

TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS & DATA PROTECTION

An Overview of Key Changes Introduced by the CMA Amendment Bill

Introduction

In our previous [Legal Update](#), we provided a brief overview of the recent developments and key legislative changes in the technology, media and telecommunications & data protection ("TMT") space in Malaysia. Since then, some of the bills that were passed by the House of Representatives have now been passed by the upper house of the Malaysian Parliament (i.e. the Senate). These bills are now currently awaiting Royal Assent and publication in the Federal Gazette before they become law and will come into operation on a date appointed by the Minister of Communications ("Minister").

This Update aims to provide an overview of the [Communications and Multimedia \(Amendment\) Bill 2024](#) ("CMA Amendment Bill"), which introduces significant amendments to the Communications and Multimedia Act 1998 ("CMA"). The CMA Amendment Bill reflects the Malaysian government's ongoing commitment and effort to combat cybercrime, ensure online safety and address network security risks.

Key Changes

We set out below key notable changes introduced by the CMA Amendment Bill.

Changes to the CMA	Explanation
Changes with regard to access agreements under Section 150	<p>Prior to the amendments, the Malaysian Communications and Multimedia Commission ("MCMC") would only register an access agreement for the provision of listed network facilities or services and all amendments that arise from it ("Access Agreement") upon being satisfied that it is consistent with the CMA and relevant instruments, including the Mandatory Standards on Access ("Access Requirements").</p> <p>With the amendments, an Access Agreement now only needs to be lodged with MCMC within 30 days from the date of execution of the Access Agreement. However, this also means that the onus will be on the parties to the agreement to ensure that the Access Agreement is compliant with the Access Requirements.</p>
Requirement for MCMC to publish spectrum plan	<p>Any spectrum plan developed by MCMC must now be published and made available to the public by any means, and MCMC may at any time modify, vary or revoke the spectrum plan and publish such changes.</p>

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Changes to the numbering and electronic addressing plan	MCMC may modify, vary or revoke the numbering and electronic addressing plan (" NEAP ") and publish any such changes. MCMC may issue a direction to any person to comply with the NEAP, and failure to comply with this direction may result in a financial penalty.
Changes to consumer protection requirements under PART VIII	As Section 187 of the CMA, which provides for an exemption for non-licensees, has been removed, it follows that all network facilities providers, network service providers, application service providers or content applications service (" CAS ") providers (" CASP "), whether licensed or unlicensed, will be required to comply with consumer protection requirements under Section 188 of the CMA. Failure to comply may result in a financial penalty.
Changes relating to the Consumer Forum and Consumer Code	<p>The industry body to regulate consumer issues is now no longer limited to one industry body only (i.e. it is no longer limited to the Consumer Forum alone).</p> <p>Section 190 of the CMA has been amended to require any consumer code to also address the provision of information to customers regarding quality of service standards and service level agreements as well as the prohibition of procedurally and/ or substantially unfair contract terms.</p>
Limitation of Section 211	<p>With the proposed amendments, Section 211 of the CMA which initially prohibited the provision of "indecent, obscene, false, menacing, or offensive" content by a CASP, or a person using a CAS, will now be applied in the following manner:</p> <ul style="list-style-type: none"> • Section 211 of the CMA will now only apply to CASPs, and does not apply to a person using a CAS; and • the prohibited content under Section 211 of the CMA is now limited to "indecent, obscene, false, menacing, or <u>grossly</u> offensive" content. <p>For completeness, the provision of prohibited content by a person using a CAS will now be governed under Section 233 of the CMA.</p>
New power to suspend any CAS	<p>New Section 211A of the CMA empowers MCMC to direct a CASP to suspend its service, in the event of:</p> <ul style="list-style-type: none"> • a contravention of provisions relating to content requirements under the CMA; • a breach of licensing conditions relating to content; or • non-compliance with instruments relating to content as issued by the Minister or MCMC.

Changes to the CMA	Explanation
Changes relating to the Content Forum and the Content Code	<p>The industry body to regulate content is no longer limited to one industry body only (i.e. it is no longer be limited to the Content Forum alone).</p> <p>Section 212 of the CMA has been amended to allow MCMC to designate one or more industry bodies as one or more content forums to prepare content codes which are specific to different segments of the communications and multimedia industry.</p> <p>The Content Code may now address matters relating to content filtering, by way of an amendment to be made to Section 213 of the CMA.</p>
Changes to Section 233	<p>Significant amendments have been introduced to revamp Section 233 of the CMA, as summarised below:</p> <ul style="list-style-type: none"> • Similar with Section 211 of the CMA, prohibited content will now be extended to "indecent, obscene, false, menacing, or <u>grossly</u> offensive" content. • The intent in relation to prohibited content is now expanded beyond the initial language of an intent to "annoy, abuse, threaten or harass another person", to also include an intent to "commit an offence involving fraud or dishonesty against any person". • New provisions have been introduced to elaborate and provide examples of prohibited content under Section 233 of the CMA, as per the excerpt in verbatim below. <p><i>Explanation 1</i> — Obscene content may include 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, sexual degradation 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.</p> <p><i>Explanation 2</i> — 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.</p> <p><i>Explanation 3</i> — 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.</p>

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	<p><i>Explanation 4</i> — 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.</p> <p><i>Explanation 5</i> — 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 <i>cause</i> 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.</p> <p><i>Explanation 6</i> — 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 <i>that</i> 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 <i>relation</i> 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.</p>
<p>New prohibition on the sending of unsolicited commercial electronic messages</p>	<p>New Section 233A of the CMA prohibits persons from sending, causing to be sent or authorising the sending of unsolicited commercial electronic messages.</p> <p>The Minister would be empowered to make regulations in relation to unsolicited commercial electronic messages.</p> <p>Failure to comply with such regulations will result in a fine of up to RM1,000,000 (where US\$1 = RM4.4, approximately) and/or imprisonment of a maximum of term of 10 years and a fine of up to RM100,000 for every day or part of a day during which the offence continues after conviction.</p>
<p>Expansion of the powers of the Minister and MCMC</p>	<p>New provisions or changes to expand the powers of the Minister and MCMC (as applicable) have been introduced, including to:</p>

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	<ul style="list-style-type: none"> • dispense with the formality of registration under a class licence (e.g. an ASP(C) Licence for social media or internet messaging services) by making a declaration, and any person so declared shall be deemed to be registered under that class licence; • amend the Schedule to the CMA (which sets out the standard licence conditions) by an order published in the Gazette (following which a parliamentary approval will no longer be required); • expand the scope of matters in which a direction may be issued under the CMA; • expand the scope of matters in which a determination may be issued to promote industry conduct which is consistent with the objects of the CMA, any relevant instrument or provisions of the CMA or its subsidiary legislation; • change the applicable instrument for various powers under the CMA from a direction (which is subject to a process of publication in a public register) to a written instruction (which may be issued privately instead) for the purpose of enforcement; • conduct audits on any licensee or any other person providing services related to communications systems; • designate one or more industry bodies as industry, technical standards, consumer or content forums; and • promote industry regulation on network security and address network security risks.
Increased penalties	<p>The CMA Amendment Bill has introduced or increased penalties for various offences, some of which are as follows:</p> <ul style="list-style-type: none"> • Non-compliance with a direction by MCMC: The maximum penalty has been raised from RM300,000 and/or three years of imprisonment to RM1,000,000 and/or 10 years of imprisonment. • Non-compliance with registered voluntary industry code under Section 99 of the CMA: MCMC may impose a financial penalty of up to RM500,000 on any person who fails to comply with the direction of MCMC regarding a voluntary industry code. • Non-compliance with Mandatory Standards under Section 105 of the CMA: MCMC may impose a financial penalty of up to RM500,000 on any person who fails to comply with a direction of the MCMC regarding mandatory standards.

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	<ul style="list-style-type: none"> • Non-compliance with Licensing requirements under Section 126 of the CMA: The maximum penalty has been raised from RM500,000 and/or five years of imprisonment to RM1,000,000 and/or 10 years of imprisonment. There is also a further increase from RM 1,000 to RM 100,000 as the penalty imposed for an offence for every day or part of a day during which the offence is continued after conviction. • Non-compliance with Licensing Conditions under Section 127 of the CMA: MCMC may impose a financial penalty not exceeding RM500,000 on a licensee who fails to comply with a direction to comply with licence conditions. • Non-compliance with consumer protection requirements under Section 188 of the CMA: The maximum penalty has been raised from RM20,000 and/or six months of imprisonment to a financial penalty of up to RM1,000,000. • Damage to network facilities, etc. under Section 235: The maximum penalty has been raised from RM300,000 and/or three years of imprisonment to RM500,000 and/or five years of imprisonment. • Non-compliance with Section 211 of the CMA: The maximum penalty has been raised from RM50,000 and/or one year of imprisonment and a further fine of up to RM1,000 for every day or part of a day during which the offence is continued after conviction to RM1,000,000 and/or 10 years of imprisonment and a further fine of RM100,000 for every day or part of a day during which the offence is continued after conviction. • Non-compliance with Section 233 of the CMA: <ul style="list-style-type: none"> (i) The maximum penalty for an offence committed under Section 233(1) has been raised from RM50,000 and/or one year of imprisonment and a further fine of up to RM1,000 for every day or part of a day during which the offence is continued after conviction, to RM500,000 and/or two years of imprisonment and a further fine of RM5,000 for every day or part of a day during which the offence is continued after conviction. (ii) If this offence has been committed against a child who is under the age of 18 years, the CMA Amendment Bill introduces a different and higher penalty, namely a maximum fine of RM500,000 and/or five years imprisonment and a further fine of RM5,000 for every day or part of a day during which the offence is continued after conviction.
New Chapter on Network Security	New Section 230A of the CMA empowers MCMC to register certifying agencies, including agencies outside Malaysia, for the purposes of certifying compliance with regulations or standards related to network security under the CMA.

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	Additionally, new Section 230B of the CMA empowers MCMC to take pre-emptive measures to prevent, detect or counter any network security risk.
New right of private action for contravention of Sections 235 or 236	New Section 236A of the CMA provides a right of action in civil proceedings for any person who suffers loss or damage directly or as a result of a contravention by another party of Sections 235 (damage to network facilities, etc) or 236 (fraud and related activity in connection with access devices, etc) of the CMA.
New Sections 252A and 252B on the preservation or disclosure of stored communications data	New Sections 252A and 252B of the CMA empower police officers or authorised officers to require a person in control of communications data and its system to preserve and/or disclose such communications data in accordance with a written notice to be provided.

Concluding Remarks

With the many changes introduced by the CMA Amendment Bill, it is vital that affected organisations stay informed about the developments in the TMT space and commence taking proactive measures in reviewing their operations and internal policies to ensure continued compliance, especially bearing in mind the introduction of stricter penalties for certain offences.

We hope that the Update above provides you with an informative overview of the CMA Amendment Bill. Should you require any assistance or clarification in relation to the above, or any matter relating to TMT and data protection, feel free to contact us at your convenience.

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