COMBATING FAKE NEWS: ANTI-DOXXING MEASURES AND OTHER AMENDMENTS TO THE PROTECTION FROM HARASSMENT ACT

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Combating Fake News: Anti-Doxxing Measures and Other Amendments to the Protection from Harassment Act

On 7 May 2019, Parliament passed amendments to the Protection from Harassment Act 2015 Rev Ed ("POHA") to, among other things, streamline and simplify court processes, enhance the powers of the court to make orders in respect of false statements of fact, and clarify that both individuals and entities (excluding public agencies) may be liable for contraventions of certain provisions of the amended act (the "Amended Act"). The original POHA was enacted in 2014 "to provide a range of criminal and civil remedies against harassment and civil remedies for false statements of facts". The Amended Act will come into operation on a date to be announced. This article summarizes the amendments to POHA, with a focus on the changes specifically targeted at combating online falsehoods.

Background

In recent years, social media has facilitated the unprecedented spread of deliberate online falsehoods, colloquially known as "fake news". To help combat the deleterious effect fake news has on the public interest, Parliament recently passed the Protection from Online Falsehoods and Manipulation Act

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("POFMA"), which is not yet in force. However, POFMA does not generally cover private individuals or entities. Instead, Parliament will make amendments to the POHA to strengthen the remedies for private individuals and entities who are affected by online falsehoods.

Enhancements to protections for victims of falsehoods

Among the slew of changes introduced under the Amended Act will be measures intended to enhance the remedies and protections available to persons or entities that are victims of falsehoods. These amendments grant a court power to make similar orders that the Minister may make under POFMA, although it should be noted that under the Amended Act, an aggrieved party will first have to apply to court before such an order is made, whereas, under POFMA, the Minister can make the relevant order. In particular, section 15 of POHA will be replaced with new sections 15-15E, which gives a court powers to make several types of orders, including the following:

(i) **stop publication order** requiring the respondent to stop publishing a false statement, or any substantially similar statement, by a specified time;
(ii) **correction order** requiring the respondent to publish in Singapore a correction notice within a specified time in a specified form and manner; and
(iii) **disabling order** requiring an internet service provider ("ISP") to disable access by end-users of an internet intermediary service provided by the said ISP in Singapore within a specified time to any specified material or copies thereof.

Amended Act to cover both individuals and entities

In the 2017 Court of Appeal case of *Attorney-General v Ting Choon Ming* SGCA 6, the Apex Court ruled in a rare split 2-1 decision that private entities cannot invoke section 15 of POHA, which allows persons to stop the publication of false statements of fact against them. The majority ruled that the law only applied to natural persons.

To close this gap, Parliament has amended POHA to allow both private entities (viz. private legal entities) and individuals to avail themselves of the remedies under section 15 of the Amended Act (it should be noted that if the subject of the alleged falsehood is the Government, it will have to seek remedies under POFMA instead).

The Amendment Act has made it clear that private entities may be held liable in proceedings for harassment-related conduct. To this end, the Amended Act provides that private entities may be liable for contravention of certain sections of POHA relating to, *inter alia*, the failure to comply with orders made under section 15 of the Amended Act.

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Criminalisation of doxxing

The publication of personally identifiable information with the intention to harass, threaten or facilitate violence against a victim, also known as doxxing, will be introduced as an offence under the Amended Act.

While doxxing is a form of harassment on its own, sometimes used as retribution meted out by internet vigilantes against perpetrators of outrage-inducing acts that are caught on video and go viral online, it is also closely related to fake news. Oftentimes, mistakes are made in the identification of the perpetrators, leading to innocent persons suffering harassment and damage to their reputations.

In addition to the criminal sanctions applicable to the perpetrators of doxxing, victims of doxxing will be able to seek recourse under the Amended Act.

POFMA vs POHA: At a glance

Below is a table summarizing some of the key differences between POFMA and POHA.

	POFMA	POHA
Purpose	Targeted at protecting the **public interest** from the negative impact of online falsehoods	Targeted at protecting subjects (both **natural persons and non-government entities**) from harm arising from online falsehoods
Initiating party	Minister gives the Direction	Aggrieved parties must apply to court

Other changes to POHA

In addition to the above amendments, which are to combat fake news, the Amended Act also introduces several other changes.

Enhanced penalties for offences against certain persons

Section 8A of the Amended Act provides that penalties for POHA offences against vulnerable persons, be they adults or children, will be doubled. In addition, under section 8B of the Amended Act, where the victim is in an intimate relationship with the offender, enhanced penalties will apply.

Protection from Harassment Courts

Under sections 16E-J of the Amended Act, Protection from Harassment Courts ("PHC") will be established to provide a one-stop solution that will facilitate the provision of holistic and effective interventions for

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victims. The PHC will be a specialist Court with oversight over all criminal and civil matters under the Amended Act and will have simplified procedures with expedited timelines for certain types of applications and reliefs.

Enhanced Protection for Victims of Harassment

Under sections 12 and 13 of the Amended Act, the protection order ("PO") and expedited protection order ("EPO") regimes will be enhanced. POs and EPOs will be extended to also cover persons related to the victim, and will remain in place until the PO hearing is concluded. Under section 18 of the Amended Act, where the harasser is reasonably suspected to have failed to comply with a PO or EPO, for instance by causing hurt or continuing the harassment to the victim, the police will be empowered to make an arrest without a warrant. Enhanced penalties will also apply for such subsequent breaches of POs and EPOs.

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