

Public Consultation on Proposed Amendments to the Penal Code

On 9 September 2018, the Ministry of Home Affairs and Ministry of Law ("MinLaw") issued a **public consultation on the proposed amendments to the Penal Code**, recommended by the Penal Code Review Committee ("PCRC") in its report.

The proposed changes are in relation to (i) enhancing protection for vulnerable victims; (ii) keeping up with technological change; (iii) tackling emerging crime trends; (iv) updating the Penal Code; (v) harmonising criminal laws; and (vi) updating the sentencing framework.

This Update provides a brief summary of the key and salient points of the proposals in the PCRC report that refer to keeping up with technological change and tackling emerging crime trends. The PCRC report may be obtained from MinLaw's website [here](#).

Keeping up with technological change

To redefine and harmonise the meaning of 'property'.

Whilst the definition of 'property', 'movable property' and 'immovable property' are found in various statutes including the Interpretation Act, Criminal Procedure Code, and Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, the Penal Code currently defines 'movable property' to include only 'corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.'

This definition creates a gap in criminal law with respect to intangible property (e.g., debts, air miles and virtual currency) and incorporeal property (e.g., drawing rights from a bank).

The recommendation is to set out a more comprehensive definition of 'property' to include

both intangible and incorporeal property, and thereafter to amend the definition of 'theft' in section 378 of the Penal Code to include theft of incorporeal property.

To extend the definition of 'valuable security' to include electronic records.

The current definition of 'valuable security' in section 30 of the Penal Code refers to a 'document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.'

A 'document' is defined in section 29(d) of the Penal Code to include 'discs and other devices in which data is embodied.' In modern commerce however, a contract may be drafted, signed and archived entirely in electronic form (e.g., a PDF document) and that such electronic record, which is not the hard disk or server on which it resides, may amount to 'valuable security'.

It is recommended, therefore, that section 30 of the Penal Code be amended to extend 'valuable security' to electronic records and not just documents.

To clarify that corporate entities are capable of being deceived and induced.

The offence of cheating in section 415 of the Penal Code currently refers to the act of deceiving a 'person' and section 11 defines 'person' as 'any company or association or body of persons, whether incorporated or not.'

However, it needs to be made clear that corporate entities can be deceived regardless of whether any of its human agents are personally deceived or personally induced so to act. The PCRC

recommends that an explanation be added to section 415 to clarify this.

This explanation is intended to cover government bodies such as Ministries and Statutory Boards but it is not recommended that specific language be included to refer to such bodies as such bodies should already be included in the natural meaning of 'any... association or body of persons, whether incorporated or not.'

To create new offences relating to computer programs.

It is suggested that while no legislative amendments are immediately necessary, the Government should actively explore and develop a suitable framework to address the issue of criminal liability for harm caused by a computer program, in light of the advancement of machine learning, natural language processing and high degrees of autonomy of the program (commonly referred to as Artificial Intelligence).

As a starting point for future discussions on this, the PCRC discussed the possibility of creating two offences:

- (i) Subjecting those who make and alter computer programs ("**programmers**") and those who use them ("**operators**") to similar potential criminal liability as those operating machinery, an offence found in section 287 of the Penal Code. This possible new offence of negligence in relation to a computer program would impose potential criminal liability on programmers and operators; and
- (ii) Criminalising the harm that may result from computer programs by imposing a duty to take reasonable steps to cease such harm after it manifests.

To create new identity theft offence.

Electronic identification is increasingly critical to commercial and financial transactions, but the means of securing such identification has not

necessarily kept pace with the ability of criminals to abuse and exploit it.

It is found that the current offence of cheating by personation in section 416 of the Penal Code is no longer adequate to criminalise the myriad forms of identity theft that can occur in modern society.

The recommendation, therefore, is to create a new offence of illegal possession of another person's identity information.

To extend territorial jurisdiction for white collar crimes.

The PCRC report highlighted that many property and white-collar offences have multiple fact elements and it is currently not clear which fact elements must occur in Singapore for our criminal justice system to have jurisdiction over that offence.

The recommendation is to set out a schedule of offences (consisting of important property and white-collar offences) under which the Singapore courts will have jurisdiction where any fact element of the offence that takes the form of an event occurs in Singapore; and to specify that for scheduled offences, the Singapore courts will have jurisdiction where the offence involved an intention to make gain or cause loss or expose another to a risk of loss or cause harm to any person in body, mind, reputation or property, and that gain, loss or harm occurred in Singapore.

Tackling emerging crime trends

To create new offence of 'no-outcome' fraud.

The most commonly used offence governing fraudulent acts in Singapore is cheating. The current definition of 'cheating' applies only where the accused person both intended to cause a loss or gain and the victim was factually deceived, the accused person having thereby induced or caused the victim to do certain acts.

For fraud-related offences, it is recommended that the focus should be on the intent of the accused person rather than the effects of a deception on the victim. The proposal, therefore, is to create a new offence of 'no-outcome' fraud, which is committed by any person who, fraudulently or dishonestly, (a) makes a representation, (b) fails to disclose information which he is under a legal duty to disclose, or (c) abuses, whether by act or omission, a position he occupies in which he is expected to safeguard, or not to act against, the financial interests of another person.

To create new offence of obtaining services fraudulently.

The current definition of 'cheating' in section 415 of the Penal Code requires the response of the person deceived ("**victim**") to fall within the acts defined in the section i.e., the victim must (i) deliver any property to any person, (ii) consent that any person shall retain any property, or (iii)

do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property.

It may be difficult to establish that the victim's response falls within any of these acts in some cases, e.g., when the victim is deceived into providing a service for the accused person at no measurable cost to the victim or in other cases, services are obtained fraudulently but where the fraudulent act does not involve any kind of false representation.

It is recommended, therefore, that a new offence of obtaining services fraudulently be created, to make it an offence to fraudulently or dishonestly obtain a service knowing that it is being made available on a "for-payment" basis, but nevertheless not intending that any payment be made.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:



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