

The Transboundary Haze Pollution Act (THPA) and its Application to Individuals

Introduction

Since air quality in Singapore hit unhealthy levels in recent weeks, much discussion has taken place about the THPA. The focus of the discussion has mainly been on the effectiveness (or otherwise) and challenges of enforcing the THPA against corporates for causing, contributing or condoning to haze pollution in Singapore. This Client Update complements the focus with a consideration of the personal legal risks that individuals may face under the THPA.

Entities

'Entities' are the primary target of the THPA. The main operative provisions of the Act are:

- a) section 5, which creates an offence for an entity to
 1. engage in conduct, or to engage in conduct that condones the conduct of another entity or individual, which causes or contributes to haze pollution in Singapore; or
 2. participate in the management of another entity which owns or occupies land overseas and engages in conduct, or engages in conduct that condones the conduct of another entity or an individual, which causes or contributes to haze pollution in Singapore.

The offence is punishable by a fine of up to \$100,000 for each day the haze pollution in Singapore continues at or about the time of the entity's conduct, subject to an aggregate cap of \$2 million;

- b) section 6, which creates a parallel statutory duty for an entity not to engage in the above proscribed conduct;. Breach of this duty may result in a liability to pay compensation to a victim in Singapore who because of the breach, suffers physical (or mental) harm or death, property damage, or economic loss in Singapore; and
- c) section 9, which imposes a duty on an entity to comply with a preventive measures notice issued to it by the Director-General of Environmental Protection (DGEP) to do or refrain from doing anything specified in the notice for the purpose of preventing, reducing or controlling any haze pollution in Singapore. While noncompliance with a notice is not an offence as such, an entity may be subject to additional fines for noncompliance of a notice if it were subsequently to be convicted for an offence under section 5.

In the THPA, an 'entity' refers to any sole proprietorship, partnership, corporation or other corporate or unincorporated body of persons.

Individuals

This does not mean, however, that the THPA does not also target individuals. Individuals may be implicated under the Act in two ways:

Administration

Firstly, the DGEP may under section 10 of the THPA, by written notice to any person (which includes individuals), whether in or outside Singapore, require the person to provide all documents and information which relate to

any matter necessary to carry out the functions or duties of the DGEP or the National Environment Agency (NEA) under the Act, and which are within that person's knowledge or in that person's custody or under that person's control. Failure to comply with a notice is an offence punishable by a fine of up to \$5,000 and/or imprisonment for a term of up to 1 month.

In the case of an individual in Singapore, the notice may be delivered personally to the individual. An individual, whether inside or outside Singapore, may also be served a notice in any mode that the individual has consented to.

Further, if a court is satisfied that any person served with a notice intends to leave Singapore, the court may, on the application of the Public Prosecutor, order the person to remain in Singapore for such period as the court considers reasonable to ensure that the person complies with the notice.

Investigation

In addition, section 11 of the THPA empowers the DGEP to, for the purpose of investigating any offence under section 5,

- a) examine orally any person who appears to be acquainted with matters related to the offence;
- b) require by written notice the attendance before the DGEP of any person in Singapore who appears to be acquainted with matters related to the offence. If the person fails to do so, the failure may be reported to a Magistrate who may then issue a warrant to secure that person's attendance as required in the notice. Pursuant to section 15, the individual may be served the notice in one of several ways:
 - 1. by delivery to the individual personally;
 - 2. by leaving it with an adult person apparently resident at, or by sending it by prepaid registered post to, the usual or last known address of the place of residence of the individual;
 - 3. by affixing a copy of the notice in a conspicuous place at the usual or last known address of the place of residence or business of the individual; or
 - 4. by sending the notice by fax to the fax number used at the usual or last known address of the place of residence or business of the individual.
- c) require any person to provide any information or produce any book or document in that person's possession. It appears that such persons may include individuals outside Singapore in this instance since the THPA does not explicitly provide otherwise. There is also no explicit requirement for the DGEP to serve notices to communicate the requirement to the person. However, the service modes set out in section 15 are equally applicable to the giving or service of documents and orders requiring the provision of information, books, or documents.

The THPA does not provide that the refusal to be examined orally, failure to attend before the DGEP, or to produce the required information or document is an offence. Nevertheless, section 14 provides that it is an offence to obstruct, hinder or delay the DGEP in the performance or execution of his or her duty or of anything which the DGEP is empowered or required to do by or under the Act, punishable by a fine of up to \$10,000 and/or by imprisonment for a term of up to 3 months; and in the case of a second or subsequent conviction, by a fine of up to \$20,000 and/or imprisonment for a term of up to 3 months. It should be appreciated that the ambit of this offence appears to be a wide one.

Officer in default

Secondly, section 16 provides that where any offence under the Act has been committed by a corporate, a person who at the time of the commission of the offence was an officer of the corporate, i.e., a director, partner, member of the committee of management, chief executive, manager, secretary, or other similar officer, purporting to act in such capacity, may also be guilty of the same offence and proceeded against and punished accordingly, unless the person proves:

- a) that the offence was committed without the person's consent, connivance or privity; and
- b) the person exercised all such diligence to prevent the commission of the offence as the person ought to have exercised, having regard to the nature of the person's functions in that capacity and to all the circumstances.

It should be noted in this regard that for this purpose, there is no requirement that the corporate must first be convicted of the offence. Indeed, it does not even appear to be necessary that the corporate must first be proceeded against for the offence.

Conclusion

In summary, while entities are the primary targets of the THPA, individuals, including individuals outside Singapore in some cases, who possess information or documents related to matters necessary to carry out the functions or duties of the DGEP or NEA under the Act, or for the purpose of investigating section 5 offences, may be required to provide such information or produce such documents. What makes these requirements particularly onerous for individuals is that they do not automatically lapse with time; for example, some investigations which commenced during the haze pollution in 2015 remain ongoing to this day. When purporting to act as officers of a corporate, individuals in and outside Singapore must also exercise all diligence to make sure these corporates do not commit offences under the Act.

The THPA supplements and reinforces corporate accountability for haze pollution in Singapore through personal accountability. Corporate conduct that cause, contribute to, or condone haze pollution in Singapore are ultimately initiated and implemented by individuals, and the prospect of personally being legally required to provide information or documents or assist in investigations; or of personal criminal liability for offences should put such individuals on their guard.

This Client Update was authored by our Head of ESG, Dr Joseph Chun.

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