

## ONLINE CRIMINAL HARMS BILL PASSED IN PARLIAMENT

1. On 5 July 2023, the Singapore Parliament passed the Online Criminal Harms Act ("**the Act**") which will come into effect soon.
2. The Act is intended to introduce levers to enable the authorities to deal more effectively with online activities that are criminal in nature or are used to facilitate or abet crimes. We highlight the key features of the Act in this Update.

### KEY FEATURES OF THE ACT

#### Enforcement

3. The Act will primarily be administered by public officers and/or employees of public authorities appointed by the Minister ("**Designated Officers**"). Generally speaking, Designated Officers are empowered to issue directions to prevent specified criminal offences or scams or malicious cyber activities ("**Directions**"). A **Competent Authority** will be sited under the Singapore Police Force, which will serve as a single point of contact across the Government for recipients of directions issued under the Act.

#### Specified Criminal Offence ("**SCO**")

4. Directions may be issued by Designated Officers where it is reasonably suspected that a SCO has been committed and an online activity is in furtherance of it.
5. The SCOs comprise offences drawn from a broad spectrum of existing legislation, including the Penal Code 1871, Gambling Control Act 2022, Computer Misuse Act 1993, Children and Young Persons Act 1993, Moneylenders Act 2010, Protection from Harassment Act 2014, Maintenance of Religious Harmony Act 1990 and the Internal Security Act 1960.

#### Scam or Malicious Cyber Activity Offence ("**SMCAO**")

6. Directions can be issued where a Designated Officer suspects or has reason to believe that any online activity is preparatory to, or in furtherance of, the commission of a SMCAO. At the moment, SMCAOs are limited to offences under the Computer Misuse Act 1993 and various provisions of the Penal Code 1871.
7. Notably, the legal threshold for Directions to be issued for a SMCAO is lower than that of a SCO. A proactive and pre-emptive approach was thought to be needed as SMCAO-related activities tend to unfold with great speed and scale, and can inflict great (financial and non-financial) harm on victims.

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## Extra-territorial application

8. The Directions, Orders and Directives and other notices given under the Act can be issued to entities and individuals regardless of whether they have a presence in Singapore. Recipients may also be required to do (or not do) an act outside Singapore.

## Range of Directions

9. The Act will introduce five types of Directions, which we summarize in the following table:

Direction	Recipient	Action required from the recipient
Stop Communication Direction	Person who has control of the specified material or the proprietor of the identified online location	Take all reasonable steps to stop communicating to Singapore persons (e.g., through removing, stopping transmission of, or disabling access to) the specified online material or online location by the specified time.
Disabling Direction	Provider of online service (excluding internet access service or app distribution service)	Take all reasonable steps to disable access by Singapore persons to the specified online material and identical copies of such material by the specified time.
Access Blocking Direction	Internet access service provider	Take all reasonable steps to disable access by Singapore persons by means of the recipient's internet access service to any relevant material or relevant location, by the specified time.
Account Restriction Direction	Provider of online service (excluding internet access service or app distribution service)	Take all reasonable steps to disallow or restrict interaction between any relevant account on the recipient's online service and Singapore persons, by the specified time.
App Removal Direction	Provider of app distribution service (e.g., the Apple App Store)	Take all reasonable steps to stop distributing a relevant app to Singapore persons and stop enabling Singapore persons to download a relevant app, by means of the recipient's app distribution service, by the specified time

10. The recipient of a Direction may apply for reconsideration and, if that fails, appeal against the Direction. It should be noted, however, that an application for reconsideration and/or appeal *does not* affect the operation of the Direction (i.e., the recipient must still comply with it).
11. Where there is non-compliance with a Direction, the person(s) concerned may be issued further orders which, if also not complied with, can amount to an offence under the Act.

## Code of Practice and Implementation Directive

12. In addition to the abovementioned targeted enforcement measures, providers of designated online services will be required to put in place systems and processes to counter the commission of specified offences (specifically, the SMCAOs). In this regard, the Competent Authority will be empowered to issue: –
  - (a) Codes of Practice to designated online service providers. The Codes will be framed in terms of outcomes to be met, to give the relevant service providers flexibility to customise its approach. The Codes do not have legislative effect.
  - (b) Implementation Directives (e.g., to put in place a specific form of multi-factor authentication to protect against the misuse of accounts to commit crimes) to designated online service providers, where it is necessary or expedient for the prevention of online criminal harms. Non-compliance with such Directives may lead to escalatory enforcement measure, including orders to suspend or stop the relevant online service.

## CONCLUSION

13. As a whole, the Act is much welcome given the rising trend of offences committed over the internet. That said, we make some brief comments.
14. Although the introduction of provisions to target SMCAO based on suspicion *pe se* (as opposed to reasonable suspicion) is justifiable, given that the initial contacting and grooming of victims often do not yet satisfy the legal requirements to constitute an offence, there is a risk that Designated Officers may 'jump the gun'. Recipients of Directions may want to consider whether the specified material is genuinely at risk of furthering a SMCAO.
15. Technology companies doing business in Singapore, particularly those providing online services, should also be prepared to navigate the newly introduced Codes of Practice and Implementation Directives which, in terms of enforceable obligations, are big step-ups from existing practice.
16. Please do not hesitate to contact us if you have any queries relating to the Act or require any advice on matters relating to online criminal offences or legal issues arising from the use of the internet.

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