



REPUBLIC OF SINGAPORE

# GOVERNMENT GAZETTE

## BILLS SUPPLEMENT

*Published by Authority*

---

---

NO. 28]

MONDAY, OCTOBER 3

[2022

---

---

First published in the *Government Gazette*, Electronic Edition, on 3 October 2022 at 5 pm.

**Notification No. B 28** — The Online Safety (Miscellaneous Amendments) Bill is published for general information. It was introduced in Parliament on 3 October 2022.

# **Online Safety (Miscellaneous Amendments) Bill**

---

**Bill No. 28/2022.**

*Read the first time on 3 October 2022.*

A BILL

*i n t i t u l e d*

An Act to amend the Broadcasting Act 1994 and the Electronic Transactions Act 2010 to regulate providers of online communication services.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

## Short title and commencement

1. This Act is the Online Safety (Miscellaneous Amendments) Act 2022 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

## PART 1

### AMENDMENT OF BROADCASTING ACT 1994

#### Amendment of long title

2. The long title to the Broadcasting Act 1994 is amended by inserting, immediately after the words “broadcasting apparatus,”, the words “to regulate online communication services accessible by Singapore end-users,”.

#### Amendment of section 2

3. Section 2 of the Broadcasting Act 1994 is amended —

(a) by inserting, immediately before the definition of “Authority” in subsection (1), the following definitions:

““a point” includes a mobile or potentially mobile point, whether on land, underground, in the atmosphere, underwater or anywhere else;

“access”, in relation to any content, means to read, view, hear or otherwise experience content, by means of a broadcasting service or an electronic service, and includes —

(a) access that is subject to a precondition, such as the use of a password;

(b) access by way of push technology;

(c) access by way of a standing request; and

(d) access for a limited period of time only;”;

(b) by inserting, immediately after the definition of “Code of Practice” in subsection (1), the following definitions:

““communicate”, in relation to any content, means —

(a) to make available (by posting or otherwise); or 5

(b) to distribute (by sharing or forwarding or otherwise),

the content, regardless if the communication is between persons and persons, things and things or persons and things; 10

“content” means information or material capable of communication by means of a broadcasting service or an electronic service —

(a) whether in the form of text; 15

(b) whether in the form of speech, music or other sounds;

(c) whether in the form of visual images (animated or otherwise), pictorial or graphic form (for example, an anthropomorphic or a humanlike depiction); 20

(d) whether in any other form; or

(e) whether in any combination of forms;”; 25

(c) by inserting, immediately after the definition of “dwelling house” in subsection (1), the following definition:

““electronic service” has the meaning given by section 2A(2);”;

(d) by inserting, immediately after the definition of “encrypted” in subsection (1), the following definitions: 30

““end-user”, in relation to an electronic service,  
means an individual who, or an entity that, and  
whether or not in the course of business —

(a) has access to content or something  
which contains content; or

(b) communicates content, or something  
which contains content,

on or by means of the electronic service, but  
excludes a person who is prescribed by the  
Minister by order in the *Gazette*;

“engage in conduct” means —

(a) to do an act or omit to do an act —

(i) on a single occasion; or

(ii) on a number of occasions over a  
period of time; or

(b) to both do an act and omit to do an  
act —

(i) on a single occasion; or

(ii) on a number of occasions over a  
period of time;

“entity” means —

(a) a body corporate (including a limited  
liability partnership);

(b) an unincorporated association;

(c) a partnership;

(d) a body politic;

(e) a body of individuals who together  
form a body; or

(f) a person other than an individual;

“excluded electronic service” has the meaning  
given by section 2A(3);”;

- (e) by inserting, immediately after the definition of “free-to-air licence” in subsection (1), the following definition:

““internet access service” means a telecommunication service between a point in Singapore and another point in Singapore or between 2 points, one of which is in Singapore —

(a) that —

(i) enables end-users to access content on the Internet using that service; or

(ii) delivers content to persons having equipment appropriate for receiving that content on the Internet, where the delivery of the service is by a telecommunication service described in sub-paragraph (i); and

(b) that is covered by a licence under the Telecommunications Act 1999,

but excludes a social media service and any telecommunication service prescribed by the Minister by order in the *Gazette* as excluded from this definition;”;

- (f) by inserting, immediately after the words “Second Schedule” in the definition of “licensable broadcasting service” in subsection (1), the words “and is not and has never been an online communication service”;

- (g) by inserting, immediately after the definition of “member” in subsection (1), the following definitions:

““online Code of Practice” means a Code of Practice that is issued or amended under section 45L or amended under section 59(3) on appeal;

“online communication service” has the meaning given by section 2A(1);

“Part 10A regulations” means regulations made under section 45P;”;

(h) by inserting, immediately after the definition of “programme” in subsection (1), the following definitions:

““provider”, for an online communication service, has the meaning given by section 2D;

“regulated online communication service” means an online communication service that is designated under section 45K(1) as a regulated online communication service;”;

(i) by inserting, immediately after the definition of “shares” in subsection (1), the following definitions:

““Singapore end-user”, in relation to an online communication service, means any of the following end-users of the service:

(a) an individual physically present in Singapore;

(b) an entity which —

(i) is incorporated under any written law; or

(ii) is constituted or organised under a law of a foreign country or territory but registered under any written law;

“social media service” has the meaning given by section 45T;” and

(j) by inserting, immediately after subsection (3), the following subsections:

“(4) For the purposes of this Act, whether any communication of content by means of a broadcasting service or an online communication service is or is not of a private or domestic nature must be determined by having regard to all or any one of the following factors:

(a) the number of individuals in Singapore who are able to access the content by means of the service;

(b) any restrictions on who may access the content by means of the service (such as a requirement for approval or permission from a user, or the provider, of the service);

(c) the relationship between the persons that the content is being or has been communicated;

(d) any other relevant factor.

(5) However, for the purposes of subsection (4), the following factors do not count as restrictions on access to content communicated by means of a broadcasting service or an online communication service:

(a) a requirement to log in to or register with the broadcasting service or online communication service (or part of such a service);

(b) a requirement to make a payment or take out a subscription in order to access the broadcasting service or online communication service (or part of such a service) or to access particular content communicated by means of that service;



(c) inability to access a broadcasting service or an online communication service (or part of such a service) or to access particular content communicated by means of that service except by using particular technology or a particular kind of device (as long as that technology or device is generally available to the public).

(6) In determining for the purposes of this Act whether an end-user is physically present in Singapore, it is to be assumed that the end-user will not falsify or conceal the end-user's identity or location.”.

#### **New sections 2A, 2B, 2C and 2D**

**4.** Part 1 of the Broadcasting Act 1994 is amended by inserting, immediately after section 2, the following sections:

#### **“Meanings of “online communication service” and associated terms**

**2A.—**(1) In this Act, an online communication service means an electronic service that is, or a part of an electronic service having the characteristics that are, specified in the Fourth Schedule.

(2) For the purposes of subsection (1), an electronic service means a service —

(a) that —

(i) enables end-users to access or communicate content on the Internet using that service, including a point-to-multipoint service; or

(ii) delivers content on the Internet to persons having equipment appropriate for receiving that content, where the delivery of the service is by a service described in sub-paragraph (i);

(b) that is a service —

- (i) between a point in Singapore and one or more other points in Singapore; or
- (ii) between a point and one or more other points, where the firstmentioned point is outside Singapore and at least one of the other points is inside Singapore; and

5

(c) that is not an excluded electronic service.

(3) For the purposes of subsection (2)(c), an excluded electronic service means —

10

- (a) an SMS service;
- (b) an MMS service;
- (c) an internet access service;
- (d) an electronic service where the only user-generated content enabled by that service is one-to-one live aural communications;
- (e) an electronic service where the only user-generated content enabled by that service is communication between 2 or more end-users that is of a private or domestic nature;
- (f) an electronic service where the user-generated content enabled by that service is accessible substantially or only to a closed group of end-users employed or engaged in a business (whether or not carried on for profit) and solely for their use as a tool in the conduct of that business; or
- (g) an electronic service that is prescribed by the Minister, by order in the *Gazette*, to be an excluded electronic service, after taking into account the functionalities of the service or the user-generated content enabled by that service or both.

15

20

25

30

(4) References in this Act to an online communication service include such a service provided from outside Singapore as well as such a service provided in or from Singapore.

(5) In this section —

“functionality”, in relation to an electronic service, includes —

(a) any feature that enables interactions of any description between end-users of the service; and

(b) any feature that enables end-users to search online locations or databases, index search results or otherwise retrieve content from the search results;

“MMS” means an electronic service that enables only the transmission of multimedia messages (such as visual or voice communication) from an end-user on a mobile telephone to another mobile telephone through a telecommunication service;

“MMS message” means a message (whether or not accompanied by any sound or images) sent using an MMS;

“one-to-one live aural communications”, in relation to an electronic service, means content —

(a) consisting of speech or other sounds conveyed in real time between 2 end-users of the service by means of the service;

(b) that is not a recording; and

(c) that is not accompanied by user-generated content of any other description, except identifying content;

“point-to-multipoint service” means an electronic service which allows an end-user to communicate content to more than one end-user simultaneously;

“SMS” means an electronic service that only enables the transmission of short text messages from an end-user on a mobile telephone to another mobile telephone through a telecommunication service;

“SMS message” means a text message sent using an SMS;

“user-generated content”, in relation to an electronic service, means content —

(a) that is —

(i) generated directly on the service by an end-user of the service; or

(ii) communicated by posting or sharing on the service by an end-user of the service; and

(b) that may be accessed by another end-user of that service, or other users, of the service by means of that service.

### **Amendment of Fourth Schedule**

**2B.**—(1) The Minister may, by order in the *Gazette*, revoke or replace, or add to, the Fourth Schedule.

(2) Every order made under subsection (1) must be presented to Parliament as soon as possible after publication in the *Gazette*.

### **Transitional arrangements for former licensable broadcasting service**

**2C.**—(1) With effect from the date that a licensable broadcasting service is specified in the Fourth Schedule as an online communication service (called the conversion date) —

(a) this Act ceases to apply to —

(i) that service as a licensable broadcasting service; and

(ii) the provider of that service as a broadcasting licensee; and

- (b) this Act then continues to apply to that service as an online communication service, and the former broadcasting licensee as a provider of an online communication service,

but without affecting the following:

- (c) the enforcement by any person of any right or claim against the former broadcasting licensee;
- (d) the enforcement by the former broadcasting licensee of any right or claim against any person;
- (e) any proceeding under section 12(1) with respect to the former licensable broadcasting service that is pending immediately before the conversion date;
- (f) any appeal under section 12(2) or 59(1) with respect to the former licensable broadcasting service that is pending immediately before the conversion date.

(2) Any proceeding and appeal mentioned in subsection (1)(e) and (f) may be continued under sections 12 and 59, respectively, as if the Fourth Schedule had not been enacted.

### **Meaning of “provider” of online communication service**

**2D.**—(1) Subject to this section, in this Act, the provider of an online communication service is the entity that has control over —

- (a) who can use the online communication service that is specified in the Fourth Schedule;
- (b) the operations of the characteristics of the electronic service that are specified in the Fourth Schedule in respect of the online communication service; or
- (c) which content is communicated or provided on the online communication service.

(2) Where an online communication service is generated by a machine, the entity that controls the machine (and that entity alone) is to be treated as being the provider of the online communication service.

(3) However, if no entity controls the machine mentioned in subsection (2), but an individual controls or individuals control the machine, the provider of the online communication service is to be treated as being that individual or those individuals.

(4) If no entity has control over —

5

(a) who can use the online communication service that is specified in the Fourth Schedule;

(b) the operations of the characteristics of the electronic service that are specified in the Fourth Schedule in respect of the online communication service; or

10

(c) which content is communicated or provided on the online communication service,

but an individual has or individuals have control over who can do so, then that individual or those individuals is or are to be treated as being the provider of the online communication service.

15

(5) Despite subsection (1), a person that provides an internet access service through which content on an online communication service may be accessed by end-users of the online communication service, is not to be treated as a person who has control over who can use the online communication service for the purposes of this Act.

20

(6) Part 10A regulations may be made to specify who is to be treated as a provider of an online communication service where more than one entity is treated as the provider thereof under subsection (1).”.

25

## **New Part 10A**

**5.** The Broadcasting Act 1994 is amended by inserting, immediately after section 45, the following Part:

**“PART 10A****ONLINE COMMUNICATION SERVICE REGULATION***Division 1 — Scope and key concepts***Purpose**

5       **45A.** The purpose of this Part is to ensure that providers of online communication services to Singapore end-users —

10           (a) provide a safe online environment for Singapore end-users that promotes responsible online behaviour, deters objectionable online activity and prevents access to harmful content;

          (b) place adequate priority on the protection of Singapore end-users who are children of different age groups from exposure to content which may be harmful to them; and

15           (c) are regulated in a manner that enables public interest considerations to be addressed.

**Application**

20       **45B.** This Part applies to and in relation to any content that is provided on any online communication service and is accessible by any Singapore end-user except that if the content was published on the Internet before the date of commencement of section 5 of the Online Safety (Miscellaneous Amendments) Act 2022, this Part does not apply to the content on an online communication service unless the content remains accessible to  
25       a Singapore end-user of the service on or after that date.

**When content is provided or communicated on online communication service**

30       **45C.—**(1) For the purposes of this Part, content is provided on an online communication service if the content can be accessed by one or more of the end-users using the service.

          (2) For the purposes of this Part, content is communicated on an online communication service by an end-user if the end-user

causes the content to be accessible by one or more other end-users using the service.

### **Meaning of “egregious content”**

**45D.**—(1) In this Part, “egregious content” means —

- (a) content that advocates or instructs on suicide or self-harm; 5
- (b) content that advocates or instructs on violence or cruelty to, physical abuse of, or acts of torture or other infliction of serious physical harm on, human beings;
- (c) content that advocates or instructs on sexual violence or coercion in association with sexual conduct, whether or not involving the commission of a heinous sex crime; 10
- (d) content depicting for a sexual purpose, or that exploits, the nudity of a child or part of a child in a way that reasonable persons would regard as being offensive, whether or not sexual activity is involved; 15
- (e) content that advocates engaging in conduct in a way that —
  - (i) obstructs or is likely to obstruct any public health measure carried out in Singapore; or 20
  - (ii) results or is likely to result in a public health risk in Singapore;
- (f) content dealing with matters of race or religion in a way that is likely to cause feelings of enmity, hatred, ill will or hostility against, or contempt for or ridicule of, different racial or religious groups in Singapore; 25
- (g) content that advocates or instructs on terrorism; or
- (h) any other content that is prescribed by Part 10A regulations as egregious content. 30

(2) It does not matter if the content in subsection (1) relates to conduct engaged in within or outside Singapore.



(3) In this section —

“heinous sex crime” means —

- (a) an offence under the Penal Code 1871 involving serious sexual assault such as rape or sexual assault by penetration, or sexual communication with or sexual grooming of a child;
- (b) an offence under section 8 of the Children and Young Persons Act 1993;
- (c) an abetment of or a conspiracy to commit an offence specified in paragraph (a) or (b);
- (d) an attempt to commit an offence specified in paragraph (a) or (b); or
- (e) conduct outside Singapore which, had it been engaged in within Singapore, would have been an offence specified in paragraph (a), (b), (c) or (d) and punishable by a Singapore court;

“public health measure” means the organised response by society (including Government) to prevent, mitigate or control a public health risk;

“public health risk” means circumstances, a thing or substance that —

- (a) is or is likely to be hazardous to the health of individuals in the context of the wider health of the community; or
- (b) contributes or is likely to contribute to disease or the transmission of an infectious disease to or among human beings;

“terrorism” means the engaging in any conduct constituting —

- (a) a terrorist act within the meaning given by section 2(2) and (3) of the Terrorism (Suppression of Financing) Act 2002 affecting persons or property situated in Singapore;

- (b) a terrorist bombing offence within the meaning given by section 2 of the Terrorism (Suppression of Bombings) Act 2007;
- (c) a nuclear terrorism offence within the meaning given by section 2 of the Terrorism (Suppression of Misuse of Radioactive Material) Act 2017; 5
- (d) an abetment of or a conspiracy to commit an act or offence specified in paragraph (a), (b) or (c);
- (e) an attempt to commit an act or offence specified in paragraph (a), (b) or (c); or 10
- (f) an offence specified in paragraph (a), (b), (c), (d) or (e) and punishable by a Singapore court if the conduct had been engaged in within Singapore.

*Division 2 — Offences involving egregious content* 15

**Offence of not stopping egregious content on online communication service**

**45E.**—(1) A person commits an offence if —

- (a) the person provides an online communication service with a Singapore end-user link; 20
- (b) the online communication service provides or can be used to access content on the online communication service;
- (c) the content is egregious content;
- (d) the person knows, or ought reasonably to know that — 25
  - (i) the online communication service provides or can be used to access that content; and
  - (ii) the content is egregious content; and
- (e) the person fails in the person's duty under section 45J to comply with a section 45H direction given to the 30

person in relation to that egregious content provided on that online communication service by the person.

(2) A person that is guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day or part of a day during which the offence continues after conviction.

(3) For the purposes of subsection (1), it is immaterial whether the online communication service is provided from outside Singapore or provided in or from Singapore.

(4) If —

(a) a section 45H direction is given in relation to an online communication service provided by a person; and

(b) in a prosecution of the person for an offence against subsection (1), it is proven that the online communication service provides or can be used to, at the time the direction was given, access the content specified in the direction,

then, in that prosecution, it must be presumed until the contrary is proved, that the person knew —

(c) that the online communication service provides or can be used to access that content at the time the direction was given; and

(d) that the content is egregious content at the time the direction was given.

### **Offence of not stopping access to online communication service**

**45F.**—(1) A person commits an offence if —

(a) the person provides an internet access service with a Singapore end-user link;

- (b) the internet access service can be used by a Singapore end-user of an online communication service to access content provided on the online communication service;
  - (c) the content is egregious content; 5
  - (d) the person knows, or ought reasonably to know that —
    - (i) the internet access service can be used by a Singapore end-user of the online communication service to access the content provided on the online communication service; 10  
and
    - (ii) the content is egregious content; and
  - (e) the person fails in the person's duty under section 45J to comply with a section 45I blocking direction given to the person in relation to access to the online communication service through its internet access service. 15
- (2) A person that is guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$20,000 for each day or part of a day the person does not comply with a section 45I blocking direction given to the person but not exceeding a total fine of \$500,000. 20
- (3) For the purposes of subsection (1), it is immaterial whether the online communication service is provided from outside Singapore or provided in or from Singapore. 25
- (4) If —
- (a) a section 45I blocking direction is given in relation to an internet access service provided by a person; and

- (b) in a prosecution of the person for an offence against subsection (1), it is proven that the internet access service can, at the time the direction was given, be used by a Singapore end-user of an online communication service to access content provided on the online communication service using the internet access service specified in the direction,

then, in that prosecution, it must be presumed until the contrary is proved that the person knew —

- (c) that the internet access service can, at the time the direction was given, be used by a Singapore end-user of the online communication service to access content provided on that online communication service; and
- (d) that the content is egregious content at the time the direction was given.

## **Defence**

**45G.** In a prosecution of the person for an offence against section 45E(1) or 45F(1), it is a defence for the person charged to prove, on a balance of probabilities, that —

- (a) it was not reasonably practicable to do more than what was in fact done to satisfy the duty in section 45J; and
- (b) there was no better practicable means than was in fact used to satisfy the duty in section 45J.

## **Section 45H direction**

**45H.**—(1) If the Authority is satisfied that —

- (a) any egregious content is being provided on an online communication service with a Singapore end-user link; and

- (b) Singapore end-users of the service can access the egregious content,

the Authority may give the provider of the online communication service a written direction requiring the provider —

5

- (c) to do one or more of the following as the Authority considers appropriate:

- (i) to disable access to the egregious content on its service by Singapore end-users who use or may use the service;

10

- (ii) to stop delivery or communication of content to an account or accounts of —

(A) all Singapore end-users of the service; or

(B) any particular group of end-users comprising one or more Singapore end-users of the service,

15

so as to stop or reduce the communication, provision or access, or further communication, provision or access, by Singapore end-users of egregious content on the online communication service; and

20

- (d) to do so within the period specified in the written direction, or any extension of that period that the Authority may allow in any particular case.

- (2) To avoid doubt, a requirement in subsection (1)(c)(ii) —

25

- (a) may include requiring altering, terminating or suspending any functionality of the service provided to the Singapore end-user concerned; but

- (b) must not require the doing of any thing with respect to the provision of an online communication service to the whole or part of any area in Singapore.

30

- (3) In addition, a requirement in subsection (1)(c) must not relate to any user-generated content that is communication

between 2 or more end-users that is of a private or domestic nature.

(4) The egregious content must be, so far as is reasonably practicable, identified by the Authority in a section 45H direction in a way that is sufficient to enable the provider concerned to comply with the direction.

(5) In this section, “account” includes —

(a) a free account;

(b) a prepaid account; and

(c) anything that may reasonably be regarded as the equivalent of an account.

### **Section 45I blocking direction**

**45I.**—(1) This section applies to a provider of an internet access service.

(2) If the Authority is satisfied that —

(a) a provider of an online communication service with a Singapore end-user link which is given a section 45H direction fails to comply with the direction; and

(b) the internet access service has control over access by Singapore end-users of the online communication service to content provided on that online communication service,

the Authority may direct the provider of the internet access service to stop access by Singapore end-users to the online communication service.

### **Duty to comply**

**45J.**—(1) Every provider of an online communication service or an internet access service to whom is given a section 45H direction or section 45I blocking direction, has the duty to take all reasonably practicable steps to comply with the direction given to the provider.

(2) No civil or criminal liability is incurred by a provider of an online communication service or an internet access service provider, or an officer, employee or agent of such a provider, for anything done or omitted to be done with reasonable care and in good faith in complying with a section 45H direction or section 45I blocking direction given to the provider.

5

### *Division 3 — Regulated online communication services*

#### **Regulated online communication service**

**45K.**—(1) The Authority may designate an online communication service with a Singapore end-user link as a regulated online communication service with effect from a date specified in that order if the Authority, after taking into account —

10

(a) the range of all online communication services provided to Singapore end-users; and

15

(b) the extent and nature of the effect that the different types of online communication services have on the people of Singapore and her different communities,

is satisfied that the online communication service should be a regulated online communication service in furtherance of the purposes in section 45A.

20

(2) The Authority must cause notice of every designation under subsection (1) to the public by causing it to be published in any other manner that the Authority considers will secure adequate publicity for the designation.

25

(3) A designation under subsection (1) may be revoked at any time by the Authority by instrument in writing; and the Authority must give notice, or cause the giving of notice, of the revocation in the same manner in which the designation was first given.

30

(4) To avoid doubt, the non-publication of any notice of a designation under subsection (1), or its revocation, in the manner described in subsection (2) does not affect the validity of the designation or revocation, as the case may be.



### **Online Code of Practice for regulated online communication service**

5       **45L.**—(1) Without limiting section 6, the Authority may, from time to time and in accordance with rules made under subsection (2) —

- (a) issue one or more online Codes of Practice applicable to providers of any regulated online communication service or specified types of such providers; and
- 10       (b) amend or revoke any online Code of Practice issued under paragraph (a),

with respect to all or any of the matters in subsection (4) relating to the provision of that regulated online communication service.

15       (2) The Minister may make rules prescribing the manner or form of procedure to be followed in connection with the preparation and issuing of online Codes of Practice applicable to providers of regulated online communication services, and any amendment or revocation of any such Code of Practice, including rules requiring the Authority —

- 20       (a) to give prior notice of any draft online Code of Practice proposed to apply to providers of any regulated online communication service or particular regulated online communication service (including a draft Code of Practice that is to replace an online Code of Practice in force) or any proposal of
- 25       amendments to or revocation of an online Code of Practice in force;
- (b) to specify the place or places where copies of any draft online Code of Practice or the proposed amendment or revocation may be inspected;
- 30       (c) to invite objections and representations in connection with the draft online Code of Practice or the proposed amendment or revocation; and

- (d) to consider or inquire into all or any of those objections and representations where made in accordance with the rules.

(3) If any provision in any online Code of Practice issued or amended under subsection (1) is inconsistent with any provision of this Act or the Part 10A regulations, that provision in that Code —

- (a) is to have effect subject to this Act and the Part 10A regulations; or
- (b) having regard to the provisions of this Act and the Part 10A regulations, does not have effect.

(4) An online Code of Practice issued or amended under this section applicable to providers of any regulated online communication service or specified types of such providers may provide for all or any of the following:

- (a) requirements that a provider of the regulated online communication service must, by establishing and applying appropriate systems or processes, provide the service in a way that —

- (i) prevents Singapore end-users of its service (particularly children of different age groups) from accessing content that presents a material risk of significant harm to them; and

- (ii) mitigates and manages the risks of danger to Singapore end-users of its service (particularly children of different age groups) from content provided or that may be provided on its service;

- (b) any matter so as to provide practical guidance or certainty in respect of what content does or does not present a material risk of significant harm to Singapore end-users generally or certain types of Singapore end-users of the service;

- (c) the procedures to be followed by a provider of the regulated online communication service so as to

satisfy the duty under section 45M to comply with the online Code of Practice applicable to that provider, which may include —

- 5                   (i) undergoing (at its own cost) such audit as the Authority may require to ascertain the provider's compliance with the provisions of the online Code of Practice applicable to the provider;
- 10                  (ii) reporting to the Authority, periodically or whenever requested by the Authority, information about the measures taken by the provider to ensure that Singapore end-users are able to use the regulated online communication service in a safe manner; or
- 15                  (iii) conducting risk assessments on the systemic risks brought about by or relating to the functioning and use of their services and taking reasonable and effective measures aimed at mitigating those risks;
- 20           (d) a requirement for collaboration or cooperation by the provider of the regulated online communication service with any conduct of research into its regulated online communication service by a suitable expert or experts approved by the Authority, so as to assist in developing the Authority's understanding of —

  - 25                   (i) the nature and level of the systemic risks brought about by or relating to the functioning and use of the regulated online communication service; and
  - 30                   (ii) the evolution and severity of such online systemic risks;
- (e) any matter that promotes or furthers any purpose in section 45A.

### **Duty of regulated online communication service provider**

**45M.**—(1) Every provider of a regulated online communication service has the duty to take all reasonably practicable steps to comply with the online Code of Practice applicable to the provider in the provision of the regulated online communication service. 5

(2) Where it is alleged for the purposes of this Act that any provider of a regulated online communication service failed to comply with the duty under subsection (1), it is for the provider to show that — 10

(a) it was not reasonably practicable to do more than what was in fact done to satisfy that duty; and

(b) there was no better practicable means than was in fact used to satisfy that duty.

(3) A requirement of an online Code of Practice applicable to a provider of a regulated online communication service has effect despite — 15

(a) any duty of confidentiality or privacy imposed by any rule of law; or

(b) any duty imposed by any contract or any rule of professional conduct, 20

that prevents the provider from complying with that requirement or restricts the provider in such compliance.

(4) No civil or criminal liability is incurred by a provider of a regulated online communication service or an officer, employee or agent of such a provider, for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with or giving effect to a requirement of the online Code of Practice. 25

(5) An online Code of Practice otherwise does not have legislative effect. 30

## Regulatory action

**45N.**—(1) Subject to section 45O, if the Authority is satisfied that a provider of a regulated online communication service (called in this section and section 45O the defaulting provider) has failed to satisfy the duty under section 45M(1), the Authority may —

- (a) order the defaulting provider to pay, within a period specified in the order, a financial penalty of any amount that the Authority thinks fit, but not exceeding \$1 million; or
- (b) direct the defaulting provider to take any steps, whether in or outside Singapore, and within a specified time, that may be necessary to remedy the failure.

(2) A defaulting provider that does not comply with a direction given to the defaulting provider under subsection (1)(b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day or part of a day during which the offence continues after conviction.

(3) For the purposes of subsection (2), it is immaterial whether the online communication service concerned is provided from outside Singapore or provided in or from Singapore.

## Procedure for regulatory action under section 45N

**45O.**—(1) Before exercising any powers under section 45N(1) in relation to any defaulting provider of a regulated online communication service, the Authority must give written notice to the defaulting provider —

- (a) stating that the Authority intends to take regulatory action against the defaulting provider;
- (b) specifying the type of action in section 45N(1) the Authority proposes to take, and each instance of non-compliance that is the subject of the action; and

- (c) specifying the time (being at least 14 days from the date of service of notice on the defaulting provider) within which written representations may be made to the Authority with respect to the proposed action.

(2) The Authority may, after considering any written representation under subsection (1)(c), decide to take any regulatory action in section 45N(1) that the Authority considers appropriate.

(3) Where the Authority has made any decision under subsection (2) against any defaulting provider, the Authority must serve on the defaulting provider concerned a notice of its decision.

(4) Subject to section 59(2), a decision which is specified in the notice given under subsection (3) takes effect from the date on which that notice is given, or on any other date that may be specified in the decision.

#### *Division 4 — Administrative and general provisions*

### **Regulations**

**45P.**—(1) The Authority may, with the approval of the Minister, make regulations which are required or permitted to be prescribed by this Part or are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) All subsidiary legislation made under this Part must be presented to Parliament as soon as possible after publication in the *Gazette*.

### **Incorporation by reference**

**45Q.**—(1) Any subsidiary legislation made under this Part or any online Code of Practice may make provision for or in relation to a matter by applying, adopting or incorporating by reference, with or without modification, any material contained in any standard, rule, requirement, specification or other document, as in force at a particular time or from time to time, which relates to any matter with which the subsidiary

legislation or online Code of Practice deals, even if the standard, rule, requirement, specification or other document does not yet exist when the subsidiary legislation or online Code of Practice is made.

5 (2) Any material referred to in subsection (1) may be applied, adopted or incorporated by reference in any subsidiary legislation made under this Part or any online Code of Practice —

(a) in whole or in part; or

10 (b) with modifications, additions, or variations specified in the subsidiary legislation or online Code of Practice, as the case may be.

(3) A copy of any material applied, adopted or incorporated by reference in any subsidiary legislation made under this Part or  
15 any online Code of Practice, including any amendment to, or replacement of, the material, must be —

(a) certified as a correct copy of the material by the Minister or the Authority, as the case may be; and

(b) retained by the Authority.

20 (4) Any material applied, adopted or incorporated in any subsidiary legislation made under this Part or any online Code of Practice by reference under subsection (1) is to be treated for all purposes as forming part of the subsidiary legislation or online Code of Practice; and, unless otherwise provided in the  
25 subsidiary legislation or online Code of Practice, every amendment to any material incorporated by reference under subsection (1) that is made by the person or organisation originating the material is, subject to subsections (5) and (6), to be treated as being a part of that subsidiary legislation or online  
30 Code of Practice, as the case may be.

(5) Where any material referred to in subsection (1) is applied, adopted or incorporated by reference in any subsidiary legislation made under this Part or any online Code of Practice, the Authority must give notice in the *Gazette* stating —

- (a) that the material is incorporated in the subsidiary legislation made under this Part or online Code of Practice and the date on which the relevant provision in the subsidiary legislation or online Code of Practice was made; 5
- (b) that the material is available for inspection during working hours, free of charge;
- (c) the place where the material can be inspected without charge;
- (d) that copies of the material can be purchased; 10
- (e) the place where copies of the material can be purchased; and
- (f) if copies of the material are available in other ways, the details of where or how the material can be accessed or obtained. 15

(6) In this section, “modification” includes omissions, additions and substitutions.

### **Interface with other laws and civil liability**

**45R.**—(1) To avoid doubt, section 26(1) of the Electronic Transactions Act 2010 (which relates to the limitation of liability against network service providers) applies in relation to any liability under this Part other than liability under section 45E, 45F or 45N. 20

(2) Nothing in section 45J or 45M is to be construed —

- (a) as conferring a right of action in any civil proceedings in respect of any contravention of any provision of this Part or an online Code of Practice; or 25
- (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings. 30

(3) For the purposes of sections 45E(1), 45F(1), 45H and 45I, a person is to be disregarded as a Singapore end-user using an



online communication service if the person accesses content in any of the following circumstances:

(a) the accessing of the content is necessary for enforcing this Act or any other written law;

(b) the accessing of the content is necessary for monitoring compliance with, or investigating a contravention of, this Act or any other written law;

(c) the accessing of the content is solely for the purposes of proceedings in a Singapore court or tribunal;

(d) the accessing of the content is both —

(i) necessary and solely for, or of assistance in, conducting scientific, medical, academic or historical research; and

(ii) reasonable in the circumstances for the purpose of conducting that scientific, medical, academic or historical research.

### **Modification of section 50**

**45S.**—(1) Where the person that commits an offence under section 50(2) or (3) is a provider of a regulated online communication service and with respect to documents or information relating to that service, that person shall be liable on conviction to a fine not exceeding \$1 million despite section 50(4).

(2) The power under section 50(1) to require the provision of documents relating to an online communication service includes power to require the production of documents held outside Singapore.

### **Interpretation of this Part**

**45T.**—(1) In this Part, unless the context otherwise requires —

“advocate”, in relation to any conduct, means counsel, promote, encourage or urge the engaging in that conduct;

“child” means an individual who is below 18 years of age;

“functionality”, in relation to an online communication service, has the meaning given by section 2A; 5

“harm” includes harm to an individual’s mental health;

“section 45H direction” means a direction given under section 45H to a provider of an online communication service, and includes such a direction that is varied under section 59(3) on appeal; 10

“section 45I blocking direction” means a direction given under section 45I to a provider of an internet access service, and includes such a direction varied under section 59(3) on appeal; 15

“social media service” means an electronic service that satisfies all the following characteristics:

(a) the sole or primary purpose of the service is to enable online interaction or linking between 2 or more end-users (including enabling end-users to share content for social purposes); 20

(b) the service allows end-users to communicate content on the service;

(c) any other characteristics that are prescribed by Part 10A regulations; 25

“system or process” includes —

(a) a human or an automated system or process; and

(b) any technology;

“user-generated content” has the meaning given by section 2A. 30

(2) To avoid doubt, “content” in this Part includes user-generated content.

## (3) Where —

- (a) by or under any provision of this Part or any Part 10A regulations or any direction given under this Part, an act or a thing is required or directed to be done within a particular period or before a particular time, or any extended period or time that the Authority may allow;
- (b) failure to do that act or thing within the period or before the time mentioned in paragraph (a) constitutes an offence; and
- (c) that act or thing is not done within the period or before the time mentioned in paragraph (a),

the obligation to do that act or thing continues, even though that period has expired or that time has passed, until that act or thing is done.

(4) For the purposes of this Part, an online communication service has a Singapore end-user link if, and only if, all or any of the end-users of that service are Singapore end-users.”.

**Amendment of section 59****6. Section 59 of the Broadcasting Act 1994 is amended —**

- (a) by inserting, immediately after the words “Any licensee” in subsection (1), the words “, any provider of an online communication service or any provider of an internet access service (as the case may be)”;
- (b) by inserting, immediately after subsection (4), the following subsection:

“(5) In relation to the Minister determining an appeal against any online Code of Practice issued or any direction given by, or the exercise of any discretion vested in, the Authority under Part 10A, sections 45H, 45I, 45K, 45L(3) and (4) and 45N(1) apply as if the reference to the Authority in any limit as to any online Code of Practice issued or any direction given by, or the exercise of any discretion

under those respective sections, were a reference to the Minister.”.

### **Repeal and re-enactment of section 64 and new section 64A**

7. Section 64 of the Broadcasting Act 1994 is repealed and the following sections substituted therefor:

5

#### **“Service of documents**

**64.**—(1) A document that is permitted or required by this Act to be served on a person may be served as described in this section.

(2) A document permitted or required by this Act to be served on an individual may be served —

10

(a) by giving it to the individual personally;

(b) by sending it by prepaid registered post to the address specified by the individual for the service of documents or, if no address is so specified, the individual’s residential address or business address;

15

(c) by leaving it at the individual’s residential address with an adult apparently resident there, or at the individual’s business address with an adult apparently employed there;

20

(d) by affixing a copy of the document in a conspicuous place at the individual’s residential address or business address;

(e) by sending it by fax to the fax number last known to the person giving or serving the document as the fax number for the service of documents on the individual; or

25

(f) by sending it by email to the individual’s last email address.

(3) A document permitted or required by this Act to be served on a partnership (other than a limited liability partnership) may be served —

30

- (a) by giving it to any partner or other similar officer of the partnership;
- (b) by leaving it at, or by sending it by prepaid registered post to, the partnership's business address;
- 5 (c) by sending it by fax to the fax number used at the partnership's business address; or
- (d) by sending it by email to the partnership's last email address.

10 (4) A document permitted or required by this Act to be served on a body corporate (including a limited liability partnership) or an unincorporated association may be served —

- (a) by giving it to the secretary or other similar officer of the body corporate or unincorporated association, or the limited liability partnership's manager;
- 15 (b) by leaving it at, or by sending it by prepaid registered post to, the body corporate's or unincorporated association's registered office or principal office in Singapore;
- (c) by sending it by fax to the fax number used at the body corporate's or unincorporated association's registered office or principal office in Singapore; or
- 20 (d) by sending it by email to the body corporate's or unincorporated association's last email address.

25 (5) In addition, a document permitted or required by this Act to be served on an individual, a partnership, a body corporate or an unincorporated association may be served —

- (a) by giving an electronic notice to the individual, partnership, body corporate or unincorporated association (called in this section an addressee) by the addressee's chosen means of notification, stating that the document is available and how the addressee may use the addressee's chosen means of access to access the document's contents;
- 30

- (b) where by the exercise of reasonable diligence, the name of any individual or a body of persons to whom the document is to be served, or the business address, residential address or last email address of the individual or body, cannot be ascertained — by posting it on a website that is maintained by the Authority and prescribed by the Minister by notification in the *Gazette* for this purpose; or 5
  - (c) by any other method authorised by the regulations for the service of documents of that kind if the addressee consents (expressly or impliedly) to service of a document of that kind in that way. 10
- (6) Service of a document under this section takes effect —
  - (a) if the document is sent by fax and a notification of successful transmission is received — on the day of transmission; 15
  - (b) if the document is sent by email — at the time that the email becomes capable of being retrieved by the person to whom it is sent;
  - (c) if the document is sent by prepaid registered post — 2 days after the day the document was posted (even if it is returned undelivered); or 20
  - (d) if the document is posted on a website mentioned in subsection (5)(b) — at the beginning of the day after the date on which subsection (5)(b) has been complied with. 25
- (7) However, service of any document under this Act on a person by email or by an electronic notice at the person's chosen means of notification, may be effected only with the person's prior consent (express or implied) to service in that way. 30
- (8) This section does not apply to documents to be served in proceedings in court.

(9) In this section —

“Act” includes any subsidiary legislation made under this Act;

“business address” means —

5                   (a) in the case of an individual, the individual’s usual or last known place of business, or place of employment, in Singapore; or

10                   (b) in the case of a partnership (other than a limited liability partnership), the partnership’s principal or last known place of business in Singapore;

15                   “chosen means of access”, for an addressee on whom is or is to be served a document permitted or required by this Act, means an electronic means the addressee agrees with the person giving or serving the document as the means by which the addressee may access that document’s contents;

20                   “chosen means of notification”, for an addressee on whom is or is to be served a document permitted or required by this Act, means an electronic means that the addressee nominates to the person giving or serving the document as the means by which the addressee may be notified that such a document has been served on the addressee;

                    “document” includes a notice permitted or required by this Act to be served;

25                   “last email address” means the last email address given by the addressee concerned to the person giving or serving the document as the email address for the service of documents under this Act;

30                   “residential address” means an individual’s usual or last known place of residence in Singapore.

### **Financial penalties, etc., payable to Consolidated Fund**

**64A.** All fines imposed under section 12(1) and all financial penalties ordered under section 45N(1) —

(a) may be recovered by the Authority in any court of competent jurisdiction as if they were simple contract debts; and

(b) must be paid into the Consolidated Fund.”.

### **New Fourth Schedule**

**8.** The Broadcasting Act 1994 is amended by inserting, immediately after the Third Schedule, the following Schedule:

#### **“FOURTH SCHEDULE**

Sections 2A(1), 2B(1), 2C and 2D(1)  
and (4)

#### **ONLINE COMMUNICATION SERVICES**

1. Social media service.”.

### **PART 2**

#### **AMENDMENT OF ELECTRONIC TRANSACTIONS ACT 2010**

### **Amendment of Electronic Transactions Act 2010**

**9.** Section 26 of the Electronic Transactions Act 2010 is amended by inserting, immediately after subsection (3), the following subsection:

“(3A) To avoid doubt, subsection (1) does not apply in relation to any liability under section 45E, 45F or 45N of the Broadcasting Act 1994.”.



## PART 3

## FINAL PROVISION

**Saving and transitional provisions**

- 5 **10.** For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations in the *Gazette*, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

## EXPLANATORY STATEMENT

This Bill seeks to amend the Broadcasting Act 1994 and the Electronic Transactions Act 2010 to regulate providers of online communication services.

Part 1 contains amendments to the Broadcasting Act 1994.

Part 2 sets out an amendment to the Electronic Transactions Act 2010.

Part 3 is about saving and transitional issues.

Clause 1 relates to the short title and commencement.

## PART 1

## AMENDMENT OF BROADCASTING ACT 1994

Clause 2 amends the long title to the Broadcasting Act 1994 to extend its scope to cover the regulation of providers of online communication services.

Clause 3 amends section 2 of the Broadcasting Act 1994 to set out new definitions used in several Parts of the Bill.

Clause 4 introduces 4 new sections to the Broadcasting Act 1994, all of which concern online communication services.

An electronic service which is specified in the new Fourth Schedule is an online communication service. See also clause 8. The new section 2A defines an electronic service and an online communication service.

The amendments extend to conduct outside Singapore. The new section 2A defines an online communication service to include such a service provided from outside Singapore as well as such a service provided in or from Singapore.

However, there are some electronic services which are excluded from being capable of being specified as an online communication service, and the new section 2A lists these. For example, SMS and MMS.

The new section 2B empowers the Minister to revoke or replace, or add to, the new Fourth Schedule, by order in the *Gazette*. Every such order made must be presented to Parliament as soon as possible after publication in the *Gazette*.

The new section 2C describes the effect of specifying an electronic service which is presently a licensable broadcasting service in the new Fourth Schedule as an online communication service. The object is to avoid double regulation of providers of such a service.

The new section 2D explains who is a provider of an online communication service.

Clause 5 contains the principal amendment in the Bill and inserts a new Part 10A into the Broadcasting Act 1994. The new Part 10A consists of 20 new sections distributed in 4 Divisions.

Division 1 consists of 4 new sections containing the key concepts used in the new Part 10A. This is to be read together with supplementary interpretive provisions in Division 4.

The new section 45A sets out the purposes of the new Part 10A and serves to guide the Info-communications Media Development Authority (the IMDA) and the Minister in the exercise of discretion under the new Part.

The new section 45B makes clear that the new Part 10A applies to and in relation to any content that is provided on any online communication service and is accessible by any Singapore end-user.

However, if the content was published on the Internet before the date of commencement of clause 5, the new Part 10A will not apply to the content on an online communication service unless the content remains accessible to a Singapore end-user of the service on or after that date.

The new section 45C explains when content is provided on an online communication service or is accessible through an internet access service. The new section 45C also explains that content is communicated on an online communication service by an end-user if the end-user causes the content to be accessible by one or more other end-users using the online communication service.

The new section 45D defines what is egregious content. This sort of content, if provided on an online communication service, is reason for the IMDA to give the provider of the online communication service a section 45H direction requiring access to the content to be disabled, etc.

Division 2 consists of 6 new sections relating to online communication services.

The new section 45E sets out the offence of not stopping egregious content on an online communication service with a Singapore end-user link, where the provider of the online communication service knows, or ought reasonably to know that the online communication service provides or can be used to access that egregious content and the content is egregious content, a section 45H direction is given to the provider in relation to that egregious content provided on that online communication service by the person, and the provider fails in satisfying the duty under the new section 45J to comply with the section 45H direction.

It is immaterial whether the online communication service is provided from outside Singapore or provided in or from Singapore.

The penalty is a fine not exceeding \$1 million and, in the case of a continuing offence, a further fine not exceeding \$100,000 for every day or part of a day during which the offence continues after conviction.

The new section 45F relates to any provider of an internet access service which does not stop access by Singapore end-users to an online communication service specified in a section 45I blocking direction given to the person in relation to access to the online communication service through its internet access service. It is immaterial whether the online communication service is provided from outside Singapore or provided in or from Singapore.

The penalty is a fine not exceeding \$20,000 for each day or part of a day the person does not comply with the section 45I blocking direction given to the person, subject to a total cap of \$500,000.

The new section 45G sets out a defence to the offences in the new sections 45E and 45F, the onus of which is on the defendant to prove on a balance of probabilities. In a prosecution of a person for an offence against the new section 45E(1) or 45F(1), it is a defence for the person charged to prove that —

- (a) it was not reasonably practicable to do more than what was in fact done to satisfy the duty in the new section 45J; and
- (b) there was no better practicable means than was in fact used to satisfy the duty in the new section 45J.

What is “reasonably practicable” is therefore to be judged on the basis of what was known at the relevant time, and requires the balancing of outcomes.

The new section 45H provides the circumstances when the IMDA gives a provider of an online communication service a section 45H direction. The IMDA has first to be satisfied that any egregious content is being provided on an online communication service with a Singapore end-user link, and that Singapore end-users of the service can access the egregious content.

The section 45H direction is one given to the provider of the online communication service concerned requiring the provider to do one or more of the following within a specified time:

- (a) to disable access to the egregious content on its service so that Singapore end-users who use or may use the service cannot access the egregious content;
- (b) to stop delivery or communication of content to an account or accounts of all Singapore end-users of the service, or any particular group of end-users comprising one or more Singapore end-users of the service, so as to stop or reduce the communication, provision or access, or further communication, provision or access, by Singapore end-users of egregious content on the online communication service.

However, a section 45H direction cannot contain a requirement which relates to any user-generated content that is communication between 2 or more end-users that is of a private or domestic nature.

A section 45H direction is appealable to the Minister under section 59(1) of the Broadcasting Act 1994, which is amended by clause 6.

The new section 45I provides the circumstances when the IMDA gives a section 45I blocking direction to a provider of an internet access service.

The IMDA must first be satisfied that a provider of an online communication service with a Singapore end-user link has been given a section 45H direction and the provider fails to comply with that direction, and an internet access service has control over access by Singapore end-users of the online communication service to content provided on that online communication service.

A section 45I blocking direction directs the provider of the internet access service concerned to stop access by Singapore end-users to the online communication service.

A section 45I blocking direction is appealable to the Minister under section 59(1) of the Broadcasting Act 1994, which is amended by clause 6.

The new section 45J imposes on every provider of an online communication service or an internet access service to whom is given a section 45H direction or a section 45I blocking direction a duty to take all reasonably practicable steps to comply with the direction given to the provider.

Protection against civil and criminal liability is given to a provider of an online communication service or an internet access service provider, or an officer, employee or agent of such a provider, for anything done or omitted to be done with reasonable care and in good faith in complying with a section 45H direction or a section 45I blocking direction given to the provider.

Division 3 consists of 5 new sections relating to a subset of online communication services, called regulated online communication services.

The new section 45K empowers the IMDA to designate an online communication service with a Singapore end-user link as a regulated online communication service with effect from a date specified.

The IMDA can do so only after taking into account the range of all online communication services provided to Singapore end-users, and the extent and nature of the effect that the different types of online communication services have on the people of Singapore and her different communities, and the IMDA is satisfied that the online communication service should be a regulated online communication service in furtherance of the purposes in the new section 45A.

The IMDA's designation is appealable to the Minister under section 59(1) of the Broadcasting Act 1994, which is amended by clause 6.

The new section 45L empowers the IMDA to issue one or more online Codes of Practice applicable to providers of any regulated online communication service or specified types of such providers. The IMDA can also amend or revoke any online Code of Practice so issued.

The online Codes of Practice can cover all or any of the matters in the new section 45L(4) relating to the provision of the regulated online communication service to which the Code of Practice applies.

However, an online Code of Practice can only be issued, amended or revoked after certain consultation processes are followed. The Minister is conferred power under the new section 45L(2) to make rules prescribing the manner or form of procedure to be followed in connection with the preparation and issuing of online Codes of Practice applicable to providers of regulated online communication services.

An online Code of Practice which is issued or amended under the new section 45L is appealable to the Minister under section 59(1) of the Broadcasting Act 1994, which is amended by clause 6.

The new section 45M imposes a duty on every regulated online communication service provider to take all reasonably practicable steps to comply with the online Code of Practice applicable to the provider in the provision of the regulated online communication service.

The new section 45N empowers the IMDA to take regulatory action against a provider of a regulated online communication service (called the defaulting provider) that has failed to satisfy the duty under the new section 45M(1). The IMDA may either —

- (a) order the defaulting provider to pay, within a period specified in the order, a financial penalty of any amount that the IMDA thinks fit, but not exceeding \$1 million; or
- (b) direct the defaulting provider to take any steps, whether in or outside Singapore, and within a specified time, that may be necessary to remedy the failure.

Under the new section 45N(2), a defaulting provider which does not comply with a remedial direction given to the defaulting provider shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day or part of a day during which the offence continues after conviction.

The new section 45O sets out the due process that must be observed before a remedial direction or an order of financial penalty may be meted out under the new section 45N.

Division 4 consists of administrative, general and supplementary interpretive provisions numbering 5 sections.

The new section 45P empowers the IMDA, with the approval of the Minister, to make regulations required or permitted to be prescribed by the new Part 10A or necessary or convenient to be prescribed for carrying out or giving effect to the new Part. All subsidiary legislation made under that Part must be presented to Parliament as soon as possible after publication in the *Gazette*.

The new section 45Q authorises dynamic incorporation by reference to external material when subsidiary legislation or online Codes of Practice are made.

The new section 45R deals with the interface between the new Part 10A and other written laws and in particular, section 26(1) of the Electronic Transactions Act 2010 (which relates to the limitation of liability against network service providers).

The new section 45R also makes clear that any duty imposed on providers of an online communication service under the new section 45J or 45M does not confer a right of action in any civil proceedings in respect of any contravention of any provision of the new Part 10A or an online Code of Practice, or a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings. A person is therefore not entitled to sue for breach of statutory duty just because of a contravention of any provision of the new Part 10A or an online Code of Practice.

Finally, there are exceptional end-users who may access egregious content. These are to be disregarded for the purposes of the new sections 45E(1), 45F(1), 45H and 45I.

For example, Singapore end-users who access content on an online communication service solely in order to enforce the Broadcasting Act 1994 or any other written law, or to monitor compliance with, or investigate a contravention of, the Broadcasting Act 1994 or any other written law.

The new section 45S makes an indirect amendment to section 50 of the Broadcasting Act 1994 where the offender who commits an offence under section 50(2) or (3) is a provider of a regulated online communication service and with respect to documents or information relating to that service. Instead of the penalty in section 50(4) of the Broadcasting Act 1994, the penalty for such a provider of a regulated online communication service on conviction is a fine not exceeding \$1 million.

Finally, the new section 45T contains definitions of terms used specifically in the new Part 10A.

Clause 6 amends section 59(1) of the Broadcasting Act 1994 so as to confer on any provider of an online communication service or internet access service, a right of appeal to the Minister against decisions of the IMDA or the online Code of Practice.

Clause 7 repeals and re-enacts section 64 on the service of documents required or permitted under the Broadcasting Act 1994 and introduces a new section 64A on the collection of financial penalties and regulatory fines imposed by the IMDA.

The new section 64 provides for newer modes of service of documents required or permitted under the Broadcasting Act 1994 other than summonses for court proceedings.

The new modes of service introduced follow the technological advances in communications. Service by fax is provided for. Service by email is also permissible. Service is also permitted by giving an electronic notice to the individual, partnership, body corporate or unincorporated association (called an addressee) by the addressee's chosen means of notification, stating that the document is available and how the addressee may use the addressee's chosen means of access to access the document's contents. For example, a recipient of a notice may choose to be notified by a mobile phone application that notifies the person that a notice to the person is available to be accessed on a website maintained by the IMDA.

The new section 64 also provides for special service arrangements for a person where, by the exercise of reasonable diligence, the name of the person to whom the document is to be served, or the business address, residential address or last email address of the person, cannot be ascertained. The document may be served by posting it on a website maintained by the IMDA and prescribed by the Minister by notification in the *Gazette* for this purpose.

However, service of any document on a person by email or by an electronic notice at the person's chosen means of notification may be effected only with the person's prior consent to service in that way. The consent may be given expressly or impliedly.

The new section 64A states that all fines imposed by the IMDA under section 12(1) of the Broadcasting Act 1994 and all financial penalties ordered by the IMDA under section 45N(1) of that Act must be paid into the Consolidated Fund. They may be recovered by the IMDA in any court of competent jurisdiction as if they were simple contract debts.

Clause 8 inserts a new Fourth Schedule into the Broadcasting Act 1994 which will list the online communication services to which the new Part 10A applies. Social media services are presently what is specified in the new Fourth Schedule, which may be varied in future according to the new section 2B without parliamentary approval.

## PART 2

### AMENDMENT OF ELECTRONIC TRANSACTIONS ACT 2010

Clause 9 makes a related amendment to section 26 of the Electronic Transactions Act 2010 corresponding to the new section 45R of the Broadcasting Act 1994 inserted by clause 5.

## PART 3

### FINAL PROVISION

Clause 10 confers power on the Minister to make regulations prescribing provisions of a saving or transitional nature consequent on the enactment of any clause in the Bill as the Minister may consider necessary or expedient. The regulations must be published in the *Gazette* but within a 2-year time limit after the date of commencement of the relevant clause.

## EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.

---