

A BILL

i n t i t u l e d

An Act to amend the Penal Code.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Penal Code (Amendment) Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 4

2. The Penal Code [Act 574], which is referred to as the “Code” in this Act, is amended in subsection 4(1)—

(a) by substituting for the words “Chapters VI and VIA” the words “Chapters VI, VIA and VIB”; and

(b) by substituting for paragraph (d) the following paragraph:

“(d) by any person against property belonging to, or operated or controlled by, in whole or in part, the Government of Malaysia or the Government

of any State in Malaysia, including diplomatic or consular premises of Malaysia, any citizen of Malaysia, or any corporation created by or under the laws of Malaysia located outside Malaysia;”.

Amendment of section 107

3. Section 107 of the Code is amended by inserting after paragraph (a) the following paragraph:

“(aa) commands any person to do that thing;”.

Substitution of explanation to section 120A

4. The Code is amended in section 120A—

(a) by substituting for the explanation to the section the following explanations:

“*Explanation 1*—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Explanation 2—Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit the offence unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.”; and

(b) by inserting after the explanations to the section the following illustrations:

“ILLUSTRATIONS

(a) If *A* and *B* agree to embark on a bombing campaign throughout Malaysia, and either one of them commits an act in furtherance of the agreement such as acquiring Ammonium Nitrate fertilizer or other bomb making components, they will each be guilty of conspiracy to cause explosions even though no bombing targets were identified and no bombing was actually attempted.

(b) A wilfully and knowingly joins an enterprise of persons consisting of B, C and D where they share a common criminal purpose to commit certain offences such as attacking civilian objects, murder and terrorism, and at least one of them acts on the plan by surveilling targets or securing a weapon to be used in the attacks. All four are guilty of conspiracy to attack civilian objects, and commit murder and terrorism the moment any one of them acts on the plan.

(c) A and B agree to cheat the Government on a contract for goods by inflating the price of goods quoted in the tender document. A and B intend to conceal the real price of the goods to the Government. A and B are guilty of conspiring to cheat the Government the moment that one of them drafts the fraudulent tender document or engages in any other act in furtherance of the plan.

(d) A, B and C agree to engage in fraud and misuse of visas, permits or other documents to facilitate a particular act of terrorism in Malaysia. All three are guilty of conspiracy to provide support for the commission of a terrorist act the moment any one of them engages in an act in furtherance of the plan, such as acquiring the visas or other materials necessary to produce the fraudulent documents.”.

Amendment of section 120B

5. Section 120B of the Code is amended—

(a) in subsection (2), by substituting for the word “Whoever” the words “Subject to subsection (3), whoever”; and

(b) by inserting after subsection (2) the following subsection:

“(3) If the offence, the commission of which is the object of the conspiracy, is a minor offence under the Minor Offences Act 1955 [Act 336] the punishment for such conspiracy shall not exceed the maximum punishment provided for such minor offence.”.

New sections 124B to 124N

6. The Code is amended by inserting after section 124A the following sections:

“Activity detrimental to parliamentary democracy

124B. Whoever, by any means, directly or indirectly, commits an activity detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to twenty years.

Attempt to commit activity detrimental to parliamentary democracy

124C. Whoever attempts to commit an activity detrimental to parliamentary democracy or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years.

Printing, sale, etc., of documents and publication detrimental to parliamentary democracy

124D. (1) Whoever, by any means, directly or indirectly, prints, publicises, sells, issues, circulates or reproduces any document or publication detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to fifteen years:

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court that the document or publication in respect of which he is charged was printed, published, sold, issued, circulated or reproduced, as the case may be, without his authority, consent and knowledge, and without any want of due care or caution on his part, and that he did not know and had no reason to suspect the nature of the document or publication.

Possession of documents and publication detrimental to parliamentary democracy

124E. (1) Any person who, without lawful excuse, has in his possession any document or publication detrimental to parliamentary democracy or any extract therefrom, shall be punished with imprisonment for a term which may extend to ten years.

(2) The document and publication referred to in subsection (1) shall be presumed to be a document or publication detrimental to parliamentary democracy until the contrary is proved; and where in any prosecution under this section it is proved that a person was carrying or had in his possession or under his control a document or publication detrimental to parliamentary democracy he shall be deemed to have known the contents and the nature of the contents of such document or publication:

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court—

- (a) that he was not aware of the contents and the nature of the contents of the document or publication detrimental to parliamentary democracy which he was carrying or had in his possession or under his control; and
- (b) that he was carrying or had the document or publication detrimental to parliamentary democracy in his possession or under his control in such circumstances that at no time did he have reasonable cause to believe or suspect that the document or publication was a document or publication detrimental to parliamentary democracy.

Importation of document and publication detrimental to parliamentary democracy

124F. (1) Any person who imports or attempts to import or abets the importation of any document or publication detrimental to parliamentary democracy or without lawful excuse has in his possession any document or publication shall be punished with imprisonment for a term which may extend to five years.

(2) The document and publication referred to in subsection (1) shall be presumed to be a document or publication detrimental to parliamentary democracy until the contrary is proved; and where in any prosecution under this section it is proved that a person was carrying or had in his possession or under his control a document or publication detrimental to parliamentary democracy he shall be deemed to have known the contents and the nature of the contents of such document or publication:

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court—

- (a) that he was not aware of the contents and the nature of the contents of the document or publication detrimental to parliamentary democracy which he was carrying or had in his possession or under his control; and
- (b) that he was carrying or had the document or publication detrimental to parliamentary democracy in his possession or under his control in such circumstances that at no time did he have reasonable cause to believe or suspect that the document or publication was a document or publication detrimental to parliamentary democracy.

Posting of placards, *etc.*

124g. Any person who posts or distributes any placard, circular or other document containing any incitement to violence, or counselling violent disobedience to the law or to any lawful order, or likely to lead to any breach of the peace, shall be punished with imprisonment for a term which may extend to five years.

Dissemination of information

124h. Any person who by word of mouth or in writing or in any newspaper, periodical, book, circular, or other printed publication or by any other means including electronic means incites violence, or counsels violent disobedience to the law or to any lawful order, shall be punished with imprisonment for a term which may extend to five years.

Dissemination of false reports

124i. Any person who, by word of mouth or in writing or in any newspaper, periodical, book, circular, or other printed publication or by any other means including electronic means spreads false reports or makes false statements likely to cause public alarm, shall be punished with imprisonment for a term which may extend to five years.

Receipt of document and publication detrimental to parliamentary democracy

124j. (1) Any person or any office bearer of any association or any responsible member or agent of any organization who receives any document or publication detrimental to parliamentary democracy shall deliver the same without delay to a police officer; and any person, office bearer, member or agent who fails to do so, or who, unless authorized so to do by a police officer not below the rank of Superintendent of Police, communicates to any other person, or publishes or causes to be published the contents of any such document or publication, shall be punished with imprisonment for a term which may extend to ten years.

(2) The document and publication referred to in subsection (1) shall be presumed to be a document or publication detrimental to parliamentary democracy until the contrary is proved; and where in any prosecution under this section it is proved that a person was carrying or had in his possession or under his control a document or publication detrimental to parliamentary democracy he shall be deemed to have known the contents and the nature of the contents of such document or publication:

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court—

- (a) that he was not aware of the contents and the nature of the contents of the document or publication detrimental to parliamentary democracy which he was carrying or had in his possession or under his control; and

- (b) that he was carrying or had the document or publication detrimental to parliamentary democracy in his possession or under his control in such circumstances that at no time did he have reasonable cause to believe or suspect that the document or publication was a document or publication detrimental to parliamentary democracy.

Sabotage

124K. Whoever, by any means, directly or indirectly, commits sabotage shall be punished with imprisonment for life.

Attempt to commit sabotage

124L. Whoever attempts to commit sabotage or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years.

Espionage

124M. Whoever, by any means, directly or indirectly, commits espionage shall be punished with imprisonment for life.

Attempt to commit espionage

124N. Whoever attempts to commit espionage or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years.”.

Amendment of section 130A

7. The Code is amended by substituting for section 130A the following section:

“**130A.** In this Chapter—

- (a) “activity detrimental to parliamentary democracy” means an activity carried out by a person or a group of persons designed to overthrow or undermine parliamentary democracy by violent or unconstitutional means;

- (b) “document or publication detrimental to parliamentary democracy” means any document or publication having in part or in whole a tendency—
- (a) to excite organized violence against persons or property in Malaysia;
 - (b) to support, propagate or advocate any act prejudicial to the security of Malaysia or the maintenance or restoration of public order therein or inciting to violence therein or counselling disobedience to the law thereof or to any lawful order therein; or
 - (c) to invite, request or demand support for or on account of any collection, subscription, contribution or donation, whether in money or in kind, for the direct or indirect benefit or use of persons who intend to act or are about to act, or have acted, in a manner prejudicial to the security of Malaysia or to the maintenance of public order therein, or who incite to violence therein or counsel disobedience to the law thereof or any lawful order therein;
- (c) “espionage” means an activity to obtain sensitive information by ulterior or illegal means for the purpose that is prejudicial to the security or interest of Malaysia;
- (d) “essential services” includes—
- (a) water services;
 - (b) electricity services;
 - (c) public health services;
 - (d) banking and financial services;
 - (e) fire services;
 - (f) prison services;
 - (g) postal services;
 - (h) telecommunication services including the communication infrastructure;
 - (i) telegraph services;

- (j) radio communication services including broadcasting and television services;
 - (k) port, dock and harbour services and undertakings;
 - (l) public transport services by land, sea or air;
or
 - (m) bulk distribution of fuel and lubricants;
- (e) “harbour” includes supplying a person with shelter, food, drink, money or clothes; or, except by a person employed in a Government hospital, medicines, bandages, surgical dressings or any other form of aid to a person wounded; or arms, ammunition or means of conveyance, or assisting a person in any way to evade apprehension;
- (f) “imprisonment for life” means (subject to the provisions of any written law conferring power to grant pardons, reprieves or respites or suspension or remission of punishments) imprisonment until the death of the person on whom the sentence is imposed;
- (g) “publication” includes all written, pictorial or printed matter, and everything of a nature similar to written or printed matter, whether or not containing any visible representation, or by its form, shape or in any other manner capable of suggesting words or ideas, or an audio recording and every copy, translation and reproduction or substantial translation or reproduction in part or in whole thereof;
- (h) “sabotage” means—
- (a) an act or omission intending to cause harm—
 - (i) for the interests of foreign powers or foreign organizations;
 - (ii) to premises or utilities used for national defence or for war; or
 - (iii) to the maintenance of essential services;
or
 - (b) knowingly producing defective materials, premises or utilities used for national defence or for war;

(i) “sensitive information” means any document, information and material—

(a) relating to the Cabinet, Cabinet committees and State Executive Council; or

(b) that concerns sovereignty, national security, defence, public order, essential public interest of Malaysia and international relations,

whether or not classified as “Top Secret”, “Secret”, “Confidential” or “Restricted” by a minister, the Menteri Besar or Chief Minister of a State or any public officer appointed by a minister.”.

New section 130KA

8. The Code is amended by inserting after section 130K the following section:

“Member of a terrorist group

130KA. Whoever is a member of a terrorist group shall be punished with imprisonment which may extend to imprisonment for life and shall also be liable to a fine.”.

New Chapter VIb

9. The Code is amended by inserting after Chapter VIA the following Chapter:

“CHAPTER VIb

ORGANIZED CRIME

Interpretation in relation to this Chapter

130U. In this Chapter—

“organized criminal group” means a group of two or more persons, acting in concert with the aim of committing one or more serious offences, in order to obtain, directly or indirectly, a material benefit, power or influence;

“serious offence” means any offence punishable with imprisonment for a term of ten years or more.

Member of an organized criminal group

130v. Whoever is a member of an organized criminal group shall be punished with imprisonment for a term which may extend to five years.

Assisting an organized criminal group

130w. Whoever assists an organized criminal group to further the interest of that group shall be punished with imprisonment for a term which may extend to ten years.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Penal Code [Act 574] in line with the introduction of the Security Offences (Special Measures) Act 2012. The amendments proposed to the Penal Code deal with organized crimes, activities detrimental to parliamentary democracy, sabotage and espionage.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.
3. *Clause 2* seeks to amend section 4 on the extension of the Code to extraterritorial offences. The new Chapter VIb on organized crime has been added as an extraterritorial offence under the Code and a new paragraph (*d*) has been inserted to replace the existing paragraph. In the new paragraph (*d*), offences committed against property operated or controlled by in whole or in part by the Government of Malaysia or any State Government or any citizen of Malaysia or any corporation created by or under the laws of Malaysia located outside Malaysia shall be considered as committed in Malaysia. This is an enlargement of criminal jurisdiction from the existing paragraph (*d*). This enlargement is consistent with the current position of international law.
4. *Clause 3* seeks to tackle the situation currently faced by the police with regard to the mastermind who commands others to carry out criminal acts. The current position on abetment does not cover those who instruct. In an organized crime scenario, it is difficult to connect the person who instructs to the evidence of the crime committed. Thus, the proposed new provision seeks to make any person who commands another to do a criminal act an abettor.
5. *Clause 4* seeks to clarify section 120A by providing an additional explanation on criminal conspiracy.

6. *Clause 5* seeks to add a new subsection to section 120B on punishment of criminal conspiracy. The new subsection deals with the formula for the punishment if the offence, the commission of which is the object of the conspiracy, is a minor offence under the Minor Offences Act 1955 [Act 336].
7. *Clause 6* seeks to introduce thirteen offences into Chapter VI (Offences Against the State). Seven of these are new offences, namely activity detrimental to parliamentary democracy, attempt to commit activity detrimental to parliamentary democracy, dissemination of information, sabotage, attempt to commit sabotage, espionage and attempt to commit espionage. However, the proposed sections 124D, 124E, 124F, 124G, 124I and 124J deal with offences which used to be in the Internal Security Act 1960 [Act 82] but with modifications.
8. *Clause 7* seeks to introduce new definitions into Chapter VI to cater for the new offences under *clause 6*. The new definitions are “activity detrimental to parliamentary democracy”, “document or publication detrimental to parliamentary democracy”, “espionage”, “essential services”, “publication”, “sabotage” and “sensitive information”.
9. *Clause 8* seeks to introduce a new offence of being a member of a terrorist group into Chapter VI A.
10. *Clause 9* seeks to introduce a new Chapter VI B on organized crime. Two new offences are created, namely being a member of an organized criminal group which carries a sentence of imprisonment of up to five years and assisting an organized criminal group which carries a sentence of imprisonment of up to ten years.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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