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Penal Code (Amendment) Act Passed By Parliament

Relevance Of This Update

The Penal Code (Amendment) Act expands and modifies existing offences, as well as introduces new offences, such as sexual acts committed against persons with mental disability and sexual grooming of minors. Modifications of existing offences include giving extra-territorial effect to the offence of engaging commercial sex with a person under 18, and making the deliberate wounding of religious and racial feelings of any person an offence. In addition, the penalties were also modified to provide the courts with greater sentencing discretion to reflect developments in crime trends.

Introduction

The Penal Code (Amendment) Act (the 'Act') was passed by Parliament on 23 October 2007, amending the Singapore Penal Code (the 'Code') and certain other written laws. The Act will come into operation on 1 February 2008.

The key features of the Act are discussed below.

Offences

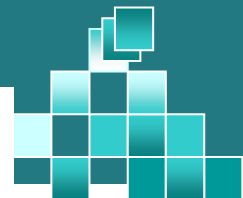
The Act expands and modifies existing offences, creates new ones and repeals certain offences.

Expansion And Modification Of Existing Offences

The Act expands and modifies the scope of several sections of the Penal Code.

- **Unlawful Assembly**

Section 141 provides that an unlawful assembly is constituted if the common object of the assembly is to commit any offence, whether or not it relates to public tranquility. Previously, unlawful assembly is committed if the act prejudices public tranquillity. With the amendment, there is no need for the act to affect public tranquillity before an offence of unlawful assembly is committed.



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- Extortion

Section 383 states that extortion may be committed by putting a person in fear of any harm in body, mind, reputation or property to that person or any other person, even if the harm is to be caused legally.

- Cheating

Section 415 of the Code has been amended to provide that (i) the offence of cheating is committed whether or not the deception was the sole or main inducement; (ii) it is sufficient that the deception caused damage or harm not only to the victim, but to any person; and (iii) any representation made through an agent will be treated as having been made by the accused himself.

- Offences Relating To Race And Religion

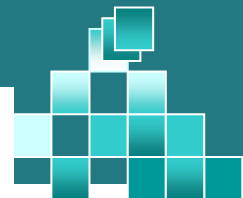
Section 298 now covers the deliberate wounding of religious or racial feelings of any person by causing any matter however represented, to be seen or heard by the person. A new section 298A has been inserted to provide that it is an offence for a person who:

- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, knowingly promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between different religious or racial groups; or
- (b) commits any act which he knows is prejudicial to the maintenance of harmony between different religious or racial groups and which disturbs or is likely to disturb the public tranquility.

With the amendment, the prosecution will have the option to proceed either under the Code or under the Sedition Act.

- Necrophilia and Bestiality

Section 377 on unnatural carnal intercourse has been repealed and a new section 377 has been introduced, which makes it an offence for a man to penetrate with his penis the vagina, anus or mouth, as the case may be, of a human corpse. With the amendment, consensual sexual penetration of the vagina, anus or mouth between a man and a woman, both of whom are of or above the age of 16 years, are no longer an offence, so long as the act does not constitute incest, prostitution of minor under 18 or sexual acts with mentally disabled person. However, such acts, if committed in public, may still amount to an offence under section 294 of the Code or provisions under other written law. The offence of bestiality, or sex with animals, previously covered under section 377, is now criminalised under a new section 377B.



- Sexual Offences

Several provisions on sexual offences have been amended. They are discussed below.

- (i) Incest

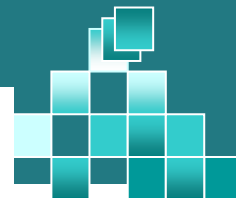
The new section 376G expands the offence of incest to include various forms of sexual acts involving penetration, in addition to sexual intercourse. The degree of kinship for the proscribed conduct was also expanded to include a grandmother and grandson. The section was further refined so that a boy under 16 cannot be prosecuted for incest (as currently provided for females under 16 years old), as they are not mature enough to make an informed decision.

- (ii) Rape

The new section 375 re-enacts the offence of rape with some modifications, and introduces exceptions to the husband's marital immunity from rape. This new section applies to spouses in both Muslim and non-Muslim marriages. Previously, marital immunity applied for a man who engages in non-consensual sexual intercourse with his wife 13 years of age and above. Given the changed status of women and the evolving nature of the marital relationship, the new section 375 provides that marital immunity does not apply if any of the following conditions is met:

- (a) the wife was at the time of the offence living separately from him under a judgment of judicial separation or an interim judgment of divorce not made final;
 - (b) at the time of the offence, there was in force an injunction restraining him from having sexual intercourse with his wife; or
 - (c) at the time of the offence, there was in force a protection order under section 65 or an expedited order under section 66 of the Women's Charter made against him pursuant to an application by his wife.

The scope of the provisions on rape under sections 375 and 376 have also been amended to include persons who have undergone a sex reassignment procedure, and to define sexual intercourse to include acts involving a surgically constructed penis or vagina that is integrated into the body of a person.



Introduction Of New Offences

Several offences have been introduced with the passage of the Penal Code (Amendment) Bill, including the following:

- **Genocide**

The new Chapter VIB on 'Genocide' gives greater effect to the Convention on the Prevention and Punishment of the Crime of Genocide which Singapore acceded to in 1995. The Act makes the commission of genocide an offence punishable with death where genocide consists of the killing of any person, or in any other case, with mandatory imprisonment which may be for life, or for a term which may extend to 20 years.

- **Perverting Course Of Justice**

The new section 204A makes it an offence to intentionally obstruct, prevent, pervert or defeat the course of justice before trial. Under the previous law, a person who perverts the course of justice before trial does not commit an offence. In addition, a new section 204B creates several offences in relation to bribery of, and other means of influencing witnesses from giving evidence and in relation to witnesses who accept bribes to avoid giving true testimony.

- **Overseas Abetment**

A new section 108B provides that a person abets an offence within the meaning of the Code if he abets an offence committed in Singapore notwithstanding that any or all of the acts constituting the abetment were committed outside Singapore. Previously, a person who abets the commission of an offence in Singapore while he is outside Singapore cannot be tried for the offence of abetment.

- **Kidnapping Or Abducting To Compel Government**

Section 364A criminalises kidnapping or abducting to compel the Government or any person to do or abstain from doing any act as would encompass a terrorist hostage-taking scenario.

- **Sexual Assault By Penetration**

Section 367 replaces the reference to 'unnatural lust' with a reference to 'non-consensual penile penetration of the anus', as a consequence of the repeal of section 377 on unnatural carnal intercourse. Under section 376, any man who engages in anal or oral sex with another person, or causes another man to engage in anal or oral sex with him, shall be guilty of an offence if the act was conducted without the consent of the other person or man. With oral and anal sex decriminalised, this new offence is required to



prosecute non-consensual penetrative sexual acts, including the use of body parts (other than the penis) and objects.

- Sexual Grooming Of Minors Under 16

To further protect minors, a new section 376A has been introduced to criminalise sexual grooming of a minor less than 16 years of age. An adult (of or above the age of 21 years) who meets or travels to meet a minor under 16 years of age within Singapore with the intention of committing a relevant offence, will be guilty of an offence if the person had met or communicated with the minor on two or more previous occasions. It is immaterial whether those prior meetings or communications had taken place in or outside Singapore. For example, if an offender travels from a foreign country to Singapore, and travels within Singapore to meet a minor, the offence is made out.

- Commercial Sex With Minors Under 18

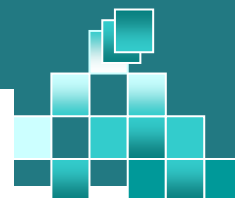
The new section 376B provides that it is an offence for a person (male or female) to obtain sexual services of a minor under 18 years of age (male or female) or to communicate with another person (including the minor) for the purpose of obtaining for consideration such sexual services. This does not mean that the age of protection for minors against sexual exploitation is increased to 18 years. The basic regime that protects young people from being sexually exploited remains intact. The section provides, however, that it is not an offence to obtain sexual services from a person's own spouse.

- Commercial Sex With Minors Under 18 Outside Singapore

The new section 376C gives extra-territorial effect to the offence of prostitution under 376B, so any Singapore Citizen or Permanent Resident who purchases or solicits sexual services from a minor under 18 years of age in another country can be prosecuted in Singapore. It is not a requirement under the Act that a double criminality (ie, that the act is an offence both in the destination country and in Singapore) exists to prosecute a child sex tourist. Thus, even if the actions were legal in the country in which the accused allegedly committed his crime, if it constituted an offence under the Code, the accused can be prosecuted in Singapore.

- Organising Or Promoting Sex Tours

The new section 376D makes it an offence to organise or promote tours outside Singapore for commercial sex with any minor under 18 years of age. While the apprehending of a sex tourist removes only one person from the industry, the closing down a child-sex tourism agency will block a far greater number of sex tourists.



- Procurement Of Sex With Person With Mental Disability

The new section 376F criminalises intentional procurement of sexual activities with a person with mental disability who is capable of consent, but where inducement, threat or deception was used to obtain that consent. It is not an offence to sexually touch or engage in consensual sexual activity *per se* with a mentally disabled person, if there was no inducement, threat or deception involved, or if the person did not know and could not reasonably be expected to know of the mental disability, or for a person to engage in consensual sexual activity with his or her spouse who is mentally disabled.

Repeal Of Certain Offences

Four provisions of the Code have been repealed. Sections 243A (on forfeiture of counterfeit coin), 376D (on sanction for the offence of incest) and 489E (on forfeiture of counterfeit currency) are part of the criminal procedure. Thus, it is more appropriate for these provisions to reside in the Criminal Procedure Code. Section 498 on the archaic offence of enticing or taking away or detaining with criminal intent a married woman has also been repealed, as it was no longer relevant in today's context.

Definitions, Explanations And Expressions

Several sections of the Code have been amended to update and clarify definitions and expressions therein. For example, the term 'current coin' has been re-defined as coin which is legal tender in Singapore or in any foreign country. Section 30 has expanded the meaning of the term 'valuable security' to include a credit card, a charge card, a stored value card, an automated teller machine card and such other cards which have money or money's worth or other financial rights attached. Reward cards and discount cards do not, however, fall within the ambit of valuable security.

Section 320 has expanded the meaning of 'grievous hurt' to include 'death' and 'penetration of the vagina or anus, as the case may be, of a person without that person's consent, which causes severe bodily pain'. If the penetration of the vagina or anus is not sexual in nature, but is carried out with the intent of causing hurt to the victim without the victim's consent (eg with an object), it would not constitute an offence of sexual assault by penetration under the new section 376. The clause has the effect of making such a penetration of the vagina or anus punishable as an act of causing grievous hurt. As the defence of consent under section 87 does not apply to acts intended or likely to cause grievous hurt, the clause provides that only a non-consensual penetration of the vagina or anus will constitute grievous hurt, in order to exclude consensual sexual acts which may cause severe bodily pain in some cases.

The definition of 'document' has also been expanded to cover offences committed via electronic means.



Penalties

The Act has increased the penalties for various offences as some of the previous penalties (especially the fines) were too low. The increase of the penalties also gives flexibility to the judiciary in sentencing. In addition, the Act has also introduced penalties for new offences, which include the following:

- death penalty for genocide (section 130E) and kidnapping or abducting of any person in order to compel the Government or any person from doing any act (section 364A);
- optional caning for offences related to abduction and kidnapping (sections 363A and 364A); and
- appropriate imprisonment term or fine, or both for the other new offences.

Consequential Amendments To Relevant Legislation

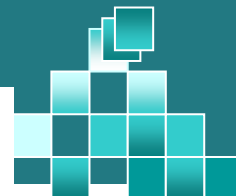
As a consequence of the amendments to the Code, related and consequential amendments to other written laws were made. In particular, the Act amends the Women's Charter (Cap. 353), the Children and Young Persons Act (Cap. 38) to make it an offence to procure or attempt to procure the commission of any obscene or indecent act by any child or young person, the Singapore Armed Forces Act (Cap. 295) to include a reference to 'sexual assault by penetration', and the Criminal Procedure Code (Cap. 68).

Concluding Words

The changes to the Code have been introduced to make the penal system more relevant, effective and more reflective of the values that the Singapore society holds.

We have issued several Client Updates on the Penal Code Amendments. To view our earlier Client Updates in relation to this, please click on the respective links below:

- Client Update November 2006 – [Consultation On The Proposed Penal Code Amendments](#)
- Client Update September 2007 – [The Penal Code \(Amendment\) Bill Was Introduced In Parliament](#)



If you would like more information on the above, please contact Francis Xavier, Hamidul Haq or K. Murali Pillai, whose contact details appear on the left of page 2, or contact the Knowledge & Risk Management Group at eoasis@rajahtann.com, and we would be happy to assist you.

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