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Shaping Malaysia's Digital Future: Key Highlights of the Communications & Multimedia (Amendment) Bill 2024

Introduction

The Communications and Multimedia Act 1998 ("CMA") has been in force for more than 25 years, and there have been extensive calls for reform over the years for various reasons. In December 2024, the Communications and Multimedia (Amendment) Bill 2024 ("the Bill") was approved by the Dewan Rakyat on 9 December 2024 and subsequently by the Dewan Negara on 16 December 2024. Once the Bill receives the Royal Assent and is published in the Federal Gazette, it will officially become law and take effect on a specified date.

As an attempt to tackle cybercrime, enhance online safety and mitigate network security risks in Malaysia, the Bill introduces stringent measures to improve regulatory oversight by the Malaysian Communications and Multimedia Commission ("MCMC"). Key updates include expanded powers granted to MCMC, a class licensing framework for

social media, and enhanced penalties for online offences.

Crucial Amendments/Additions

1. Dispense with Formalities

The new insertion of section 46A grants the Minister of Communications ("the Minister") discretionary powers to declare under section 13, any person operating under a class licence to be registered without the need for formalities of registration for that class licence.

2. Licensing Requirement

Pursuant to the Communications and Multimedia (Licensing) (Exemption) Order 2000 and the Communications Multimedia and (Licensing) 2000, Application Regulations Service Providers ("ASP") offering social media platforms messaging services must now obtain the Applications Services Provider Class (ASP(C)) licence by 1 January 2025 under CMA. This shall be applicable to ASPs with at least 8 million registered users in Malaysia, including cloud service providers, internet access service providers and public cellular services.



3. Access Requirements

The process for handling access agreements has undergone significant changes under the amended section 150. Previously, the MCMC was required to register access agreements related to listed network facilities or services and any amendments, only after confirming their compliance with the CMA and associated instruments, such as the Mandatory Standards on Access (Access Requirements).

With the new amendments, the registration system has been replaced by a lodgement system, requiring access agreements to be submitted to the MCMC within 30 days of execution. This shift places the responsibility squarely on the parties involved to ensure that their agreements adhere to the Access Requirements.

4. Suspension of Services in relation to Content:

The new insertion of **section 211A** allows the MCMC to direct a content applications service provider to suspend its services for a specified period in light of any contravention to content requirements (Chapter 2 of

Part IX of the CMA), any breach of licensing conditions in relation to content, or any non-compliance with any instrument from the Minister or the MCMC in relation to content.

5. Stronger Enforcement:

(a) Section 233, which seeks to govern acts on the improper use of network facilities or services, has now been expanded to cover "grossly offensive" communications (previously only "offensive") as well as contents involving "fraud or dishonesty against any persons". Thus, the prohibited content has been extended and elaborated. Below are examples provided by the CMA on what falls within the scope of prohibited content:

Explanation 1

Obscene content include may content that gives rise to a feeling of disgust due to lewd portrayal which may offend a person's manner on decency and modesty, having possibility of bringing negative influence and corrupting the mind of those easily influenced. In relation to a child, obscene content includes but not limited to child sexual grooming, degradation sexual that



portrays any person as a mere sexual object or to demean the dignity, exploit or discriminate them, portrayal of sex or pornography including rape, attempted rape against child, sexual bestiality, whether consensual or otherwise.

Explanation 2

Indecent content may include content which is profane in nature, improper and against generally accepted behaviour, customary laws and culture. Content that portrays private parts based on arts, information or science which are not gross, are not indecent. In relation to a child, indecent content includes but not limited to content which is profane in nature, improper and inappropriate for a child according to a reasonable adult's consideration.

Explanation 3

Content that portrays private parts based on arts, information or science which are not gross such as sex education or anatomy, are not obscene or indecent.

Explanation 4

False content may include content or information which are untrue,

confusing, incomplete or fabrication of non-existent matters. Content in the form of satire and parody or where it is clear that it is fictional, are not false.

Explanation 5

Menacing content may include content which causes annoyance, harmful and evil threats, encourages and incites criminal act or leads to public disorder. In relation to a child, menacing content includes but not limited to-

- (a) content that may cause emotional disturbance such as, portrayal of gruesome death, and domestic violence; or
- (b) content that may cause a child to imitate the portrayal of such act, such as content with suicidal tendencies, dangerous physical acts, street crime acts, or usage of drug.

Explanation 6

Grossly offensive content may include content that contains expletive and profane in nature that offends many people including crude references, hate speech and violence as follows:



- (a) crude references are obscene, offensive, coarse or profane words. However, the usage of those words in the context of their ordinary meaning and not intended to be used as crude language are not grossly offensive;
- (b) hate speech that refers to any word, visual, audio and gesture that are insulting or demeaning a person are grossly offensive.
- (c) portrayal of violence in news reporting in accordance with ethics for journalists are not grossly offensive. In relation to a child, content which portrays violent scenes that depict humanitarian context or for the purpose of character and plot development, is not grossly offensive; or
- (d) any communication made in good faith is not grossly offensive as long as the communication consists of statements of fact, that are true in substances and facts, and consists of statements of opinion.

In addition, the penalties under section 233 have also been

- increased to a fine not exceeding RM500,000 or a maximum imprisonment term not exceeding 2 years or both and a further fine (which was made available through the Bill) of RM500,000 for every day during which the offence continues after conviction for offences targeting minors.
- (b) Unsolicited commercial electronic messages (Section 233A): The introduction of the new section 233A is a specific provision on the prohibition of unsolicited commercial electronic messages, which are essentially spam messages. Spam messages are previously governed under section 233(1)(b). Now, Section 233 will explicitly address actions involving fraud or dishonesty against any person.

6. **Heftier Punishments:**

In relation to non-compliance with the CMA, the Bill has introduced relatively higher punishment standards, for example:

(a) Non-compliance with the direction of the MCMC
 (Section 53): The punishment for non-compliance under section 53 has been



increased from 'RM300,000 or imprisonment not exceeding 3 years or both' to 'RM1,000,000 or imprisonment term not exceeding 10 years or both'. The offender shall also be liable to a fine of RM100,000 for every day or part of a day during which the offence is continued after the conviction.

(b) Non-compliance with written instructions (Section 74): Any individual who fails to comply with a written instruction issued by MCMC under this Chapter of Information-Gathering Powers commits an offence and upon conviction, is liable to a fine, imprisonment or both and a further fine.

amendment The of this provision has brought the punishment for failure to provide the information requested by the MCMC from 'a fine of up to RM20,000 or imprisonment for up to 6 months or both' to 'a fine of up to RM1,000,000, imprisonment for a term of up to 10 years, or both'. Additionally, they may incur further fine а of

- RM100,000 for each day or part of a day that the offence continues after conviction.
- Penalty (Section 242): Where (c) there are omissions to comply with the CMA, breach of licence conditions or when dealing with offences where there is no specific penalty provided under CMA. the penalties imposed have been increased from 'a fine of up to RM100,000 and/or imprisonment for up to 2 years' to 'a fine of up to RM1,000,000 and/or imprisonment for up to 5 years'.
- Further fine (Section 41): With (d) reference to circumstances where an individual licence has been suspended, cancelled, surrendered or expired and the licensee did not cease to provide its services immediately, he shall not only be liable to a fine or a term of imprisonment, he shall also be liable to a further fine of RM100,000 for each day or part of a day which the offence continues after conviction.



7. Audit requirements:

The addition of sections 73A and 73B grants the MCMC powers to conduct audit or exercise auditing requirements on the licensees. This discretionary power granted to the MCMC was previously not observed under the CMA.

Section 73A provides that the MCMC may conduct an audit on any licensee or any other person who provides services related to communications system on any matter under the CMA, its subsidiary legislation, any instrument issued under the CMA, or any information furnished to the MCMC.

Section 73B allows the MCMC to order the licensee to appoint an independent expert to audit, at its own expense, on any matter under the CMA, its subsidiary legislation, any instrument issued under the CMA, or any information furnished to the MCMC.

Notably, anyone who fails to comply with these provisions commits an offence.

8. The Protection of the Interests of Consumers

(a) Consumer protection requirements

All network facilities providers, network service providers, application service providers or content application service providers (regardless of whether they are licensed or unlicensed) must now comply with the requirements on consumer protection pursuant to section 188. There was previously an exemption for non-licensees provided under section 187 which has since been removed by the Bill.

(b) Consumer Code & Consumer Forum

Previously, there was only one industry body that can regulate consumers e.g. the content forum. There are no longer such restrictions whereby any relevant persons can establish consumer codes.

Section 190 provides that consumer codes established by the service providers must now include the provision of information to customers with relation to:



- The quality of service standards and service level agreements; and
- The prohibition of procedurally and/or substantially unfair contract terms.

(c) Content Code & Content Forum

Prior to the Bill, only one industry body can be designated as a content form to regulate content. Now, any industry body can regulate content as elaborated below:

Section 212 now allows MCMC to designate one or more industry bodies as content forums to prepare content codes specific to different segments of the communications and multimedia industry.

Section 213 now provides that the content code may address content filtering as one of the matters.

Greater Powers Granted to the Minister and the MCMC

Through the Bill, the Minister and the MCMC have been granted wider powers which include, among others:

(a) Dispense with formalities of registration pursuant to the Communications and Multimedia (Licensing)

- (Exemption) Order 2000 and the Communications and Multimedia (Licensing) Regulations 2000;
- (b) Power to amend the Schedule(on standard licensing conditions)
- (c) Power to address network security risks
- (d) Auditing powers (Power to conduct audit or direct for an audit to be conducted)
- (e) Establishment of measures to promote industry conduct that aligns with the objectives of the CMA (51/55/104)
- (f) Expansion of the circumstances relating to the issuance of a direction under the CMA
- (g) determine mandatory standards including for matters where the MCMC is satisfied that the designated industry forum has not developed a satisfactory voluntary industry code or that the voluntary industry code is likely to fail or has failed, and will continue to fail
- (h) Promote industry regulation on network security and



address security risks

10. New Provisions on Network Security

Sections 230A and 230B aim to strengthen the MCMC's authority over network security. Section 230A empowers the MCMC to register certifying agencies, including those outside Malaysia, to certify compliance with regulations or standards under the CMA. Section 230B further grants the MCMC the authority to instruct individuals to take necessary measures to prevent. detect, or address any network security risks.

11. Right of private action

The newly introduced Section 236A grants individuals who suffer loss or damage directly due to violations of Section 235 (pertaining to damage to network facilities) or Section 236 (addressing fraud and related activities involving access devices) an explicit right to initiate civil action against the alleged offenders. This right is available regardless of whether the offenders have been formally charged under the CMA. Notably, the existing CMA does not currently provide a civil right of action

for such cases.

12. Preservation or Disclosure of Communications Data

Section 252A establishes duties to preserve communications data when a police officer or authorized officer determines that:

- (a) the data is reasonably necessary for an investigation;and
- (b) (b) there is a risk that it could be destroyed or made inaccessible.

Section 252B empowers a police officer or authorized officer to issue a written notice directing the individual managing the communications system to disclose the required data if it is considered reasonably necessary for investigating offences under the CMA or its related regulations.

Comments

The Communications and Multimedia (Amendment) Bill 2024 represents a pivotal step in modernizing Malaysia's digital governance framework. By introducing stringent licensing requirements, enhanced consumer protections, tougher penalties, and a focus on network security, the



amendments aim to address evolving challenges in the digital era. These reforms not only strengthen regulatory oversight but also foster a safer, more accountable, and innovative digital ecosystem.

As businesses and service providers navigate this new landscape, compliance with the updated provisions will be critical

to avoid severe penalties and maintain operational integrity. By aligning with these legislative advancements, Malaysia positions itself as a leader in creating a robust and responsible digital economy, setting a benchmark for the region and beyond.

This article was written by our partners, Sri Sarguna Raj, Steven Cheok Hou Cher & Nicole Chong from the Intellectual Property, Media, Sports & Gaming Practice Group, with the assistance of Soo An Qi, Lim Chaw Zen and Michelle Yap Siew Hui (Senior Associate, Associate & Pupil). It contains general information only. It does not constitute legal advice or an expression of legal opinion and should not be relied upon as such.