

Date Published: 04 Aug 2014

1 Mdm Speaker, I beg to move, “That the Bill be now read a Second time.”

2 Transboundary haze pollution has been a perennial problem in the region for the past two or more decades. The root of this problem is misaligned commercial interests where companies burn forests and engage in unsustainable degradation of land in order to maximise short-term profits. It is clear that it is only in the recent decades, when the presence and operations of companies in the region’s forests and lands have grown significantly, especially oil palm plantations, that the haze situation has become much more severe and widespread.

3 I would like to point out that the main victims of this man-made disaster who have suffered the most are the local indigenous people living in and directly adjacent to forests that are being burnt. We in Singapore are, in a sense, secondary victims, but the damage to our health and economy is real and significant.

4 The persistence of this problem in this region despite the obvious harm shows the enormity of the challenge. There is therefore an urgent need for governments, non-governmental organisations, responsible companies, and local communities to collaborate more effectively, to insist on transparency and to pursue investigations in order to hold the culprits accountable for their actions, and for effective enforcement actions.

5 The question is: why are we now enacting the Transboundary Haze Pollution legislation? After all, do the countries in whose forests are being burned not already have their own laws? The reality is that it is not a lack of laws. It is a lack of enforcement action. There is inadequate enforcement on the ground to deter such illegal land clearing and we, in Singapore, cannot simply wait and wishfully hope that the problem will be resolved on its own. The Singapore Government, and, I hope, this House, would want to send a strong signal that we will not tolerate the actions of errant companies that harm our environment and put at risk the health of our citizens.

6 We have, therefore, tabled this Bill to introduce a new Transboundary Haze Pollution Act. This legislation will make it an offence for any entity – Singaporean or non-Singaporean -- to cause or to contribute to transboundary haze pollution in Singapore. This Bill is not intended to replace the laws and enforcement actions of other countries, but it is to complement the efforts of other countries to hold companies to account.

7 Given the very strong economic incentives today for companies to adopt the cheapest methods of clearing land for plantations, we need to tilt the playing field in favour of companies that do the right and responsible thing, and deter the companies that do the wrong and irresponsible thing. We must not allow companies to ignore the environmental and health impacts of their actions. Our transboundary haze pollution legislation will add to the slate of deterrence measures by enabling us to hold these companies accountable for their irresponsible behaviour and will send the signal that we will not tolerate such misconduct.

8 Specifically, the following are the objectives of the Bill:

First, it creates an offence for an entity to engage in conduct, or to engage in conduct that condones the conduct of another entity, which causes or contributes to haze pollution in Singapore. It is also an offence if an entity participates in the management of another entity which owns or occupies land overseas, and that other entity engages in conduct, or engages in conduct that condones the conduct of another, which causes or contributes to haze pollution in Singapore;

Secondly, it creates a new statutory duty for an entity not to engage in conduct, and not to engage in conduct that condones the conduct of another which causes or contributes to haze pollution in Singapore. There is also a statutory duty for an entity, which participates in the management of another entity which owns or occupies land overseas, to ensure that the foreign entity does not engage in conduct, and does not engage in conduct that condones the conduct of another, which causes or contributes to haze pollution in Singapore;

Thirdly, this legislation creates a liability regime making such entities and their officers who had played a part in the proscribed conduct, liable to pay compensation for such conduct which have caused or contributed to transboundary haze pollution within Singapore, resulting in harm to any person, property or the environment here.

9 Mdm Speaker, I shall now highlight the key features and provisions of this Bill.

10 This Bill is designed to apply to entities whose conduct causes or contributes to transboundary haze pollution in Singapore, regardless of whether these entities have a connection to Singapore. Clause 4 of the Bill provides for such extra-territorial reach.

11 Let me assure the Members of this House that this is not something that we enter into lightly. Because we are addressing transboundary haze pollution, an extra-territorial approach is necessary for the law to be effective. This exercise of extra-territorial jurisdiction under this Bill is in line with international law, specifically the objective territorial principle.

12 Mdm Speaker, in order to allow the Bill to have a deeper reach to the real perpetrators behind any land and forest fire overseas that leads to haze pollution in Singapore, this Bill has been designed to catch entities that are directly or indirectly involved in slash-and-burn activities overseas that result in haze pollution in Singapore. In short, a party does not need to have started the fire itself in order to be held liable for the act. A party would be liable if it participates in the management of the actual offending party. That is what I referred to as the second entity. Clause 3 lists out the three circumstances when an entity is regarded under the Bill to have participated in the management of another entity. By participating, we mean the entity is (a) being involved in the management or operational affairs of the second entity, (b) exercising decision-making control over any business decision by the second entity, or (c) exercising control at a level comparable to that exercised by a manager of the second entity.

13 In order to make it clear, the Bill defines an entity as a sole proprietorship, partnership, corporation or other body of persons, whether corporate or unincorporate. As I have stated earlier, the root of the transboundary haze pollution problem is companies that burn forests and engage in unsustainable degradation of land. That said, where offences are committed by a body corporate, an unincorporated association or a partnership, clause 16 of the Bill will hold individuals in positions of responsibility liable for offences committed by such entities. To avoid liability, such an individual must prove that the offence was committed without his consent, connivance or privity. He must also prove that he had exercised all due diligence to prevent the offence as he ought to have exercised.

14 Some countries have a more complex land holding and control system and land ownership may not be confined literally to mean the physical ownership of land. We have, therefore, in clause 2 defined “owner” broadly, taking into account the different ways of land holding and control in other foreign countries and territories. The definition is not exhaustive, but mentions specifically any person who holds a valid lease, licence, permit, concession or other similar authorisation from a foreign government, as regards land in that foreign State or territory, for the purpose of farming or forestry operations on that land. The definition also covers any person who has an agreement or arrangement with another person who is the supposed “owner” of such land, where ownership is the broad definition as described before.

15 I apologise for the substantial amount of legalese, but I need to make this point because, sometimes, ownership and control structures can be complex. And our law has to be sufficiently comprehensive to catch all relevant culprits.

16 Let me move on to defences. The Bill needs to take into account the complex land ownership structure in overseas countries and commercial relationships in this space. Therefore, the defences stipulated under clause 7(2) and 7(4) of this Bill cannot be used by the accused or defendant if the haze pollution was caused or contributed by his/her employee or agent, or any person and the person’s employees that have been engaged, directly or indirectly, by the accused to carry out work on the land that the accused owns or occupies.

17 The defences in clause 7 also cannot be used by any person who has a customary right under the foreign law over the foreign land with whom the accused or defendant has an agreement or arrangement that relates to any farming operations or forestry operations. However, clause 7(2) and 7(4) provide that it shall be a defence if it is proved that the conduct which caused or contributed to the transboundary haze pollution was by any other person. Clause 7(1) is also available to owners, occupiers and operators if they can prove that the haze pollution is caused solely by grave natural disaster or an act of war.

18 I will move on now to the criminalisation of offences. The Bill criminalises acts in relation to any conduct carried out in Singapore or outside Singapore which causes or contributes to any haze pollution within Singapore. Mdm Speaker, in what follows, I will outline the details of the criminal penalties provided under this Bill.

19 Clause 5 of the Bill sets out the offences in the Bill which seeks to deter entities from being involved in activities which cause or contribute to haze pollution. It is an offence if an entity engages in conduct, whether in or outside Singapore, or engages in conduct that condones any conduct of another, again, whether in or outside Singapore, that causes or contributes to any haze pollution within Singapore. Similarly, it is also an offence for an entity to indirectly cause or contribute to haze pollution in Singapore through its participation in the management of another entity which owns or occupies land outside Singapore and where that other entity engages in conduct, or engages in conduct that condones the conduct of another, which causes or contributes to haze pollution in Singapore.

20 The penalty for the offence is a fine not exceeding \$100,000 for every day or part thereof that there is haze pollution in Singapore arising from that entity's conduct. The maximum aggregate fine that can be imposed under this clause is capped at \$2 million. The fine's per-day formula is intended to disincentivise an entity from continuing its errant conduct and to incentivise it to put out any fires within its jurisdiction at the earliest possible time so as to mitigate the adverse impact any prolonged haze might bring.

21 Similarly, an entity which fails to comply with the preventive measures notice given in relation to that haze pollution in Singapore would be liable to an additional fine not exceeding \$50,000 for every day or part thereof that the entity failed to comply with the preventive measures notice.

22 In our public consultation exercise of the Bill, we received strong support for a penalty regime that would place a substantial financial penalty on the errant entity, in order to act as an effective counter against the very strong economic motivations of the companies.

23 To give greater clarity as to when an offence is deemed to have occurred under the Bill and its regulations, we will define this as when the air quality in any part of Singapore reaches a Pollutant Standards Index (PSI) of 101 or higher; and that this has lasted for a continuous period of 24 hours or longer. These become the threshold. Both these conditions must hold at the same time. This is a reasonable benchmark, as a PSI of 101 or more reflects air quality in the Unhealthy range or worse. The State will use this information along with satellite data and other meteorological evidence, to determine who may be responsible for causing the haze.

24 In reality, it will be challenging to establish a clear nexus between the transboundary haze affecting Singapore and the responsible parties involved. Any such evidence would be circumstantial at best. To facilitate this, clause 8 therefore provides the necessary legal presumptions to allow the establishment of a causal link through the use of reasonably probative circumstantial evidence with the help of technology, such as high-resolution satellite images and meteorological information at or near the time that the transboundary haze pollution occurs in Singapore.

25 Further presumptions are also provided under clause 8 to facilitate identification of an entity responsible for the haze pollution in Singapore; the establishment of the causal link between an entity that participates in the management of another entity and where the other entity is responsible for the haze pollution in Singapore; and for the identification of the owner or occupier of land through maps from recognised sources. All these presumptions are assumed to be true until the contrary is proved. The use of rebuttable presumptions has precedents in Singapore law, and their inclusion here paves the way for Singapore to use the new law effectively to deter and to hold companies accountable.

26 Similarly, NEA must be given effective investigative powers to establish a case. Penalties are therefore created under clauses 10(6) and 10(7) for failure to comply with the notice to furnish documents and information required for investigation, or where one wilfully alters, suppresses, destroys or provides false information. The penalties for both offences can be a fine not exceeding \$5,000 or imprisonment or both. Clause 14 further provides the penalty for obstructing the Director-General of Environmental Protection or any authorised officers during their investigations. Clause 17 allows the court to penalise any person who failed to comply with the notice to attend court. Where a court is satisfied that a person served with a notice intends to leave Singapore, the court may also by order require the person to remain in Singapore. We hope that these penalties will lead to more cooperative behaviour during the investigation phase.

27 Let me move on now to civil liability. Mdm Speaker, we know that some groups of people especially those with health problems, and the operations of some businesses such as those in the tourism industry, can be severely affected by the onset of haze in Singapore. Hence, we need to provide a legal recourse for affected persons in Singapore who have suffered from the haze to seek redress from the responsible party or parties. Clause 6 creates new statutory duties. Where an entity engages in conduct that is in breach of the new statutory duties, this will give rise to a civil claim.

28 Civil damages recoverable under the Bill may include damages for: (1) any personal injury or disease; (2) any mental or physical incapacity; (3) any damage to property; and (4) any economic loss including loss of profits. There is no stated cap on the liability, and the Court will determine the quantum of damages to be awarded. However, the Court will use legal principles and case law to do this, and this means that the claimable amount is, in effect, limited by the extent of harm, loss or damage actually suffered by the plaintiff. The civil liability provided for in this Bill will only take effect in relation to haze episodes occurring after the date of coming into force of this Bill. In other words, this Bill will not operate retrospectively.

29 Mdm Speaker, I would like to reiterate the importance of evidence gathering in the process of investigation so as to establish the culpability of the offending entity. This is the reason why the Bill allows us to serve a notice on a body corporate, an unincorporated association or a partnership which does not have any place of business in Singapore, to assist NEA in its investigations under clause 10(3).

30 After giving notice, NEA may enter any building in Singapore, and seize or take extracts from copies and documents. Clause 11 of the Bill empowers the Director-General or an authorised officer to examine witnesses and to require their attendance for statement taking. Clause 13 provides immunity for the Director-General and his officers, for anything which is done in good faith and with reasonable care while performing any function or duty under the Bill.

31 Mdm Speaker, it is my Ministry and the NEA's mission to protect the public health of all Singaporeans – public hygiene, food safety and the quality of air and water that we all share. This commitment extends to the mitigation of transboundary haze pollution, even when we have no direct sight of the source. People in the region have been suffering from the bane of haze pollution arising from illegal commercial land and forest clearing through slash-and-burn practices for many decades. It is necessary for us to table this Bill to hold such irresponsible entities accountable for their actions.

32 However, I want to be upfront. This Bill will be challenging to implement. You would have noted from the elaboration of the clauses in the Bill, which aims to strike a balance between addressing the difficulties of identifying the culprit while ensuring that the Bill does not over-reach such that companies that are doing the right thing also feel threatened.

33 Many have also told me that this Bill is novel, and introduces new legal concepts to our Singapore law which we may not have prior experience to guide us. Therefore, I do not anticipate that we will, immediately or in the near future, have an overwhelming number of prosecutions against companies once the Act comes into force. In fact, I expect NEA to be thorough and to exercise careful judgment when implementing the legislation and, when it is time to identify the company that should be subjected to the full consequences of the law. At this point, I would also like to reassure responsible businesses that adopt environmentally sustainable practices that they will have nothing to fear.

34 I am also heartened that in the course of the one-month public consultation exercise that we held in February and March this year, we received much support for this Bill from members of the public and other concerned parties such as academics and NGOs. Even companies that will themselves be subject to the Bill understood our motivations and gave us useful feedback. The feedback from the consultation was used to improve our Bill, and I want to thank all those who have contributed to this process. Members of the House would be aware that the version which you have now is different from the version which we first put up months ago. This shows the benefits of the public consultation process.

35 To conclude, I would like to reiterate that this Bill is not meant to replace the enforcement actions that should be taken by other countries, but rather to complement their investigative and enforcement efforts. While this legislation is a step in the right direction, it is not a silver bullet. It is only one of a slate of measures that we must put in place in order to tackle the transboundary haze that has plagued our region for many

years. I strongly believe that regional cooperation within ASEAN is still a critical pillar of the ultimate solution. Enacting this legislation is just one step to re-align commercial interest. We still need the support and cooperation of many other stakeholders – the foreign governments, the companies, the NGOs and fellow Singaporeans ? in order to make this region and Singapore safe from haze pollution. Mdm Speaker, I beg to move.

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