

**ANNEX I – DRAFT TEXT & EXPLANATORY NOTES**

**EXTRACT FROM VERSION 14 FSSB ON MARKETING**

**General interpretation**

**3.—(1)** In this Act —

“advertise” or “advertising” as a verb, has the meaning given by section 7(2);

“advertisement” has the meaning given by section 7(5);

“label”, in relation to any goods, includes any tag, brand, stamp, mark, stencil or written statement, any representation or design, or any descriptive matter, that —

- (a) is attached to, annexed or affixed to the goods or any container or packaging of or thing used in connection with the goods;
- (b) is written, printed, stamped or located on the goods or any container or packaging of or thing used in connection with the goods;
- (c) is determined on the basis of anything encoded on or in relation to the goods;
- (d) is displayed or used in connection with, or is accompanying, the goods or anything on which the goods are mounted for display or exposed for supply; or
- (e) is otherwise applied to the goods or any container or packaging of or thing used in connection with the goods in a manner from which it may reasonably be inferred that it is applicable to those goods,

and includes a label that is partly obscured by another label that is written, stamped or located partly over the firstmentioned label;

(2) For the purposes of this Act and without limiting the generality of the definition of “content” in subsection (1) —

- (a) any content consisting of or including a hyperlink is taken to include the content that may be accessed directly via the hyperlink; and
- (b) any content consisting of or including an image or item on which data is stored electronically (such as a QR code) is taken to include content that may be accessed directly by means of the image or item.

(3) For the purposes of this Act and without limiting the generality of the definition of “label” in subsection (1), the following content is taken to be a label:

- (a) any content that may be accessed directly via a hyperlink comprised in any content on or in a label;

(b) any content that may be accessed directly by means of an image or item on or in a label on which data is stored electronically (such as a QR code).

(4) For the purposes of this Act, a label is attached to a container or packaging of goods if the label is securely attached or affixed to, appears on, or is included with, the container or packaging, and —

(a) a reference to a label attached to a container or packaging includes a reference to writing appearing on the container or packaging; and

(b) a reference to attaching a label to a container or packaging includes a reference to putting writing on the container or packaging.

(8) In determining for the purposes of this Act whether a person is physically present in Singapore, it is to be assumed that the person will not falsify or conceal the person's identity or location.

### **Meaning of “publish in Singapore”, “advertise” and associated terms**

7.—(1) In this Act, “publish in Singapore”, in relation to any content, means communicating, distributing, or making available or making known, the content to the general public, in whatever form and by whatever means, such as (but not limited to) —

(a) including the content in a newspaper, magazine, leaflet, brochure, ticket or other document that is available, or distributed, to the general public;

(b) including in a film, video, television programme or radio programme that is, or is intended to be, seen or heard by the general public;

(c) publicly displaying the content, or something that contains the content, in Singapore;

#### *Examples*

A blimp, a gas-inflated balloon or other like object which is attached or anchored to the ground and upon which content is displayed.

An animated billboard.

A computer monitor, screen or digital display panel or similar appliance designed to be used primarily for the reception and display of any content capable of being received, or received and displayed, as visual images (whether moving or still) with or without sound, from a broadcasting service, where the monitor, screen, panel or appliance is situated in common property.

(d) leaving the content, or something containing the content, in such a position in a public place and in such circumstances as to indicate that it is intended to be available for collection by members of the general public who are in a public place;

(e) selling, hiring out or supplying the content, or something containing the content, to the general public, or offering the content, or something containing the content, for sale or supply to, or hire by, the general public;

- (f) posting the content as online material, to which any person physically present in Singapore is capable of having access through the internet;
- (g) providing the content on or by any service that —
  - (i) is a social media service, a relevant electronic service or a telecommunication service (such as but not limited to SMS and MMS); and
  - (ii) is —
    - (A) between a point in Singapore and one or more other points in Singapore; or
    - (B) between a point and one or more other points, where the firstmentioned point is outside Singapore and at least one of the other points is inside Singapore,

so that the content is accessible to or delivered to, one or more users of the service who are physically present in Singapore;

- (h) direct marketing of the content to any individuals physically present in Singapore; or
- (i) publishing the content on an app (including a smartphone or tablet app) to which any person physically present in Singapore is capable of having access through the internet.

(2) In this Act, “advertise”, or “advertising” as a verb, means to publish, or to cause or authorise to be published, in Singapore any advertisement.

(3) For the purposes of this Act and without limiting the generality of the definition of “advertise” or “advertising” in subsection (2), a person is to be treated as causing or authorising to be published, content in Singapore if the person —

- (a) pays for, commissions, or authorises the content, or something that contains the content, to be published in Singapore; or
- (b) receives consideration for the display, placement or location of the content, or something that contains the content, in a manner described in subsection (1) and the display, placement or location of the advertisement is determined by systems or processes that are agreed between the parties entering into the contract relating to the advertisement.

(4) However, none of the following, of itself, amounts to advertising by an individual or a person concerned:

- (a) an individual communicating —
  - (i) to the general public of his or her personal opinion in relation to any goods or services or any person who provides goods or services; and
  - (ii) without the individual receiving or agreeing to receive, and without the individual contracting for, any money or money’s worth, for or in connection with his or her communication;

- (b) an individual communicating any content, or something that contains content, that is online material produced entirely by another person —
  - (i) by using —
    - (A) a social media service;
    - (B) a relevant electronic service; or
    - (C) a telecommunication service (such as but not limited to SMS and MMS); and
  - (ii) by —
    - (A) forwarding the content, or the something that contains the content, to; or
    - (B) sharing the content or the something that contains the content with, other users of the service without altering the content; and
  - (iii) without the individual receiving or agreeing to receive, and without the individual contracting for, any money or money's worth, for or in connection with his or her communication;
- (c) an individual expressing through a functionality of a social media service or a relevant electronic service, his or her view about any content, or something that contains any content, that is content produced entirely by another person, being a functionality which enables an end-user of the service to do anything as follows:
  - (i) apply a “like” or “dislike” button or other similar button;
  - (ii) apply an emoji or symbol of any kind;
  - (iii) engage in yes/no voting;
  - (iv) rate or score the content in any way;
- (d) a person providing a service (such as a search engine service) that enables end-users of a social media service, a relevant electronic service or a telecommunication service to search online locations or online material, index search results or otherwise retrieve information or material from the search results;
- (e) a proprietor of any food business displaying or exhibiting, or causing or allowing to be displayed or exhibited, any words or symbols that appear in or on any premises occupied by the proprietor and that relate to the food business, including a menu relating to that food business;
- (f) 2 or more persons communicating content between themselves that is of a private or domestic nature, by using —
  - (i) a social media service;
  - (ii) a relevant electronic service; or
  - (iii) a telecommunication service (such as but not limited to SMS and MMS);

(g) engaging in any other conduct specified or described by the Minister in an order in the *Gazette*.

(5) In this section —

“a point” includes a mobile or potentially mobile point, whether on land, underground, in the atmosphere, underwater or anywhere else;

“access”, in relation to any content that is online material or an online location, means to read, view, hear or otherwise experience the content, and includes —

- (a) access that is subject to a precondition, such as the use of a password;
- (b) access by way of push technology;
- (c) access by way of a standing request; and
- (d) access for a limited period of time only;

“advertisement” means any content that can reasonably be regarded as intended to promote, directly or indirectly —

- (a) the sale of any goods or services; or
- (b) the sale of any brand of goods or services,

but excludes a label unless included as an “advertisement” by regulations made under this Act;

“direct marketing” means the sending of direct marketing material directly to an individual by direct means (such as an email or SMS) other than by an excluded electronic service;

“direct marketing material” means any content where, having regard to the nature of the content, the way in which the content is presented, and the content that can be located using the URLs, telephone numbers or contact information (if any) set out in the content, it would be concluded that the purpose, or one of the purposes, of the content is an advertisement to promote —

- (a) the sale of any goods or services; or
- (b) the sale of any brand of goods or services;

“excluded electronic service” means —

- (a) an electronic service where the only user-generated content enabled by that service is one-to-one live aural communications;
- (b) an electronic service where the only user-generated content enabled by that service is communication between 2 or more persons that is of a private or domestic nature; or
- (c) an electronic service where the user-generated content enabled by that service is accessible substantially or only to a closed group of persons employed or engaged in a business (whether or not carried on for profit) and solely for their use as a tool in the conduct of that business;

“MMS” means a service that enables the transmission of multimedia messages (such as visual or voice communication) from an end-user on a mobile telephone to another mobile telephone through a telecommunication service;

“point-to-multipoint service” means an electronic service which allows a person to transmit material to more than one end-user simultaneously;

“posting”, by a person of any content as online material, means the person causing the content to be accessible to, or delivered to, one or more other persons who can access the content through the internet;

“publicly display”, for any content, means to display, exhibit, screen or project the content —

- (a) in a public place in order that another person may see the content;
- (b) in or on a conveyance (whether mobile or stationary) which is used to provide a public passenger transport service and is in a public place, in order that another person may see the content; or
- (c) in any place in a way so that anyone in a public place can see the content from inside or outside the firstmentioned place;

“public passenger transport service” means a service involving the transport of passengers within, or partly within, Singapore for hire or reward, by —

- (a) a motor vehicle;
- (b) a train (including rolling stock); or
- (c) a vessel,

but does not include a service that provides transport by a motor vehicle that is generally conducted on land that is not a road;

“relevant electronic service” means any of the following electronic services that is supplied to the general public, and is not an excluded electronic service:

- (d) an electronic service that enables end-users to communicate, by means of email, with other end-users;
- (e) an online instant messaging service that enables end-users to communicate with other end-users;
- (f) a service that specialises in providing links or facilitating access to, or information about, online locations, such as (but not limited to) a search engine, directory service or web browser;
- (g) a point-to-multipoint service;

“SMS” means a service that enables the transmission of short text messages from an end-user on a mobile telephone to another mobile telephone through a telecommunication service;

“social media service” has the meaning given by section 45T of the Broadcasting Act 1994;

“telecommunication service” has the meaning given by section 2 of the Telecommunications Act 1999.

(7) For the purposes of this section, whether any communication of content on or by a service is or is not of a private or domestic nature must be determined by having regard to all or any one of the following factors:

- (a) the number of individuals in Singapore who are able to access the content by means of the service;
- (b) any restrictions on who may access the content by means of the service (such as a requirement for approval or permission from a user, or the provider, of the service);
- (c) the relationship between the persons that the content is being or has been communicated;
- (d) any other relevant factor.

EXPOSURE DRAFT

## EXPLANATORY STATEMENT

A label is defined in clause 3 to include any tag, brand, stamp, mark, stencil or written statement, any representation or design, or any descriptive matter, that —

- (a) is attached to, annexed or affixed to the goods or any container or packaging of or thing used in connection with the goods;
- (b) is written, printed, stamped or located on the goods or any container or packaging of or thing used in connection with the goods;
- (c) is determined on the basis of anything encoded on or in relation to the goods;
- (d) is displayed or used in connection with, or is accompanying, the goods or anything on which the goods are mounted for display or exposed for supply; or
- (e) is otherwise applied to the goods or any container or packaging of or thing used in connection with the goods in a manner from which it may reasonably be inferred that it is applicable to those goods.

The definition of “label” extends to cover content accessible directly via hyperlinks and QR codes on labels; see clause 3(3). As the space on labels is valuable, it is increasingly common for labels to contain hyperlinks or QR codes which set out or link the consumer to content extrinsic to the label. The expanded definition is directed at addressing a situation where the physical label may be in full conformity with the relevant regulations but the extrinsic content may not.

To avoid overlapping laws, the linked content which is a label is generally not an advertisement; see clause 7(5).

Clause 7 defines “publishing in Singapore” and “advertising” for the purposes of the Bill. The clause covers both traditional and non-traditional forms of advertising. The clause is of particular relevance to the marketing controls contained in Parts 9 and 10 of the Bill, where the offences involving non-compliant advertising are directed at ensuring food safety and at health promotion.

To “advertise” is defined as publishing, causing or authorising to be published, content in Singapore. Publishing in Singapore means communicating, distributing, or making available or making known, the content to the general public in Singapore.

Where content is made available, distributed or communicated in electronic or digital form using a social media service, telecommunication service (like SMS or MMS) or relevant electronic service (like an online instant messaging service or by email), the content is taken to be published in Singapore if it originates from a point in Singapore or is between a point and one or more other points, where the first-mentioned point is outside Singapore and at least one of the other points is inside Singapore.

Clause 7 takes into account the developments in labelling and in digital marketing which have gone beyond advertising methods that the last set of amendments in 2017 to the Sale of Food Act 1973 could take into account.

For example, website marketing today that employs ‘user experience’ (UX) design to help induce customer purchases of a product. Then, there is social media marketing with its interactive elements mimicking communication which would ordinarily not be regarded as advertising, except that social media can include a business paying for advertising on social networks. Finally, there is search engine marketing, which seeks to increase business visibility on a search engine (such as Google or Bing) and therefore encourage or drive traffic to a product or business website. There is also search engine optimisation, which can ‘organically’ rank the business or product website higher in search results.

Clause 7 makes clear what newer digital methods of marketing constitute advertising for the purposes of the Bill.

However, to avoid overreach, some persons who engage in certain modes of digital communication on electronic services would not be treated as advertising.



Examples of persons are excluded are —

- (a) an individual food blogger who voluntarily and without reward posts his or her opinion about an eatery he or she just patronised or a food he or she just ate, would not be advertising about the food;
- (b) an individual forwarding or sharing, without reward, any online material produced entirely by another person, without altering the content;
- (c) a person providing a search engine service; and
- (d) 2 or more persons communicating content between themselves that is of a private or domestic nature.

EXPOSURE DRAFT

## PART 9

### FOOD AND HEALTH PROMOTION

#### Definitions for Part 9

172. In this Part —

“non-communicable disease of public health interest” means a non-communicable disease determined under section 173;

“Part 9 offence” means an offence under any subsidiary legislation made under section 174;

“population” means the population in Singapore;

“target food”, in relation to a non-communicable disease of public health interest means one or more identifiable foods the consumption of which contributes, or might, based on the available scientific evidence, contribute, to the occurrence of a non-communicable disease of public health interest.

#### Non-communicable disease of public health interest

173.—(1) The Minister may determine a disease as a non-communicable disease of public health interest where the Minister is satisfied —

(a) that one or more identifiable foods consumed contributes to the occurrence of that disease; and

(b) that the disease —

(i) is likely to adversely affect the health of the population over a period of time;

(ii) causes significant chronic disease, disability or mortality in the population;

(iii) interferes with or is inconsistent with the goals of public health; or

(iv) is associated with poor health outcomes in the population.

(2) A determination under subsection (1) may be made after consulting the Director-General of Health.

(3) Once a determination is made under subsection (1), the Minister must cause to be published a notice of the making of the determination as follows without delay:

(a) in the *Gazette*; or

(b) in any other manner that will secure adequate publicity for the fact of making of the determination.

(4) However, failure to publish a notice under subsection (3) in respect of any determination does not invalidate the determination.

(5) A determination made under subsection (1) may be revoked at any time by the Minister; and the Minister must cause the giving of notice of the revocation in the same manner in which the notice of the making of the determination was first given.

## **Part 9 Regulations**

**174.**—(1) The Minister may make regulations in relation to —

- (a) one or more identifiable foods which are target foods related to the occurrence of a non-communicable disease of public health interest, for the purpose of preventing or reducing the occurrence of that disease in Singapore;
  - (b) any identifiable foods, for the purpose of informing individuals adequately about the food, and influencing and assisting them, to make food choices affecting their health and well-being and that of their families; or
  - (c) the advertising of identifiable food or how it is promoted for sale, for the purpose of promoting public health.
- (2) Without limiting subsection (1), those regulations may —
- (a) prohibit the import of target foods or restrict the import of other foods;
  - (b) restrict or prohibit the manner in which target foods are manufactured, prepared, distributed or supplied, or used in the manufacture or preparation of other foods, including the composition, contents and additives of those target foods;
  - (c) restrict or prohibit the manner in which the general public, or certain members of the general public, may acquire or obtain access to target food;
  - (d) restrict or prohibit the content used in advertising or labelling of food for supply, including (but not limited to) —
    - (i) requiring, or prohibiting, specified content in any advertisement or label relating to that food; and
    - (ii) prescribing the form of the content required under sub-paragraph (i), including (but not limited to) its size and colour, or the size, colour and font type of the content and how it is displayed;
  - (e) require warnings to be included in content used in advertising, or content of labels, relating to target foods for supply, including —
    - (i) requiring a warning label that is intended to inform the general public of the danger of a link between consuming a target food and the non-communicable disease of public health interest; and
    - (ii) prescribing the form of the warning required under sub-paragraph (i), including (but not limited to) its size and colour, or the size, colour and font type of the warning, or the size, colour and font type of the content, and how it is displayed; and

- (f) require the placement or display (including in a menu) at food premises in connection with the sale of food at those premises, of prescribed dietary and nutritional information about the food;
  - (g) restrict or prohibit the medium or manner in which food is advertised or sponsored or is promoted for sale, including requiring or prohibiting advertising in relation to the food at specified times or at specified premises;
  - (h) create offences for a contravention of any provision of the regulations, the penalty for which on conviction may be a fine not exceeding \$10,000 or imprisonment for a term not exceeding 6 months or both;
  - (i) specify the Part 9 offences that may be compounded; and
  - (j) provide for any saving, transitional and other consequential, incidental and supplemental provisions that are necessary or expedient.
- (3) Regulations made under this section may apply —
- (a) in respect of all food businesses or particular categories of food businesses, whether or not the food business is licensable;
  - (b) in respect of all food premises or particular categories of food premises;
  - (c) in respect of all persons who engage in conduct to promote the sale of food or particular categories of such persons;
  - (d) in respect of all advertising or particular media, content or nature of advertising;
  - (e) in respect of all foods or particular categories of food;
  - (f) in respect of all methods of supply of any food mentioned in paragraph (e) or particular methods of supply of that food; or
  - (g) in respect of the population generally or particular communities in the population.

### **Part 9 enforcement officers**

**175.**—(1) The Director-General of Health may, in relation to —

- (a) any provision of this Part or Part 13;
- (b) any Part 9 regulations; or
- (c) any provision in Part 10 involving any Part 9 regulations,

appoint any individual in subsection (2) as a Part 9 enforcement officer for the purpose of that provision and in relation to one or more Part 9 offences.

(2) Any of the following individuals may be appointed under subsection (1) as a Part 9 enforcement officer if he or she is suitably trained to properly exercise the powers of a Part 9 enforcement officer:

- (a) a public officer;
- (b) an employee or officer of a public authority;
- (c) any auxiliary police officer appointed under the Police Force Act 2004.

(3) The Director-General of Health may, for any reason that appears to the Director-General of Health to be sufficient, at any time revoke an individual's appointment under subsection (1) as a Part 9 enforcement officer.

(4) The Director-General of Health must issue to each Part 9 enforcement officer an identification card (in physical or digital form) which must be carried at all times by the Part 9 enforcement officer when the officer is exercising any power under any provision of Part 13 in relation to a Part 9 offence.

(5) Every Part 9 enforcement officer whose appointment as such ceases must return without delay to the Director-General of Health any identification card issued to him or her under subsection (4).

(6) A former Part 9 enforcement officer who, without reasonable excuse, fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,500 or to imprisonment for a term not exceeding 6 months or to both.

### **Remedial notices**

**176.**—(1) This section applies if a Part 9 enforcement officer reasonably believes —

(a) a person —

(i) is contravening a provision of any Part 9 Regulations;

(ii) is or has committed an offence under section 184 by contravening a requirement of any Part 9 Regulations; or

(iii) has contravened a provision of any Part 9 Regulations in circumstances that make it likely the contravention will continue or be repeated;

(b) a matter relating to the contravention can be remedied; and

(c) it is appropriate to give the person an opportunity to remedy the matter.

(2) The Part 9 enforcement officer may give the person in subsection (1)(a) a remedial notice requiring the person to remedy the contravention or have the contravention remedied.

(3) The remedial notice must state all the following:

(a) that the Part 9 enforcement officer reasonably believes the person the notice is addressed to —

(i) is contravening a provision or requirement of any Part 9 Regulations; or

(ii) has contravened a provision or requirement of any Part 9 Regulations in circumstances that make it likely the contravention will continue or be repeated;

(b) the provision or requirement the Part 9 enforcement officer believes is being, or has been, contravened (called the relevant provision);

(c) briefly, how it is believed the relevant provision is being, or has been, contravened;

- (d) the period in which the person must remedy the contravention or have the contravention remedied;
- (e) that it is an offence to fail to comply with the remedial notice unless the person has a reasonable excuse.

(4) The remedial notice may also state the reasonable steps that the Part 9 enforcement officer considers necessary to remedy the contravention, or avoid further contravention, of the relevant provision.

*Example of reasonable steps*

Withdrawing or rectifying advertisements of foods, publishing in Singapore a rectification notice to inform the general public of non-compliant advertisements, or suspending the sale or supply of a specific food.

(5) A Part 9 enforcement officer person must keep a copy of every remedial notice given under this section.

(6) The person to whom a remedial notice is given must comply with the remedial notice unless the person has a reasonable excuse.

(7) A person who contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction —

- (a) where the person is an individual — to a fine not exceeding \$5,000; or
- (b) where the person is not an individual — to a fine not exceeding \$10,000.

(8) If it is an offence to contravene the relevant provision for which the remedial notice is given, the person cannot be prosecuted for that offence unless the person fails to comply with the remedial notice and does not have a reasonable excuse for the non-compliance.

(9) A person may be prosecuted for the contravention of a relevant provision without a Part 9 enforcement officer first giving a remedial notice for the contravention.

## PART 10

### MISLEADING OR DECEPTIVE CONDUCT AND OTHER MARKETING OFFENCES

#### Definitions for Part 10

**177.**—(1) In this Part —

“composition”, in relation to food, includes information about the ingredients or other constituents, or the proportion of ingredients or other constituents, of the food;

“relevant advertising regulations” means —

- (a) the provisions of any regulations made under Part 15 that relate to advertisements; or
- (b) the provisions of the Part 9 Regulations that relate to advertisements;

“relevant regulations” means any of the following that are not relevant advertising regulations:

- (a) the standards or any other regulations made under Part 15;
- (b) the Part 9 Regulations;

“representation” means —

- (a) an express or implied claim or promise; or
  - (b) an express or implied statement made in any way,
- and includes an advertisement or the content of any label.

(2) In this Part, an advertising of an advertisement is Singapore-linked if the person who publishes, or causes or authorises the publishing, in Singapore of the advertisement is —

- (a) an individual physically present in Singapore when he or she publishes, or causes or authorises the publishing, in Singapore of the advertisement;
- (b) an entity which is registered in Singapore (even if incorporated outside Singapore), or is incorporated, under any written law, when the entity publishes, or causes or authorises the publishing, in Singapore of the advertisement; or
- (c) a corporation sole or corporation aggregate established under a private Act when it publishes, or causes or authorises the publishing, in Singapore of the advertisement.

#### Meaning of “falsely describe” in relation to food

**178.**—(1) For the purposes of this Part, food that is falsely described includes food to which any one or more of the following paragraphs applies:

- (a) the food is represented as being of a particular composition or nature for which there is an applicable standard and the food does not comply with that standard;

- (b) any content used on the packaging or in the labelling in or with which the food is packed, labelled or offered for supply would create a false impression as to the composition, effect, nature or origin of the food, in the mind of a reasonable person;
- (c) the food is not of the composition, effect, nature or origin represented by the manner in which the food is advertised, packed, labelled or offered for supply;
- (d) the description of the food conceals the fact that the food is unsafe or unsuitable.

### **Misleading or deceptive conduct in the course of food business**

**179.**—(1) A person commits an offence if the person, in the course of carrying on a food business, engages in conduct that is misleading or deceptive or is likely to mislead or deceive, in relation to —

- (a) the packaging or labelling of food intended for supply; or
- (b) the supply of food.

#### *Illustration*

Making a false or misleading representation about a particular food that purports to be a testimonial by any person relating to the food offered for supply.

(2) A person who is guilty of an offence under subsection (1) shall be liable on conviction —

- (a) where the person is an individual —
  - (i) to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 6 months or to both; or
  - (ii) where the individual is a repeat offender — to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 12 months or to both; or
- (b) where the person is not an individual —
  - (i) to a fine not exceeding \$30,000; or
  - (ii) where the person is a repeat offender — to a fine not exceeding \$60,000.

(3) In subsection (2), “repeat offender”, in relation to an offence under subsection (1), means a person who —

- (a) is convicted, or found guilty, of an offence under subsection (1) (referred to as the current offence); and
- (b) has been convicted or found guilty, on at least one other earlier occasion within the period of 5 years immediately before the date on which the person is convicted or found guilty of the current offence, of an offence —
  - (i) under that same subsection; or
  - (ii) under section 20 of the repealed Sale of Food Act 1973 for contravening section 17 of that Act.



(4) For the purposes of subsection (3), the conviction or finding of guilt for an offence referred to in subsection (3)(b)(ii) may be before, on or after the commencement of this section.

(5) This section does not apply to publication in Singapore of an advertisement relating to food.

(6) Nothing in sections 180, 181 or 182 limits subsection (1).

### **Supplying falsely described food**

**180.**—(1) A person commits an offence if —

- (a) the person, in the course of carrying on a food business, supplies food that is packaged or labelled in a way that falsely describes the food; and
- (b) the person knows, or ought reasonably to know, that the packaging or labelling falsely describes the food.

(2) A person commits an offence if the person —

- (a) supplies in the course of carrying on a food business, any food to another person;
- (b) gives the other person a false warranty for the food; and
- (c) when giving the warranty, knows or ought reasonably to know, that the warranty is false.

(3) A person who is guilty of an offence under subsection (1) or (2) shall be liable on conviction —

(a) where the person is an individual —

- (i) to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 6 months or to both; or
- (ii) where the individual is a repeat offender — to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 12 months or to both; or

(b) where the person is not an individual —

- (i) to a fine not exceeding \$30,000; or
- (ii) where the person is a repeat offender — to a fine not exceeding \$60,000.

(4) In subsection (3), “repeat offender”, in relation to an offence under subsection (1) or (2), means a person who —

- (a) is convicted, or found guilty, of an offence under subsection (1) or (2) (referred to as the current offence); and
- (b) has been convicted or found guilty, on at least one other earlier occasion within the period of 5 years immediately before the date on which the person is convicted or found guilty of the current offence, of an offence —
  - (i) under that same subsection; or

- (ii) under section 20 of the repealed Sale of Food Act 1973 for contravening section 17 of that Act.

(5) For the purposes of subsection (4), the conviction or finding of guilt for an offence referred to in subsection (4)(b)(ii) may be before, on or after the commencement of this section.

### **Supplying falsely described food — strict liability**

**181.**—(1) A person commits an offence if the person, in the course of carrying on a food business —

- (a) supplies to another person food that is packaged or labelled in a way that falsely describes the food; or
- (b) supplies food to another person and gives that person a false warranty for the food.

(2) A person who commits an offence under subsection (1) shall be liable on conviction —

- (a) where the person is an individual — to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months or to both; or
- (b) where the person is not an individual — to a fine not exceeding \$10,000.

(3) In proceedings for an offence under subsection (1) —

- (a) it is not necessary for the prosecution to prove that a person charged knew or had reason to believe that the food is falsely described or the warranty is false, as the case may be; but
- (b) it is a defence to the charge for the person charged to prove, on a balance of probabilities, that the person charged —
  - (i) did not know and could not reasonably have been expected to know, that the food is falsely described when supplied; or
  - (ii) when giving the warranty, had reason to believe that the assertions or statements contained in the warranty were true.

### **Meat substitution**

**182.**—(1) A person must not, during the slaughter of animals to produce meat or meat products, meat processing, do something to the meat —

- (a) with the intention of deceiving someone else about the species of animal the meat is from; or
- (b) that the person knows, or ought reasonably to know, is likely to result in someone else being deceived about the species of animal the meat is from.

(2) A person who is guilty of an offence under subsection (1) shall be liable on conviction —

- (a) where the person is an individual —

- (i) to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 6 months or to both; or
  - (ii) where the individual is a repeat offender — to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 12 months or to both; or
- (b) where the person is not an individual —
  - (i) to a fine not exceeding \$30,000; or
  - (ii) where the person is a repeat offender — to a fine not exceeding \$60,000.
- (3) In subsection (2), “repeat offender”, in relation to an offence under this section, means a person who —
  - (a) is convicted, or found guilty, of such an offence (referred to as the current offence); and
  - (b) has been convicted or found guilty, on at least one other earlier occasion within the period of 5 years immediately before the date on which the person is convicted or found guilty of the current offence, of an offence under this section.
- (4) For the purposes of this section, it is immaterial whether the meat concerned is safe.

### **Mislabelling food for supply**

**183.**—(1) A person commits an offence if the person labels, or causes to be labelled, any food in connection with —

- (a) the supply or possible supply of any food in the course of carrying on a food business; or
- (b) the promotion of the supply or use of any food in the course of carrying on a food business,

in a way that —

- (c) contains any content which is prohibited by any relevant regulations for that food;
- (d) does not contain any content which is required by any relevant regulations to be used in relation to that food; or
- (e) contains content in a form contrary to any relevant regulations as they apply in relation to that food.

(2) A person commits an offence if the person supplies, in the course of carrying on a food business, any food that —

- (a) is labelled in a way that —
  - (i) contains any content which is prohibited by any relevant regulations for that food;

- (ii) does not contain any content which is required by any relevant regulations to be used in relation to that food; or
    - (iii) contains content in a form contrary to any relevant regulations as they apply in relation to that food; or
  - (b) does not bear any label where such a label is required by any relevant regulations in relation to that food.
- (3) In proceedings for an offence under subsection (1) or (2)(a), it is not necessary for the prosecution to prove that a person charged knew or had reason to believe that the label —
- (a) contains any content which is prohibited by any relevant regulations for that food;
  - (b) does not contain any content which is required by any relevant regulations to be used in relation to that food; or
  - (c) contains content in a form contrary to any relevant regulations as they apply in relation to that food.
- (4) In proceedings for an offence under subsection (2)(b), it is not necessary for the prosecution to prove that a person charged knew or had reason to believe that the food does not bear any label where such a label is required by any relevant regulations in relation to that food.
- (5) A person who is guilty of an offence under subsection (1) or (2) shall be liable on conviction —
- (a) where the person is an individual — to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months or to both; or
  - (b) where the person is not an individual — to a fine not exceeding \$10,000.

### **Offences involving non-compliant advertising**

- 184.**—(1) A person commits an offence if —
- (a) the person publishes, or causes or authorises to be published, in Singapore any advertisement about a food or regulated food contact article; and
  - (b) the advertisement contains any content that —
    - (i) contravenes any requirement of the relevant advertising regulations that are applicable to the food or the regulated food contact article; or
    - (ii) is or contains a false description of the food, or is false as to the suitability of the regulated food contact article; and
  - (c) the advertising of the advertisement is Singapore-linked.
- (2) A person who is guilty of an offence under subsection (1) shall be liable on conviction —
- (a) where the person is an individual — to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months or to both; or

(b) where the person is not an individual — to a fine not exceeding \$10,000.

(3) In proceedings for an offence under subsection (1), it is not necessary for the prosecution to prove that a person charged knew or had reason to believe that the advertisement about a food or regulated food contact article contains any content that

(a) does not comply with any requirement of the relevant advertising regulations that are applicable to the food or regulated food contact article; or

(b) is or contains a false description of the food, or is false as to the suitability of the regulated food contact article.

(4) Without limiting subsection (1)(b)(i), an advertisement that contains any content that —

(a) is prohibited by a relevant advertising regulation applicable to a food or regulated food contact article from being made in an advertisement in relation to, or being marked or attached to, the food or regulated food contact article;

(b) expressly or impliedly qualifies, or is contrary to, content required by a relevant advertising regulation to be made in relation to, or to be marked or attached to a food or regulated food contact article; or

(c) fails to include content required by a relevant advertising regulation to be made in an advertisement relating to a food or regulated food contact article,

is to be treated as contravening any requirement of the relevant advertising regulations that are applicable to the food or the regulated food contact article.

(5) In proceedings for an offence under subsection (1)(b)(ii), an advertisement is taken to be false or contain a false description of the food, or is false as to the suitability of the regulated food contact article unless evidence is adduced by the accused to the contrary.

(6) To avoid doubt, subsection (5) does not —

(a) have the effect that, merely because such evidence to the contrary is adduced, the advertisement is not false as to the relevant matter in subsection (1)(b)(ii); or

(b) have the effect of placing on any person the onus of proving that the advertisement is not false as to the relevant matter in subsection (1)(b)(ii).

### **Advertising defined food**

**185.**—(1) A person commits an offence if the person —

(a) advertises any food;

(b) the food is a defined food at the time of the advertising; and

(c) the advertising of the advertisement is Singapore-linked.

(2) A person who is guilty of an offence under subsection (1) shall be liable on conviction —

- (a) where the person is an individual — to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months or to both; or
  - (b) where the person is not an individual — to a fine not exceeding \$10,000.
- (3) For the purposes of this section, it is immaterial whether the food concerned is safe.

### **General defence of due diligence**

**186.**—(1) In a prosecution of a person for an offence under section 179, 180, 181, 182 or 183, it is a defence for the person charged to prove, on a balance of probabilities, that —

- (a) the commission of the offence was due to —
    - (i) an act or omission of another person; or
    - (ii) an accident or some other cause outside the person charged's control; and
  - (b) the person charged took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person, or by another person under the person's control.
- (2) In subsection (1)(a), another person does not include a person who was —
- (a) an employee or agent of the person charged; or
  - (b) if the person charged is an entity, an officer of the entity.

(3) Section 26H(4) of the Penal Code 1871 does not apply in relation to a strict liability offence under this Part.

### **Defence in respect of food for export**

**187.**—(1) In a prosecution of a person for an offence under section 183 involving food, it is a defence for the person charged to prove, on a balance of probabilities, that —

- (a) the food in question is to be exported to another country; and
  - (b) the food complies with the laws (if any) in force at the time of the alleged offence in the place to which the food is to be exported, being laws that deal with the same subject-matter as the provision of this Act concerned.
- (2) This section does not apply to food that was originally intended for export but was supplied in Singapore.

### **Defence relating to advertising**

**188.**—(1) In a prosecution of a person for an offence under section 184 or 185 in relation to advertising any food or regulated food contact article, it is a defence for the person charged to prove, on a balance of probabilities, that the person is acting in the course of a business of delivering, transmitting or broadcasting information or material (in whatever form or by whatever means) or making data available, and the nature of

the business is such that persons undertaking it have no control over the nature or content of the information or material or data.

(2) In a prosecution of a person for an offence under section 184 or 185 in relation to advertising any food or regulated food contact article, it is also a defence for the person charged to prove, on a balance of probabilities, that —

- (a) the advertisement about the food or regulated food contact article was so published as an accidental or incidental accompaniment to the publication of other matter not forming part of any promotion of the food or regulated food contact article in question; and
- (b) the person does not receive any direct or indirect benefit (whether financial or not) for publishing that advertisement, in addition to any direct or indirect benefit that the person receives for publishing that other matter.

(3) In addition, in any proceedings for an offence under section 184 or 185 in relation to advertising any food or regulated food contact article, it is a further defence for the person charged to prove, on a balance of probabilities, that the person —

- (a) is a person whose business is to publish or arrange for the publication of advertisements and that the person received the advertisement for publication in the ordinary course of business; and
- (b) has no financial interest in the food or regulated food contact article featured in the advertisement.

(4) However, subsections (1), (2) and (3) do not apply if the person charged for an offence under section 184 or 185 in relation to advertising any food or regulated food contact article —

- (a) had previously been informed in writing by the Agency or a Part 9 enforcement officer that publishing in Singapore of the advertisement about the food or regulated food contact article or such an advertisement would constitute an offence under this Act;
- (b) ought reasonably to have known that the publishing in Singapore of the advertisement about the food or regulated food contact article was an offence under this Part; or
- (c) is the proprietor of a food business or is otherwise engaged in the conduct of a food business for which the advertisements concerned were published.

(5) To avoid doubt, nothing in this Act limits the operation of section 26 of the Electronic Transactions Act 2010 in relation to network service providers.

# EXPLANATORY STATEMENT

## PART 9

### HEALTH PROMOTION

This Part is administered by the Ministry of Health and consists of 5 clauses.

Clause 172 sets out definitions of terms used exclusively in Part 9. Of note are the definitions of “non-communicable disease of public health interest” and “target food”.

A “target food” must always relate to some non-communicable disease of public health interest. This is defined to mean one or more identifiable foods the consumption of which contributes, or might, based on the available scientific evidence, contribute, to the occurrence of a non-communicable disease of public health interest.

Clause 173 empowers the Minister for Health to make a determination that a disease is a non-communicable disease of public health interest. The determination is made only where the Minister is satisfied that one or more identifiable foods consumed contributes to the occurrence of that disease, and that the disease —

- (e) is likely to adversely affect the health of the population in Singapore over a period of time;
- (f) causes significant chronic disease, disability or mortality in the population in Singapore;
- (g) interferes with or is inconsistent with the goals of public health; or
- (h) is associated with poor health outcomes in the population in Singapore.

Clause 174 empowers the Minister for Health to make Part 9 Regulations to promote the general public’s health through better diet and nutrition. The requirements in the Part 9 Regulations will also be relevant to labelling and advertising offences in Part 10.

Part 9 Regulations may relate to —

- (a) one or more identifiable foods which are target foods related to the occurrence of a non-communicable disease of public health interest, for the purpose of preventing or reducing the occurrence of that disease in Singapore;
- (b) any identifiable foods, for the purpose of informing individuals adequately about the food, and influencing and assisting them, to make food choices affecting their health and well-being and that of their families. For example, requiring Nutri-Grade marks on food for supply; or
- (c) the advertising of identifiable food or how it is promoted for sale, for the purpose of promoting public health.

It is envisaged that Part 9 Regulations may prohibit the import of target foods or restrict the import of other foods, such as the ban on import and use of partially hydrogenated oils in manufacture of food. If so prohibited, the target food then becomes a prohibited food as defined by clause 42. Consignments of such prohibited foods will be treated as failing and stopped at the border.

It is further envisaged that Part 9 Regulations may restrict or prohibit —

- (a) the manner in which target foods are manufactured, prepared, distributed or supplied, or used in the manufacture or preparation of other foods;
- (b) the manner in which the general public, or certain members of the general public, may acquire or obtain access to target food.

Advertising and labelling restrictions may also be prescribed in Part 9 Regulations. The requirements may extend to —

- (a) restricting or prohibiting the content used in advertising or labelling of food for supply, such as advertising prohibitions for beverages rated as having high sugar and saturated fat content;



- (b) requiring warnings or dietary and nutritional information to be included in content used in advertising or labels;
- (c) prescribing the form of the content or warning required, such as its size and colour, or the size, colour and font type of the content and how it is displayed; and
- (d) restricting or prohibiting the medium or manner in which food is advertised or sponsored or is promoted for sale, including requiring or prohibiting advertising in relation to the food at specified times or at specified premises.

Clause 175 provides for the appointment of Part 9 enforcement officers by the Director-General of Health, to support the enforcement of any Part 9 regulations or any provision in Part 10 involving any Part 9 regulations.

Clause 176 empowers a Part 9 enforcement officer to give a remedial notice requiring a person to remedy a contravention which can be remedied, or have such a contravention remedied. A remedial notice may be given if the Part 9 enforcement officer reasonably believes that a person —

- (a) is contravening a provision of any Part 9 Regulations;
- (b) is or has committed an offence under section 184 by contravening a requirement of any Part 9 Regulations; or
- (c) has contravened a provision of any Part 9 Regulations in circumstances that make it likely the contravention will continue or be repeated.

It is an offence to fail to comply with the remedial notice unless the person has a reasonable excuse.

If the remedial notice covers a contravention to be remedied that is an offence, the person cannot be prosecuted for that offence unless the person fails to comply with the remedial notice and does not have a reasonable excuse for the non-compliance.

A remedial notice can contain the reasonable steps that the Part 9 enforcement officer considers necessary to remedy the contravention, or avoid further contravention, of the relevant provision. Examples of reasonable steps are withdrawing or rectifying advertisements of foods, or publishing in Singapore a rectification notice to inform the general public of non-compliant advertisements, or immediately suspending the sale or supply of a specific food.

## PART 10

### MISLEADING OR DECEPTIVE CONDUCT AND OTHER MARKETING OFFENCES

Part 10 has 12 clauses containing offences relating to labelling and advertising about food and regulated food contact articles, and various defences to these offences.

Consumers need accurate and adequate information on food packaging and labels in order to make an informed choice. Consumers cannot make properly informed decisions about the foods they are buying without the help of food businesses.

On the other hand, food businesses commonly devise claims and place information about their products on product packaging and labelling or in broader advertising strategies such as on the internet and broadcasting, so as to influence consumers' decision-making and improve sales. Consumers are known to have been more influenced by celebrity endorsements and novelty rather than nuanced advice or empirical data from medical practitioners and nutritionists, particularly where health or nutritional claims are made. Contemporary placentophagy is one emerging risk.

There is, however, information asymmetry which makes it difficult for any consumer to verify food claims. Food credence attributes like food safety, provenance, the manufacture or production method (e.g. "free-range" and if organic or genetically modified) and the food's standard, quality or value, are matters of quality that cannot be assessed by an ordinary food buyer simply by looking or examining the product at the point of sale.

Intervention via the criminal law is necessary because the consumer is typically unable to properly assess the safety of a food product he or she is buying or take control or other steps to protect themselves before consuming the food. The consumer is also unlikely to sue in a civil action in most circumstances for falling ill as a result of consuming labelled or advertised food, because of difficulties in identifying the source and cause of many illnesses (the food would already have been consumed with any pathogen or contaminant), and the often-low costs typically incurred by most consumers.

Part 10 is therefore directed at protecting consumers from misleading or deceptive food claims (intentional or unintentional) and to ensuring that information about food on product packaging and labelling or disseminated via advertising strategies, are accurate and can be substantiated. This is to ensure that even in an environment with increasing product differentiation and competition for the consumer's dollar, product marketing remains consistent with scientific advice, to ensure honest labelling and which are aligned with the primary ingredients, and to restrict use of nutrition and implied health claims.

Clause 177 sets out definitions which are used mainly or exclusively in Part 10. The notable definitions are "relevant advertising regulations" and "relevant regulations". These 2 definitions reflect the division of responsibility between the Health Ministry and the Ministry of Sustainability and for the Environment regarding labelling and advertising relating to food.

There are definitions in clauses 3 and 7 which are also very relevant to Part 10, such as "content" and "advertisement".

Clause 178 sets out another important definition used in Part 10, namely, "falsely describe" food.

Clause 179 makes it an offence if a person, in the course of carrying on a food business, engages in conduct that is misleading or deceptive or is likely to mislead or deceive, in relation to the packaging or labelling of food intended for supply, or the supply of food. This is a general offence that does not limit the application of the other offences in Part 10.

For example, a manufacturer of fruit juices sells its products which contain a blend of fresh juice and stored juice, with packaging bearing words "fresh squeeze" and images of juice extraction which implied that the juices sold were recently squeezed.

A distributor of frozen poultry products sells the birds — duck, chicken and turkey — with its original packaging indicating that the birds raised were “range reared” when the birds were in fact grown in commercial sheds with no access to the outdoors.

Another example is making representation about a particular food that purports to be a testimonial by any person relating to the food offered for supply.

Clause 179 does not apply to advertising as that is dealt with by clause 184.

Clause 180 makes it an offence if a person, in the course of carrying on a food business, supplies food that is packaged or labelled in a way that falsely describes the food, and the person knows, or ought reasonably to know that the packaging or labelling falsely describes the food.

There is also another offence where a person supplies in the course of carrying on a food business, any food to another person, and gives the other person a false warranty for the food, knowing or ought reasonably to know that the warranty is false.

For example, a manufacturer of meat patties sells its products in packaging bearing the words “100% plant based” when the meat patties contain some ingredients of animal origin.

Clause 181 is the strict liability equivalent to the offence in clause 180. It is an offence if a person, in the course of carrying on a food business, supplies to another person food that is packed or labelled in a way that falsely describes the food, or supplies food to another person and gives that person a false warranty for the food.

For example, a provision shop sells a honey product with packaging bearing a label “Victoria Honey” when the product is in fact made up predominantly of sugars of corn and sugar cane, and that its provenance was not Victoria, Australia but another country.

Clause 182 is a form of misleading or deceptive conduct relating to meat or meat products. It is an offence where a person, during the slaughter of animals to produce meat or meat products, meat processing, does something to the meat —

- (a) with the intention of deceiving someone else about the species of animal the meat is from; or
- (b) that the person knows, or ought reasonably to know, is likely to result in someone else being deceived about the species of animal the meat is from.

This is made a specific offence in recognition of the several food-based religious practices in Singapore’s society and the importance of religious harmony.

Clause 183 sets out offences connected with labelling.

It is an offence if a person labels, or causes to be labelled, any food in connection with the supply or possible supply of any food in the course of carrying on a food business or the promotion of the supply or use of any food in the course of carrying on a food business, in a way that —

- (a) contains any content which is prohibited by any relevant regulations for that food;
- (b) does not contain any content which is required by any relevant regulations to be used in relation to that food; or
- (c) contains content in a form contrary to any relevant regulations as they apply in relation to that food.

Clause 183(2) also makes it an offence if a person supplies in the course of carrying on a food business any food —

- (a) that is labelled in a way that contains any content which is prohibited by any relevant regulations for that food, does not contain any content which is required by any relevant regulations to be used in relation to that food, or contains content in a form contrary to any relevant regulations as they apply in relation to that food; or
- (b) is not labelled in the manner which is required by any relevant regulations in relation to that food.

The offences in clause 183 are strict liability. The relevant regulations can either be the food regulations or the Part 9 regulations.

A label is defined in clause 3 to include any tag, brand, stamp, mark, stencil or written statement, any representation or design, or any descriptive matter, that —

- (a) is attached to, annexed or affixed to the goods or any container or packaging of or thing used in connection with the goods;
- (b) is written, printed, stamped or located on the goods or any container or packaging of or thing used in connection with the goods;
- (c) is determined on the basis of anything encoded on or in relation to the goods;
- (d) is displayed or used in connection with, or is accompanying, the goods or anything on which the goods are mounted for display or exposed for supply; or
- (e) is otherwise applied to the goods or any container or packaging of or thing used in connection with the goods in a manner from which it may reasonably be inferred that it is applicable to those goods.

The definition of “label” extends to cover content accessible directly via hyperlinks and QR codes on labels; see clause 3(3). As the space on labels is valuable, it is increasingly common for labels to contain hyperlinks or QR codes which set out or link the consumer to content extrinsic to the label. The expanded definition is directed at addressing a situation where the physical label may be in full conformity with the relevant regulations but the extrinsic content may not.

To avoid overlapping laws, the linked content which is a label is not an advertisement; see clause 7(5).

Clause 184 criminalises advertising that is non-compliant with advertising requirements prescribed in regulations made under the Bill. One set of requirements may be set out by the Minister for Health by way of Part 9 regulations in connection with health promotion. The other set of requirements may be set out by the Agency in connection with food safety.

A person commits an offence if the person publishes, or to causes or authorises to be published, in Singapore any advertisement about a food or regulated food contact article, and the advertisement contains any content that —

- (a) does not comply with any requirement of the relevant advertising regulations that are applicable to the food or the regulated food contact article;
- (b) is or contains a false description of the food, or is false as to the suitability of the regulated food contact article.

Clause 7(1) defines what it means to publish in Singapore. Publishing in Singapore has been defined to mean communicating, distributing, or making available or making known, the content to the general public in Singapore.

Where content is made available, distributed or communicated in electronic or digital form using a social media service, telecommunication service (like SMS or MMS) or relevant electronic service (like an online instant messaging service or by email), the content is taken to be published in Singapore if it originates from a point in Singapore or is between a point and one or more other points, where the firstmentioned point is outside Singapore and at least one of the other points is inside Singapore.

However, no offence is committed if the advertising is not Singapore-linked. Clause 177(2) provides that an advertising is Singapore-linked only if the person who publishes, or causes or authorised the publishing, in Singapore the advertisement concerned is, at the time of advertising —

- (a) an individual physically present in Singapore;
- (b) an entity which is registered in Singapore (even if incorporated outside Singapore), or is incorporated, under any written law; or

(c) a corporation sole or corporation aggregate established under a private Act.

The offence in clause 184 therefore does not extend to any person outside Singapore publishing a non-compliant advertisement, even if the content is accessible to people physically present in Singapore.

For example, an individual proprietor of a food business outside Singapore may post a food advertisement on the internet about the food product, which contains a food production substance that is not an approved food production substance for that food, under the regulations made under the Bill. Alternatively, the advertisement may be one that does not contain the required nutritional grading or health warning for the food product, which is mandatory content for health promotion reasons. That advertisement originating outside Singapore can be viewed by anyone in Singapore and offers online purchases and delivery of the food product, with a price list in Singapore dollars as well as other foreign currencies. The advertisement when posted is not Singapore linked. However, as the advertisement's content continues to be made known and published in Singapore while it remains online and accessible to anyone in Singapore (see clause 7 definition of "publish in Singapore"), the offence under clause 184 may be made out when that individual proprietor enters Singapore and the advertisement has not been taken down.

The offence in clause 184 is strict liability, no different that section 16A of the Sale of Food Act 1973 today. It is not necessary for the prosecution to prove that a person charged knew or had reason to believe that the advertisement in question contains any content that —

- (a) does not comply with any requirement of the relevant advertising regulations that are applicable to the food or the regulated food contact article; or
- (b) is or contains a false description of the food, or is false as to the suitability of the regulated food contact article.

Like section 16A of the Sale of Food Act 1973, clause 184(5) and (6) also places an evidentiary burden on the defendant who is alleged to have published an advertisement which is false as to age, composition, etc., of the food or the safety or suitability of the food or a prescribed food contact article. Failing to adduce evidence to the contrary when it is alleged that a person has made a false advertisement, will result in the advertisement being found to be false. However, the provisions do not place a legal burden on defendant to prove that the advertisement is not false.

The purpose for placing the evidentiary burden on the defendant remains necessary to protect the consumer. Food businesses commonly devise claims and place information about their products on product packaging and labelling or in broader advertising strategies such as on the internet and broadcasting, so as to influence consumers' decision-making and thus improve sales.

There is, however, information asymmetry which makes it difficult for any consumer to verify food claims. Whether or not a food claim is true, or a testimonial is used in a genuine manner is only likely to be in the knowledge of the defendant. As such, an evidentiary onus on the defendant would ensure that all relevant information will be put before the court.

In the absence of a reverse onus, the prosecution would have difficulty ascertaining whether a claim is real and/or accurate. The Agency would then need to invoke the use of extensive information gathering powers, which would impose compliance costs on businesses.

On the other hand, a food business making a genuine representation about food it is supplying should easily be able to adduce evidence that the food claims/testimonial is real/accurate by producing relevant evidence.

Clause 185 sets out the offence of advertising defined food. A person commits an offence if the person advertises a food and the food is a defined food at the time of the publication or communication, and the advertising is Singapore-linked. It is immaterial whether the defined food concerned is safe.

Clause 186 sets out a defence with respect to an offence under Part 10 (except clauses 184 and 185), under which the defendant has to prove, on a balance of probabilities, that —

- (a) that the commission of the offence was due to an act or omission of another person (who is not an employee, agent or officer of the defendant), or an accident or some other cause outside the defendant's control; and
- (b) the defendant took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the defendant, or by another person under the defendant's control.

The general defence in section 26H(4) of the Penal Code 1871 is disapplied so as to avoid legal confusion.

Clause 187 sets out a defence to a charge for an offence under clause 183 involving labelling of food. It is a defence for the person charged to prove, on a balance of probabilities, that the food in question is to be exported to another country, and the food complies with the laws (if any) in force at the time of the alleged offence in the place to which the food is to be exported, being laws that deal with the same subject-matter as the provision of this Act concerned.

Clause 188 sets out various defences for a person charged with an offence under clause 184 or 185 in relation to advertising any food or regulated food contact article.

The first defence is where the person charged can prove, on a balance of probabilities, that —

- (a) the person is acting in the course of a business of delivering, transmitting or broadcasting information or material (in whatever form or by whatever means) or making data available, and the nature of the business is such that persons undertaking it have no control over the nature or content of the information or material or data; or
- (b) if the advertising is publishing any online material, the person had reposted identical copies of the online material earlier posted by another.

The defence in paragraph (a) is akin to but does not affect the general immunity of network service providers under section 26 of the Electronic Transactions Act 2010.

The second defence is where the person charged proves, on a balance of probabilities, that —

- (a) the advertisement about the food or regulated food contact article was so published as an accidental or incidental accompaniment to the publication of other matter not forming part of any promotion of the food or regulated food contact article in question; and
- (b) the person does not receive any direct or indirect benefit (whether financial or not) for publishing that advertisement, in addition to any direct or indirect benefit that the person receives for publishing that other matter.

For example, the broadcaster includes images of a non-compliant food advertisement shown on a football pitch which is the subject of a live broadcast receivable in Singapore.

The third defence is where the person charged proves, on a balance of probabilities, that the person —

- (a) is a person whose business is to publish or arrange for the publication of advertisements and that the person received the advertisement for publication in the ordinary course of business; and
- (b) has no financial interest in the food or regulated food contact article featured in the advertisement.

However, none of the defences are available if the person charged for an offence under section 184 or 185 in relation to advertising any food or regulated food contact article —

- (a) had previously been informed in writing by the Agency that publishing in Singapore of the advertisement about the food or regulated food contact article, or such an advertisement, would constitute an offence under Part 10;

- (b) ought reasonably to have known that the publishing in Singapore of the advertisement about the food or regulated food contact article was an offence under Part 10; or
- (c) is the proprietor of a food business or is otherwise engaged in the conduct of a food business for which the advertisements concerned were published.

EXPOSURE DRAFT