PROTECTION FROM ONLINE FALSEHOODS AND MANIPULATION ACT – AN OVERVIEW

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The Protection from Online Falsehoods and Manipulation Act ("POFMA") was passed by Parliament on 8 May 2019 after a vigorous debate in Parliament. This article summarises the ambit of POFMA, the powers it confers on the government, the offences and penalties, and the avenues for appeal.

Background

Internet-enabled messaging platforms and social media platforms have allowed news and information to be disseminated with unprecedented speed. These platforms have also facilitated the dissemination of deliberate online falsehoods, colloquially known as "fake news", which represent a critical threat to the integrity of our society and our democracy. POFMA was enacted with the objective of safeguarding Singapore against this threat. However, it should be noted that while POFMA has been passed by Parliament, POFMA is not yet in force. More clarity on how POFMA will work is expected in the coming months when the draft subsidiary legislation to POFMA is tabled.

Ambit of the POFMA

POFMA seeks to prevent the "electronic communication in Singapore of false statements of fact" and does

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not seek to curb the expression of personal opinions. As such, the expression of an opinion is not prima facie, covered under POFMA. While POFMA neither exhaustively defines what constitutes a "fact", nor set s out what constitutes an "opinion", Law Minister K. Shanmugam has pointed to the body of case law as the basis for determining what is a fact or opinion. He has also clarified that criticisms of the Government, which are opinions, would not be covered under POFMA. "Liking", commenting on and forwarding news that could be fake are likewise not covered under the POFMA. Satire and parody videos are not covered as well. However, it should be noted that such activities may be circumscribed by other laws in Singapore.

Prohibited actions and penalties

Communication of false statements of fact in Singapore

It is an offence for a person to communicate a false statement of fact, whether within or outside of Singapore if they know or have reason to believe that the statement is false, and the communication of the statement in Singapore is likely to:

1. be prejudicial to the security of Singapore or any part of Singapore;
2. be prejudicial to public health, public safety, public tranquillity or public finances;
3. be prejudicial to the friendly relations of Singapore with other countries;
4. influence the outcome of an election to the office of President, a general election of Members of Parliament, a by-election of a Member of Parliament, or a referendum;
5. incite feelings of enmity, hatred or ill-will between different groups of persons; or
6. diminish public confidence in the performance of any duty or function of, or in the exercise of any power by, the Government, an Organ of State, a statutory board, or a part of the Government, an Organ of State or a statutory board.

For individuals, the penalty for communicating such false statements of fact is a jail term of up to 10 years, a fine of up to S$100,000 or both.

Making or altering bots for communication of false statements of fact in Singapore

It is an offence for a person to make or alter an automated computer program (a "bot") with the intention of using the bot to communicate a false statement of fact in Singapore, or enabling any other person to do so.

For individuals, the penalty for making or altering bots for communication of false statements of fact in Singapore is a jail term of up to 6 years, a fine of up to S$60,000 or both.

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Providing services for communication of false statements of fact in Singapore

It is an offence for a person to solicit, receive or agree to receive any financial or other material benefits as an inducement or reward for providing any service, knowing that the service is or will be used in the communication of one or more false statements of fact in Singapore.

For individuals, the penalty for providing services for the communication of false statements of fact is a jail term of up to 6 years, a fine of up to S$60,000 or both.

Powers of the government

Under Part 3 of POFMA, the government has the authority to issue a correction direction (a "Correction Direction"), a stop communication direction (a "Stop Communication Direction"), and/or an access blocking order (an "Access Blocking Order") (each also hereinafter referred to as a “Part 3 Direction”).

Correction Direction

A Correction Direction is a direction issued to a person who communicated the subject statement in Singapore, requiring the person to communicate a correction notice that contains either or both:

1. a statement that the subject statement is false, or that the specified material contains a false statement of fact; or
2. a specified statement of fact, or a reference to a specified location where the specified statement of fact may be found, or both.

A Correction Direction may also require a person to place the correction notice in a specified online location, or in the specified proximity to every copy of the false statement or a substantially similar statement, and/or to publish the correction notice in a specified manner in a specified newspaper or other printed publication of Singapore.

A Correction Direction may be issued to a person who communicated a false statement of fact in Singapore even if the person does not know or has no reason to believe that the statement is false.

Stop Communication Direction

A Stop Communication Direction is a direction issued to a person who communicated the subject statement in Singapore, requiring the person to stop communicating in Singapore the subject statement, or a substantially similar statement, by the specified time.

A Stop Communication Direction may also require a person to either or both:

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1. communicate a correction notice in the specified form and manner, to a specified person or description of persons (if any), by the specified time; or
2. publish a correction notice in the specified manner in a specified newspaper or other printed publication of Singapore.

Likewise, a Stop Communication Direction may be issued to a person who communicated a false statement of fact in Singapore even if the person does not know or has no reason to believe that the statement is false.

Access Blocking Order

If a person refuses to comply with a Correction Direction or Stop Communication Direction and the subject statement is being communicated in Singapore on an online location and end-users have accessed such online location, the Minister may direct the Info-communications Media Development Authority to order internet access service providers to take reasonable steps to disable access by end-users in Singapore to the online location of the subject statement.

Avenues for appeal

Persons who are subject to a Part 3 Direction may appeal to the High Court against the Part 3 Direction. However, before doing so, they must first apply to the Minister who made the Part 3 Direction to vary or cancel the Part 3 Direction, and the Minister must have refused the application in whole or in part.

Law Minister K Shanmugam said in Parliament that the appeal process to the High Court will be low cost and on an expedited basis. This has been stated as being as early as nine (9) working days after initiating the appeal to the Minister), and will involve the filling of standard forms without the need to hire a lawyer. The detailed procedure will be in subsidiary legislation that has yet to be published.

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