

ANTI-FAKE NEWS BILL 2018

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A BILL

i n t i t u l e d

An Act to deal with fake news and related matters.

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ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Anti-Fake News Act 2018.
- (2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

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

“Court” means Sessions Court;

“Minister” means the Minister charged with the responsibility for law;

“publication” includes—

- (a) any written publication or publication of a nature similar to any written publication, and every copy and reproduction or substantial reproduction of such publication; and

- (b) any digitally, electronically, magnetically or mechanically produced publication, and a replication or substantial replication of such publication.

Extra-territorial application

3. (1) If any offence under this Act is committed by any person, whatever his nationality or citizenship, in any place outside Malaysia, he may be dealt with in respect of such offence as if the offence was committed at any place within Malaysia.

(2) For the purposes of subsection (1), this Act shall apply if, for the offence in question, the fake news concerns Malaysia or the person affected by the commission of the offence is a Malaysian citizen.

PART II

OFFENCES

Creating, offering, publishing, etc., fake news or publication containing fake news

4. (1) Any person who, by any means, knowingly creates, offers, publishes, prints, distributes, circulates or disseminates any fake news or publication containing fake news commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both, and in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for every day during which the offence continues after conviction.

(2) The Court may, in addition to any punishment specified in subsection (1), order the person convicted of an offence under that subsection to make an apology to the person affected by the commission of the offence in the manner determined by the Court.

(3) Failure to comply with an order made under subsection (2) shall be punishable as a contempt of court.

ILLUSTRATIONS

- (a) *A* offers false information to *B*, for *B* to publish the information in *B*'s blog. *B*, not knowing that the information offered by *A* is false, publishes the information in his blog. *A* is guilty of an offence under this section. *B* is not guilty of an offence under this section.
- (b) *A* fabricates an information by stating in an article published in his blog that *Z*, a well-known businessman has obtained a business contract by offering bribes. *A* is guilty of an offence under this section.
- (c) *A* fabricates an information by stating in an article published in his blog that *Z*, a well-known businessman has obtained a business contract by offering bribes. *B*, knowing that the information has been fabricated shares the article on his social media account. Both *A* and *B* are guilty of an offence under this section.
- (d) *A* publishes an advertisement containing a caricature of *Z* depicting *Z* as a successful investor in an investment scheme knowing that *Z* is not involved in the investment scheme. *A* is guilty of an offence under this section.
- (e) *A* publishes a statement in his social media account that a food product of *Z*'s company contains harmful ingredients and is being sold to the public knowing that the production of the food product has been discontinued several years ago and the food product is no longer sold to the public. *A* is guilty of an offence under this section.
- (f) *A* creates a website impersonating a government agency's website. In the website, *A* publishes a guideline purportedly issued by the head of the government agency which requires the public to apply for a licence to carry out a particular activity. There is no such guideline issued by the government agency. *A* is guilty of an offence under this section.
- (g) *A* gives a speech during a public forum held at a public place. In his speech, *A* informs that *Z* has misappropriated moneys collected for charitable purposes knowing that the information is false. *A* is guilty of an offence under this section.
- (h) *A* holds a press conference where he claims that *Z*, an owner of a supermarket, will give out free gifts to the first one hundred customers of his supermarket on every first Saturday of the month knowing that *Z* has no intention to do as claimed by *A*. *A* is guilty of an offence under this section.

Providing financial assistance for purposes of committing or facilitating commission of offence under section 4

5. Any person who directly or indirectly, provides or makes available financial assistance intending that the assistance be used, or knowing or having reasonable grounds to believe that the assistance will be used, in whole or in part, for the purposes of committing or facilitating the commission of an offence under section 4, commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

Failing to carry out duty to remove publication containing fake news

6. (1) It shall be the duty of any person having within his possession, custody or control any publication containing fake news to immediately remove such publication after knowing or having reasonable grounds to believe that such publication contains fake news.

(2) Any person who fails to carry out the duty under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit, and in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for every day during which the offence continues after conviction.

PART III

**ORDER FOR REMOVAL OF PUBLICATION CONTAINING
FAKE NEWS**

Court may order for removal of publication containing fake news

7. (1) Any person affected by a publication containing fake news may apply *ex parte* to the Court for an order for the removal of such publication.

(2) The application under subsection (1) shall be made in the form prescribed in the First Schedule and shall be accompanied by a police report and other documents supporting such application.

(3) Upon receiving the application under subsection (2) and after considering such application or such other evidence, if the Court is satisfied that the publication containing fake news should be removed, the Court may make an order in the form prescribed in the Second Schedule for the removal of such publication.

(4) The order made under this section may contain the following particulars:

- (a) the person who is required to remove the publication containing fake news;
- (b) the manner of the removal of the publication containing fake news;
- (c) the time within which the publication containing fake news shall be removed after the service of the order; and
- (d) any other order as the Court deems fit.

(5) The order made under this section shall be deemed to be served on the person against whom the order is made if the order is served by personal service, sent by post to the last known address of such person, or served by electronic means to such person.

(6) Any person who fails to comply with the order made under this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Explanation—The service of an order under this section by electronic means to a person against whom the order is made may be done, among others, by sending the order to his e-mail address or to his social media account.

Setting aside of order for removal of publication containing fake news

8. (1) Subject to subsection (3), the person against whom an order under section 7 is made may apply to set aside the order within fourteen days from the date the order is served on him.

(2) An application to set aside under subsection (1) shall not amount to a stay of the order for removal under section 7.

(3) If an order under section 7 is obtained by the Government relating to a publication containing fake news which is prejudicial or likely to be prejudicial to public order or national security, there shall be no application for the setting aside of such order by the person against whom the order was made.

Court may order for removal of publication containing fake news by police officer or authorized officer under the Communications and Multimedia Act 1998

9. (1) If the person against whom the order is made under section 7 fails to remove the publication containing fake news, the Court may, on the application of the Public Prosecutor make an order directing a police officer or an authorized officer under the Communications and Multimedia Act 1998 [Act 588], as the case may be, to take the necessary measures to remove such publication.

(2) The application under subsection (1) shall be made in the form prescribed in the First Schedule and shall be accompanied by a police report and other documents supporting such application.

(3) Upon receiving the application under subsection (2) and after considering such application or such other evidence, if the Court is satisfied that the publication containing fake news should be removed, the Court may make an order in the form prescribed in the Second Schedule requiring a police officer or an authorized officer under the Communications and Multimedia Act 1998 to take the necessary measures to give effect to the order.

PART IV

MISCELLANEOUS

Abetment

10. Any person who abets the commission of any offence punishable under this Act shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

Institution of prosecution

11. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Seizable offence

12. Every offence punishable under this Act shall be a seizable offence..

Offence by body corporate

13. (1) If a body corporate commits an offence under this Act, a person who at the time of the commission of the offence was a director, chief executive officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge; or

- (ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person is liable under this Act to any punishment for any act, omission, neglect or default, such person shall be liable to the same punishment for the act, omission, neglect or default of the person's employee or agent, or of the employee of the person's agent, if the act, omission, neglect or default was committed—

- (a) by that person's employee in the course of his employment;
- (b) by that person's agent when acting on behalf of that person; or
- (c) by the employee of that person's agent in the course of his employment by the person's agent or otherwise on behalf of the person's agent acting on behalf of that person.

Power to amend Schedules

14. The Minister may, by order published in the *Gazette*, amend the First and Second Schedules.

FIRST SCHEDULE

APPLICATION FOR ORDER FOR REMOVAL OF PUBLICATION CONTAINING FAKE NEWS

[Subsections 7(2) and 9(2)]

IN THE SESSIONS COURT

AT _____

IN THE STATE OF _____

CASE NO: _____

Name of the applicant: _____

NRIC/Passport/Company Registration No.*: _____

Address: _____

*Delete whichever inapplicable

Application (*Please refer to Instructions to Applicant*):

In support of this application, I affirm that—
(*Please refer to Instructions to Applicant*)

Signed by _____)

Dated the _____ day of _____ 20_____)

At _____)

Before me

Commissioner for Oaths

I humbly pray to the Honourable Court for the order for the removal of the publication containing fake news to be granted.

Dated the _____ day of _____ 20_____

Hearing date: _____ Time: _____ (a.m./p.m.)

At: _____

Dated the _____ day of _____ 20_____

(Seal)

Registrar

Instructions to Applicant:

1. For the purposes of this application, the following documents must be attached herewith:
 - (a) police report; and
 - (b) certified copy of document proving the publication containing fake news; or
 - (c) other certified document or evidence supporting this application.
2. Applicant must state the specific publication containing fake news to be removed.
3. Applicant must state and affirm the basis or grounds for the making of this application. This affirmation must include the particulars relating to—
 - (a) the identity of the applicant;
 - (b) the subject matter which is said to be fake news;
 - (c) the identity of the person making such publication containing fake news;
 - (d) the manner in which such publication containing fake news was made; and
 - (e) the manner in which the applicant is affected.

SECOND SCHEDULE

ORDER FOR REMOVAL OF PUBLICATION CONTAINING FAKE NEWS

[Subsections 7(3) and 9(3)]

(*Title as in the application form in the First Schedule)

To _____

Upon receiving the application of _____ and upon receiving the police report and the documents supporting the application, filed on the _____ day of _____ 20 _____, and upon hearing _____, and the applicant by his own or _____ to abide by order of the Court for the removal of such publication containing fake news.

It is ordered and directed that you remove the publication containing fake news within _____ (specify the time/period) relating to the matters in question in this application and particularly _____

Dated the _____ day of _____ 20 _____

(Seal)

Sessions Court Judge

EXPLANATORY STATEMENT

The Anti-Fake News Act 2018 (“the proposed Act”) seeks to deal with fake news by providing for certain offences and measures to curb the dissemination of fake news and to provide for related matters. As the technology advances with time, the dissemination of fake news becomes a global concern and more serious that it affects the public. The proposed Act seeks to safeguard the public against the proliferation of fake news whilst ensuring the right to freedom of speech and expression under the Federal Constitution is respected. The provision on the power of the Court to make an order to remove any publication containing fake news serves as a measure to deal with the misuse of publication medium in particular the social media platforms. With the proposed Act, it is hoped that the public be more responsible and cautious in sharing news and information.

PART I

2. Part I of the proposed Act contains preliminary matters.
3. *Clause 1* contains the short title and empowers the Minister to appoint the date of commencement of the proposed Act.
4. *Clause 2* contains the definitions of certain words and expressions used in the proposed Act.

5. *Clause 3* contains the provision on extra-territorial application of the proposed Act. If an offence under the proposed Act is committed by any person, whatever his nationality or citizenship, in any place outside Malaysia, he may be dealt with in respect of such offence as if it was committed at any place within Malaysia. The proposed Act shall apply if, for the offence in question, the fake news concerns Malaysia or the person affected by the commission of the offence is a Malaysian citizen.

PART II

6. Part II of the proposed Act provides for offences relating to fake news.

7. *Clause 4* seeks to provide for the offence of knowingly creating, offering, publishing, printing, distributing, circulating or disseminating any fake news or publication containing fake news. The punishment for an offence under this *clause* is a fine up to five hundred thousand ringgit or imprisonment up to ten years or both, and in the case of a continuing offence, a further fine up to three thousand ringgit for every day during which the offence continues after conviction. In addition to the punishment, the Court may order for the making of an apology for example by making such apology in open court or by publishing it in the newspaper.

8. *Clause 5* seeks to provide for the offence of providing financial assistance for the purposes of committing or facilitating the commission of an offence under *clause 4*. The punishment for an offence under this *clause* is a fine up to five hundred thousand ringgit or imprisonment up to ten years or both.

9. *Clause 6* seeks to impose a duty on any person to remove publication containing fake news. Any person who fails to carry out this duty commits an offence under this *clause*. The punishment for an offence under this *clause* is a fine up to one hundred thousand ringgit and in the case of a continuing offence, to a further fine up to three thousand ringgit for every day during which the offence continues after conviction.

PART III

10. Part III of the proposed Act contains provisions relating to the power of the Court to order the removal of publications containing fake news.

11. *Clause 7* seeks to provide for the power of the Court to order the removal of publication containing fake news on an *ex parte* application by the person affected by such publication.

12. *Clause 8* deals with the setting aside of the order to remove the publication containing fake news.

13. *Clause 9* seeks to provide for the power of the Court to order the removal of publication containing fake news by a police officer or an authorized officer under the Communications and Multimedia Act 1998 if the person against whom the order under *clause 7* was made fails to remove such publication.

PART IV

14. Part IV of the proposed Act contains miscellaneous provisions.
15. *Clause 10* relates to provision on abetment.
16. *Clause 11* seeks to provide that no prosecution for an offence under the proposed Act shall be instituted except by or with the written consent of the Public Prosecutor.
17. *Clause 12* seeks to provide that every offence punishable under the proposed Act shall be a seizable offence.
18. *Clause 13* deals with an offence by a body corporate.
19. *Clause 14* empowers the Minister to amend the First and Second Schedules to the proposed Act by order published in the *Gazette*.
20. The First and Second Schedules provide for the Court form and order to be used under the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)3106]