

# **Transboundary Haze Pollution Bill**

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**Bill No. /2014.**

*Read the first time on .*

## **TRANSBOUNDARY HAZE POLLUTION ACT 2014**

**(No. of 2014)**

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A BILL

*i n t i t u l e d*

An Act to provide for criminal and civil liability for conduct which causes or contributes to haze pollution in Singapore, and for related matters.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

## PART I

## PRELIMINARY

**Short title and commencement**

- 5     **1.** This Act may be cited as the Transboundary Haze Pollution Act 2014 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

**Interpretation**

- 2.** In this Act, unless the context otherwise requires —

10     “Agency” means the National Environment Agency established under section 3 of the National Environment Agency Act (Cap. 195);

“authorised officer” has the same meaning as in section 2 of the Environmental Protection and Management Act (Cap. 94A);

15     “conduct” means any act or omission, or any series of acts or omissions, or both;

“Director-General” means the Director-General of Environmental Protection appointed under section 3(1) of the Environmental Protection and Management Act;

“document” includes —

20     (a) any map, plan, graph or drawing;

(b) any photograph;

(c) any label, marking or other writing which identifies or describes anything of which it forms a part, or to which it is attached by any means whatsoever;

25     (d) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

(e) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(f) any paper or other material on which there are marks, impressions, figures, letters, symbols or perforations having a meaning for persons qualified to interpret them;

“entity” means any sole proprietorship, partnership, corporation or other body of persons, whether corporate or unincorporate;

“grave natural disaster or phenomenon” means an unanticipated natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

“haze pollution” means the direct or indirect alteration of the environment —

(a) to its detriment or degradation or potential detriment or degradation; or

(b) to the detriment or potential detriment of its use or other environmental value,

which is of a wide scale and involves smoke resulting from any land or forest fire wholly outside Singapore;

“land or forest fire” means fire such as coal seam fire, peat fire or plantation fire;

“natural disaster” excludes an event that can be prevented by human action;

“smoke” includes soot, ash, grit and gritty particles emitted in smoke;

“the environment” means —

(a) any land, air or water;

(b) any living thing; and

(c) any man-made or modified structures and areas,  
and includes interactions between all or any of the  
components referred to in paragraphs (a), (b) and (c).

**Participation of entity in management of another entity**

5     **3.** For the purposes of this Act, an entity (referred to in this  
section as the first entity) participates in the management of another  
entity (referred to in this section as the second entity) if, and only  
if —

10     (a) the first entity actually participates in the management or  
operational affairs of the second entity;

(b) the first entity exercises decision-making control over any  
business decision by the second entity to burn any  
vegetation on any land which is situated outside Singapore  
and owned or occupied by the second entity; or

15     (c) the first entity exercises control at a level comparable to that  
exercised by a manager of the second entity, such that the  
first entity assumes or manifests responsibility —

20     (i) for the overall management of the second entity  
encompassing the day-to-day decision-making with  
respect to any business decision to burn any  
vegetation on any land which is situated outside  
Singapore and owned or occupied by the second  
entity; or

25     (ii) over all or substantially all of the operational  
functions (as distinguished from financial or  
administrative functions) of the second entity.

## PART II

## LIABILITY FOR TRANSBOUNDARY HAZE POLLUTION

**Extra-territoriality of Act**

5     **4.** This Act shall extend to and in relation to any act or thing  
outside Singapore which causes or contributes to any haze pollution  
in Singapore.

**Criminal liability for haze pollution in Singapore**

**5.—(1)** An entity shall be guilty of an offence, and shall be liable  
on conviction to a fine not exceeding \$300,000, if —

10     (a) the entity —

(i) engages in conduct (whether in or outside Singapore)  
which causes or contributes to any haze pollution in  
Singapore; or

15     (ii) authorises or condones (whether in or outside  
Singapore) any conduct (whether in or outside  
Singapore) which causes or contributes to any haze  
pollution in Singapore; and

(b) there is haze pollution in Singapore at or about the time of  
that conduct.

20     **(2)** An entity shall be guilty of an offence, and shall be liable on  
conviction to a fine not exceeding \$300,000, if —

(a) the entity participates in the management of another entity  
(referred to in this subsection as the second entity);

(b) the second entity —

25     (i) engages in conduct (whether in or outside Singapore)  
which causes or contributes to any haze pollution in  
Singapore; or

30     (ii) authorises or condones (whether in or outside  
Singapore) any conduct (whether in or outside  
Singapore) which causes or contributes to any haze  
pollution in Singapore; and

(c) there is haze pollution in Singapore at or about the time of that conduct.

(3) Where an entity commits an offence under subsection (1) or (2), and it is proved that the entity had failed to comply with any requirements in a request made by the Director-General under section 9(1) to that entity in relation to the same instance of haze pollution in Singapore, the entity shall be liable on conviction to a fine not exceeding \$450,000.

### **Civil liability for haze pollution in Singapore**

6.—(1) It shall be a duty of an entity to ensure that —

(a) it does not engage in conduct (whether in or outside Singapore) which causes or contributes to any haze pollution in Singapore; and

(b) it does not authorise or condone (whether in or outside Singapore) any conduct (whether in or outside Singapore) which causes or contributes to any haze pollution in Singapore.

(2) It shall be a duty of an entity which participates in the management of another entity (referred to in this subsection as the second entity) to ensure that —

(a) the second entity does not engage in conduct (whether in or outside Singapore) which causes or contributes to any haze pollution in Singapore; and

(b) the second entity does not authorise or condone (whether in or outside Singapore) any conduct (whether in or outside Singapore) which causes or contributes to any haze pollution in Singapore.

(3) Where any entity engages in conduct that is in breach of any duty under subsection (1) or (2), then, subject to section 7 and the defences and other incidents applicable to actions for breach of statutory duty, that is actionable conduct at the suit of any person in Singapore who, in consequence of that breach —



- (a) sustains any personal injury, contracts any disease, sustains any mental or physical incapacity or dies;
- (b) sustains any physical damage to property; or
- (c) sustains any economic loss, including a loss of profits.

5 (4) A cause of action for any actionable conduct referred to in subsection (3) shall be actionable in Singapore, whether or not that conduct is also actionable in the foreign jurisdiction where that conduct occurred.

### Defences

10 **7.—**(1) It shall be a defence to a prosecution for an offence under section 5(1) or a civil claim for a breach of duty under section 6(1), if the accused or defendant (as the case may be) proves, on a balance of probabilities, that —

(a) the haze pollution was caused solely by —

- 15 (i) a grave natural disaster or phenomenon; or
- (ii) an act of war; or

(b) the conduct which caused or contributed to the haze pollution —

(i) was that of a person other than —

- 20 (A) the accused or defendant (as the case may be);  
or

(B) any employee or agent of the accused or defendant (as the case may be); and

- 25 (ii) was not authorised or condoned by the accused or defendant (as the case may be).

(2) It shall be a defence to a prosecution for an offence under section 5(2) or a civil claim for a breach of duty under section 6(2), if the accused or defendant (as the case may be) proves, on a balance of probabilities that —

30 (a) the haze pollution was caused solely by —

- (i) a grave natural disaster or phenomenon; or

- (ii) an act of war; or
- (b) the conduct which caused or contributed to the haze pollution —
  - (i) was that of a person other than —
    - 5 (A) the accused or defendant (as the case may be);
    - (B) any employee or agent of the accused or defendant (as the case may be);
    - (C) the second entity referred to in section 5(2) or 6(2) (as the case may be); or
    - 10 (D) any employee or agent of the second entity referred to in section 5(2) or 6(2) (as the case may be);
  - (ii) was not authorised or condoned by the accused or defendant (as the case may be); and
  - 15 (iii) was not authorised or condoned by the second entity referred to in section 5(2) or 6(2) (as the case may be).

### **Presumptions**

- 8.—**(1) For the purposes of this Act, where —
- 20 (a) over a continuous period of 24 hours, the air quality in any part of Singapore deteriorates to such level or levels as may be prescribed;
  - (b) at or about the time the deterioration in air quality occurs, there is a land or forest fire on any land which is situated
    - 25 outside Singapore and is owned or occupied by an entity; and
  - (c) based on satellite images and meteorological information at or about the time the deterioration in air quality occurs, any smoke resulting from that fire is moving in the direction of
    - 30 Singapore,
- it shall be presumed, until the contrary is proved, that there is haze pollution in Singapore involving smoke resulting from that fire,

notwithstanding that there may be, at or about the same time, any land or forest or other fire on any other land situated outside Singapore (whether or not adjacent to the land referred to in paragraph (b)) or in any part of Singapore.

5 (2) For the purposes of this Act, where it is proved that an entity owns or occupies any land situated outside Singapore, and it is further proved, or presumed by operation of subsection (1), that any haze pollution in Singapore involves smoke resulting from any fire on that land outside Singapore, it shall be presumed, until the  
10 contrary is proved, that the entity has engaged in conduct, or authorised or condoned conduct, which caused or contributed to that haze pollution.

(3) Where an entity (referred to in this subsection as the first entity) participates in the management of another entity (referred to  
15 in this subsection as the second entity), and it is proved, or presumed by operation of subsection (2), that the second entity has engaged in conduct, or authorised or condoned conduct, which caused or contributed to any haze pollution in Singapore, it shall be presumed, until the contrary is proved, that the first entity failed to  
20 ensure that the second entity did not engage in that conduct, and did not authorise or condone that conduct.

(4) For the purposes of this Act —

(a) where any map is furnished by, or obtained from —

25 (i) any person pursuant to an order issued under section 10;

(ii) any foreign power or foreign Government;

(iii) any ministry, department, statutory body or any other similar body of a foreign power or foreign Government; or

30 (iv) any other person specified in the Schedule through any means specified in the Schedule; and

(b) the map shows that any land which is situated outside Singapore is owned or occupied by an entity,

it shall be presumed, until the contrary is proved, that the entity owns or occupies the land.

### PART III

#### ADMINISTRATION

##### 5 **Written notice of request to prevent, reduce or control haze pollution**

9.—(1) Where there is haze pollution in Singapore, or there is haze pollution in any part of a country or territory outside Singapore because of any land or forest fire outside Singapore and, based on  
 10 satellite images and meteorological information, the smoke from that fire may move in the direction of Singapore, the Director-General may, if he thinks it necessary or expedient to prevent, reduce or control haze pollution in Singapore, give notice in writing to any entity that, in his opinion, is directly or indirectly involved in  
 15 any conduct which is causing or contributing to, or is likely to cause, haze pollution in Singapore, requesting that entity to comply with the requirements for facilitating the prevention, reduction or control of haze pollution in Singapore as he may specify in those directions.

20 (2) Without prejudice to the generality of subsection (1), a request under that subsection may require an entity (referred to in this section as the first entity) to do any one or more of the following:

(a) to deploy fire-fighting personnel and to use any other  
 25 reasonable methods to extinguish or prevent the spread of any land or forest fire on any land situated outside Singapore —

(i) which is owned or occupied by the first entity; or

(ii) which is owned or occupied by another entity the management of which the first entity participates in;

30 (b) to discontinue, or not commence, any burning activities on such land as is referred to in paragraph (a); and

(c) to submit to the Director-General any plan of action to extinguish or prevent the spread of any fire on such land as is referred to in paragraph (a) and to prevent its recurrence.

5 (3) In this section, “fire” includes a fire the Director-General has reasonable grounds for believing may exist.

### **Power to obtain information**

10 **10.**—(1) The Director-General or an authorised officer may give notice in writing to any person (whether within or outside Singapore) requiring the person to furnish, within a reasonable period specified in the notice, and in such form and manner as may be specified in the notice, all documents and information —

(a) which relate to any matter which the Agency considers necessary to carry out the functions or duties of or assigned to the Agency by or under any provision of this Act; and

15 (b) which are within the knowledge of that person or in that person’s custody or under that person’s control.

(2) The power to require a person to furnish any document or information under subsection (1) includes the power —

20 (a) to require that person, or any individual who is or was an officer or employee of that person, to provide an explanation of the document or information;

(b) if the document or information is not furnished, to require that person to state, to the best of that person’s knowledge and belief, where it is; and

25 (c) if the information is recorded otherwise than in legible form, to require the information to be made available to the Agency in legible form.

30 (3) Any person within the limits of Singapore who, without reasonable excuse, fails to do anything required of the person by notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

(4) Without prejudice to subsection (3), a person on whom a notice is given under subsection (1) is excused from furnishing any

document or information on the ground that doing so might incriminate the person or expose the person to a criminal penalty.

(5) Any person within the limits of Singapore on whom a notice under subsection (1) is given who —

- 5       (a) intentionally alters, suppresses or destroys any document or information which he has been required by the notice to furnish; or
- (b) in furnishing any document or information required by the notice, makes any statement which the person knows to be  
10       false in a material particular, or recklessly makes such a statement,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 months or to both.

- 15       (6) If any person fails to comply with a notice under subsection (1), the court may, on the application of the Director-General or an authorised officer, make such order as the court thinks fit to secure compliance with that notice, and any such order may provide that all the costs or expenses of and incidental to the  
20       application shall be borne by that person or by any officer or employee of that person who is responsible for the failure.

- (7) Where a notice under subsection (1) is issued in connection with investigations into a suspected offence under this Act, the Agency through an authorised officer may, at any time after the  
25       expiry of the period specified in the notice, enter any building or place where the Agency has reason to believe that any document or information, in respect of which it has given the notice, may be found, and seize or take extracts or copies of any such document or information.

- 30       (8) The Agency shall be entitled without payment to keep any document or information, or any copy or extract thereof, furnished to it under subsection (1) or obtained under subsection (7).

**Power to examine and secure attendance, etc.**

**11.**—(1) For the purpose of investigating any offence under section 5, the Director-General or an authorised officer may do all or any of the following:

- 5           (a) examine orally any person who appears to be acquainted with matters related to the offence;
- (b) require by notice in writing the attendance before himself of any person within the limits of Singapore who, from information given or otherwise, appears to be acquainted  
10           with matters related to the offence;
- (c) require any person to furnish any information or produce any book or document, or any copy thereof, in the possession of that person and, without payment, inspect, keep, copy or take extracts from that book, document or  
15           copy.

(2) Any person examined under this section shall be bound to state truly what he knows of the matters related to the offence, except that he need not say anything that might expose him to a criminal charge.

20       (3) A statement made by any person examined under this section —

- (a) shall be reduced to writing;
- (b) shall be read over to him;
- (c) if he does not understand English, shall be interpreted for  
25           him in a language that he understands; and
- (d) after correction, if necessary, shall be signed by him.

(4) If any person fails to attend as required by a notice under subsection (1)(b), the Director-General or authorised officer may report such failure to a Magistrate, who may thereupon issue a  
30           warrant to secure the attendance of that person as required by the notice.

### **Public servants**

5 **12.** The Director-General and all authorised officers, when performing or exercising any function, duty or power under this Act, shall be deemed to be public servants for the purposes of the Penal Code (Cap. 224).

### **Protection from personal liability**

10 **13.** No liability shall be incurred by the Director-General, any authorised officer, any member, officer or employee of the Agency, or any other person acting under the direction of the Agency, for anything which is done or intended to be done in good faith and with reasonable care in —

(a) the exercise or purported exercise of any power under this Act; or

15 (b) the performance or purported performance of any function or duty under this Act.

### **Penalty for obstructing Director-General or authorised officer in his duty**

20 **14.** Any person who at any time obstructs, hinders or delays the Director-General or any authorised officer in the performance or execution of his duty or of anything which he is empowered or required to do under this Part shall be guilty of an offence and shall be liable on conviction —

(a) to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 months or to both; and

25 (b) in the case of a second or subsequent conviction, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 3 months or to both.



## PART IV

## MISCELLANEOUS

**Evidence**

5       **15.** The contents of any document prepared, issued or served by the Agency, the Director-General or an authorised officer under or for the purposes of this Act shall, until the contrary is proved, be presumed to be correct.

**Offences by bodies corporate, etc.**

10       **16.**—(1) Where an offence under this Act committed by a body corporate is proved —

          (a) to have been committed with the consent or connivance of an officer; or

          (b) to be attributable to any neglect on his part,

15       the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

          (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

20       (3) Where an offence under this Act committed by a partnership is proved —

          (a) to have been committed with the consent or connivance of a partner; or

25       (b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

30       (4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

(a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

5 (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

10 “body corporate” includes a limited liability partnership registered under the Limited Liability Partnerships Act (Cap. 163A);

“officer” —

15 (a) in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

20 (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in  
25 any such capacity;

“partner” includes a person purporting to act as a partner.

### **Amendment of Schedule**

**17.** The Minister may, by order published in the Gazette, amend, add to or vary the Schedule.

### **Regulations**

30 **18.** The Agency may, with the approval of the Minister, make regulations —

- (a) for carrying out the purposes and provisions of this Act; and
- (b) for the prescribing of anything that is required or permitted to be prescribed under this Act.

## THE SCHEDULE

5

Section 8(4)

### SPECIFIED PERSONS AND MEANS

1. [*Please insert persons and means (eg. Websites)*]

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### EXPLANATORY STATEMENT

This Bill seeks to provide for criminal and civil liability for conduct which causes or contributes to haze pollution in Singapore, and for related matters.

[The rest of the Explanatory Statement will be inserted after Bill has been finalised.]

### EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.

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Note 1: THPBill2014-(v22)