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Content Forum Commences Public Consultation on the Revamped Communications and Multimedia Content Code 2021

Introduction

The Malaysian Communications and Multimedia Content Code ("**Content Code**") was first introduced and registered with MCMC on 1 September 2004. The main purpose of the Content Code is to outline procedures for self-regulation as it contains governing standards and best practices for content dissemination within the communications and multimedia industry in Malaysia.

The Content Code is implemented and enforced by the Communications and Multimedia Content Forum of Malaysia ("**Content Forum**") which is the independent self-regulatory industry body registered under the Malaysian Communications and Multimedia Commission ("**MCMC**"). The Content Forum is designated by the Communications and Multimedia Act 1998 ("**CMA**") to govern and oversee the creation, dissemination and consumption of content over the electronic networked medium, and comprises key members of the communications and multimedia content industry, including advertisers, broadcasters, content creators/distributors, audiotext hosting services providers, internet service providers and civic groups.

The Second Edition of the Content Code was released and registered with MCMC on 14 February 2020 ("**Content Code 2020**"). Content Code 2020 included a few amendments which made it more comprehensive and in tandem with the current condition of electronic content.

In 2021, the Content Code was revamped to address gaps caused by the advancement of technology, the internet and social media, and facilitate the self-regulation by consumers and industry players. The Revamped Content Code Draft ("**Content Code 2021**") is the result of the consultation with Content Forum members as well as relevant key stakeholders. Content Forum has recently initiated a nationwide Public Consultation exercise as the final step in the review of the Content Code 2021. This Public Consultation is meant to give everyone the opportunity to contribute to the new version of the Content Code, as it will continue to be a reference for the interpretation of offences under Section 211 and Section 233 of the CMA.

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Key Proposed Revisions in the Content Code 2021

Redefining indecent content

The Content Code 2021 has proposed to amend the scope of indecent content to allow depictions of nudity in art or other educational purposes. Such depictions will only be allowed if they are not excessive and explicit, the extent of which will depend on the treatment and context of films / programmes and classification considerations.

New provisions in relation to online abuse and gender-based violence

A new paragraph 4.2(v) is added under Part 2 of the Content Code 2021 to address the issues of online abuse and gender-based violence by prohibiting content which incites or provokes such acts, in order to reflect Malaysia's position as a signatory to the Convention on the Elimination of All Forms of Discrimination against Women.

Extending protection to Persons with Disabilities

Under the Content Code 2021, the term "Persons with Disabilities" is used to replace the term "Persons with Special Needs", given that it is a more accurate and acceptable term and is consistent with the Persons with Disability Act 2008. Provisions of the existing code have been amended, with the necessary consultations with the relevant stakeholders, to ensure that the rights of Persons with Disabilities are respected and protected in the production of content. New provisions have been added to encourage members or Code Subjects to facilitate content accessibility for Persons with Disabilities.

Expanding the scope of provisions regulating advertisements

The scope of the provisions governing advertisements under Part 3 of the Content Code 2021 is being expanded to cover Online Marketplace Operators and others involved in the production and transmission of advertisements such as Influencers. It should be noted that the terms "Online Marketplace Operators", "Influencers" and "Social Media" are now defined in Part 1 of the revamped code. In particular, the definition of "Influencer" and "Social Media" was inserted to govern the emerging sector of influencer marketing. A new paragraph 6.3 under Part 3 is added to encompass situations where third parties such as influencers, are used to advertise or market products and services, whereby such advertisements or marketing communications including those on social media platforms must be clearly disclosed as being done in exchange for payment in cash or some other reciprocal arrangement in lieu of cash. For instance, such disclosures should be placed with the endorsement content itself and should use an upfront label that must first be noticed and understood, containing words such as "Advertisement", "Advertisement Feature", "Ad", "Sponsored", and that vague or confusing terms like

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"sp", "spon", or "collab", or stand-alone terms like "thanks" or "ambassador" as well as other abbreviations and shorthand should be avoided.

Raising the standard required pertaining to advertisements

In the Content Code 2020, the standard of advertisements is stated as "reliable standards". Under the Content Code 2021, "high standards" is deemed to be the appropriate standard for self-regulation, rather than "reliable standards", in order to ensure that self-regulation standards are sufficiently constructive to meet consumers' expectations. Further, stricter standards will be imposed on claims by advertisers to enhance accountability for claims, testimonials and endorsements made in advertisements. All descriptions, claims and comparisons made in advertisements should be capable of substantiation, and advertisers are required to hold such substantiation ready for scrutiny without delay if and when requested.

Consumer Protection

To better protect consumers, new paragraphs have been included to ensure that advertisements are honest and truthful. Advertisements shall not (i) misrepresent any matter that is likely to influence consumers (i.e. on the source/quality/capability of the product/obligation in using a trial product, actual price of products and/or services without hidden costs, conditions on the terms of payment, after sales services and benefits for charitable causes); (ii) omit "material information" and mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner; (iii) whilst obvious hyperboles, which are intended to attract attention or to amuse, are permissible provided that they are not likely to be taken as a positive claim to superior or superlative status. Further, a number of provisions have also been added, for instance, to address situations where advertisers use fear and distress to compel consumers to purchase the products/services, to ensure that prices are shown in the form of all-in or final price and that any discounted price shall comply with the relevant guidelines issued by the Ministry of Domestic Trade and Consumer Affairs (MDTCA), and to protect consumers against deceptive advertising, etc.

Removal of unacceptable products and services

One of the most prominent changes made to the existing Content Code is the removal of the list of unacceptable products and services. This is a welcome development considering that the list is outdated and includes items which are not products or services. A new paragraph has been inserted to clarify that any advertisements for products or services which are prohibited under the laws or regulations are unacceptable. The provision also makes it clear that the list is non-exhaustive and should not be limited to the items currently listed under Appendix II of the Content Code 2021. Hence, under the Content Code 2021, as a general rule, all products and services, which are legal should be allowed to be

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advertised as long as they comply with the advertising standards as prescribed in the revamped code and existing laws and regulations.

Women, children and religion in advertisements

Provisions regulating women in advertising that are previously found in the Content Code 2020 has been removed to avoid discrimination. On the other hand, amendments have been made to specifically address children's involvement in advertising content and to enhance the protection of children's rights in advertising. For instance, the use of children is not encouraged unless the products advertised are relevant to them or in the context of promoting safety for children; that advertisement addressed to children or likely to be seen by them, shall not contain anything, whether an illustration or otherwise, which results in harming them physically, mentally or morally; that any advertisement shall not include a direct exhortation to children to buy or hire a product or service or to persuade their parents, guardians or other persons to buy or hire a product or service for them, etc.

In relation to the use of religion in advertisements, this is generally prohibited under the Content Code 2021. Nevertheless, exceptions have been crafted to allow for the use of Halal certification issued and other related certifications permitted under the law.

Advertisements for cosmetic products and financial products and services

The provision regulating sanitary protection products have been removed and replaced with regulations regarding cosmetic products. In this regard, all advertisements relating to such cosmetic products shall comply with the Guidelines for Control of Cosmetic Products in Malaysia and the Guideline for Cosmetic Advertisement as published by the National Pharmaceutical Regulatory Agency (NPRA), Ministry of Health Malaysia.

Further, a new paragraph has been proposed to specifically address capital or financial products and services. Advertisements promoting financial products and services shall comply with the Financial Services Act 2013, Islamic Financial Services Act 2013, Money Services Business Act 2011 and all other related laws, rules and regulations. Advertisers who are marketing and dealing in securities shall comply with the Capital Markets and Services Act 2012, Division 3 (Advertising Guidelines) of the Prospectus Guidelines.

Allowing advertisements of intoxicating liquor

Advertisement of alcoholic drinks or beverages are generally prohibited under the Content Code 2020. However, it has been proposed that advertisements of intoxicating liquor communicated over electronic mediums based in Malaysia be allowed in order to level the playing field with print advertisers and online

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advertisers. However, such advertisements are not allowed to be communicated over television and radio.

Further, the advertising of intoxicating liquor is subject to strict restrictions stipulated in the provisions which were drafted and benchmarked against the Advertising Standards Authority Malaysia's Code of Advertising Practice 2008. For instance, advertisements of intoxicating liquor shall not feature any person below the age of 21, promote excessive consumption, give the general impression that a drink is being recommended mainly for its intoxicating effect, etc. At the same time, such advertisements shall include a clearly visible disclaimer stating that it is intended "strictly for non-Muslims aged 21 and above only", clearly visible responsible drinking messages and only feature people who are non-Muslims aged 25 and above. Reasonable efforts shall be made to ensure that advertisements of intoxicating liquor are not targeted at Muslims and any person below 21 years of age.

Allowing advertisements by licensed gambling or betting company

Under the Content Code 2021, advertisements by a licensed gambling or betting company in relation to corporate social responsibility ("**CSR**") campaigns and public service announcements ("**PSA**") are allowed, provided that it adheres to strict conditions. In essence, messages must be brought by its charitable arm which is clearly different from its parent company and that the content produced by the charitable arm shall be clearly done for the sole purpose of providing CSR and/or PSA type messages and not contain any element of the gambling business of its parent company (including the name, taglines, sound jingles, logos, font, colour and other relatable indicators). The provision also provides that gambling companies are not allowed to directly advertise any elements of their products and/or services related to gambling and betting if it were to become a title sponsor of an event held in Malaysia, and must only use the events' logo and/or charitable arm logo in the promotional materials. It should be noted that examples or illustrations of permitted advertisements have also been provided under the Content Code 2021.

Online Service Providers as Code Subjects

With regard to the scope and coverage of Specific Online Guidelines under Part 5 of the Content Code 2021, amendments have been made to include Online Service Providers as Code Subjects, so as to not only cover contents originated from and hosted in Malaysia, but also content initiated, uploaded, disseminated or made available online in Malaysia. However, paragraph 1.3, Part 5 of the revamped code makes it clear that Code Subjects shall exclude providers of Over-the-Top ("**OTT**") Content Services, including but not limited to Video-on-Demand services, linear OTT services and other like television streaming services. All Code Subjects, including Online Service Providers, must take a responsible approach to provide Content by implementing reasonable, practicable and proportionate measures and to provide a proactive and reactive mechanism in cases where prohibited material or activity is identified.

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Complaint procedure

The Content Forum operates a Complaints Bureau that addresses queries and grievances from consumers and industry members on matters relating to content over the electronic networked mediums. Amendments have also been proposed in relation to the provisions governing the general complaint procedure to the Complaints Bureau. Under the Content Code 2021, the time limit for respondents to prepare justification; for the Chairman to review the complaint and response; for the members to agree with the view of the Chairman and to write to complainant stating that there are insufficient grounds to uphold the complaint, are extended from two to five working days.

It has also been proposed that the Complaints Bureau shall provide an avenue for mediation and/or arbitration for parties involved in a particular complaint. However, the parties will be subjected to an administrative fee to support the Content Forum's expanded operational activities. New provisions have also been introduced for complaints on matters relating to comparative, superlative and misleading claims, which require an expedited process. The Complaints Bureau is required to make a ruling upon receiving documentary evidence from the complainant within 10 working days. Further, it also gives the Complaints Bureau the power to make a ruling without having to call for the presence of the complainant and respondent (i.e., without a hearing) if they deem that the written submissions or documentary evidence presented by the parties are sufficient to make a ruling.

Conclusion

Overall, the proposed revisions made under the Content Code 2021 serve the purpose of providing a more comprehensive and holistic collation of guidelines and best practices by addressing content-related issues which are new within the industry and by filling the void in the previous editions of the industry code. The changes should be welcomed to ensure that the industry remains competitive, efficient and self-regulating.

Members of the public or interested parties are urged to provide feedback on the public consultation to ensure that the Content Code 2021 reflects the current needs and circumstances of the Malaysian consumers. The consultation paper can be accessed at [Content Code 2021 Public Consultation Paper](#) and the exercise will take place from 24 September 2021 to 9 November 2021. The final draft of the Content Code 2021 will take into account the findings of the public consultation prior to its submission for registration by MCMC.

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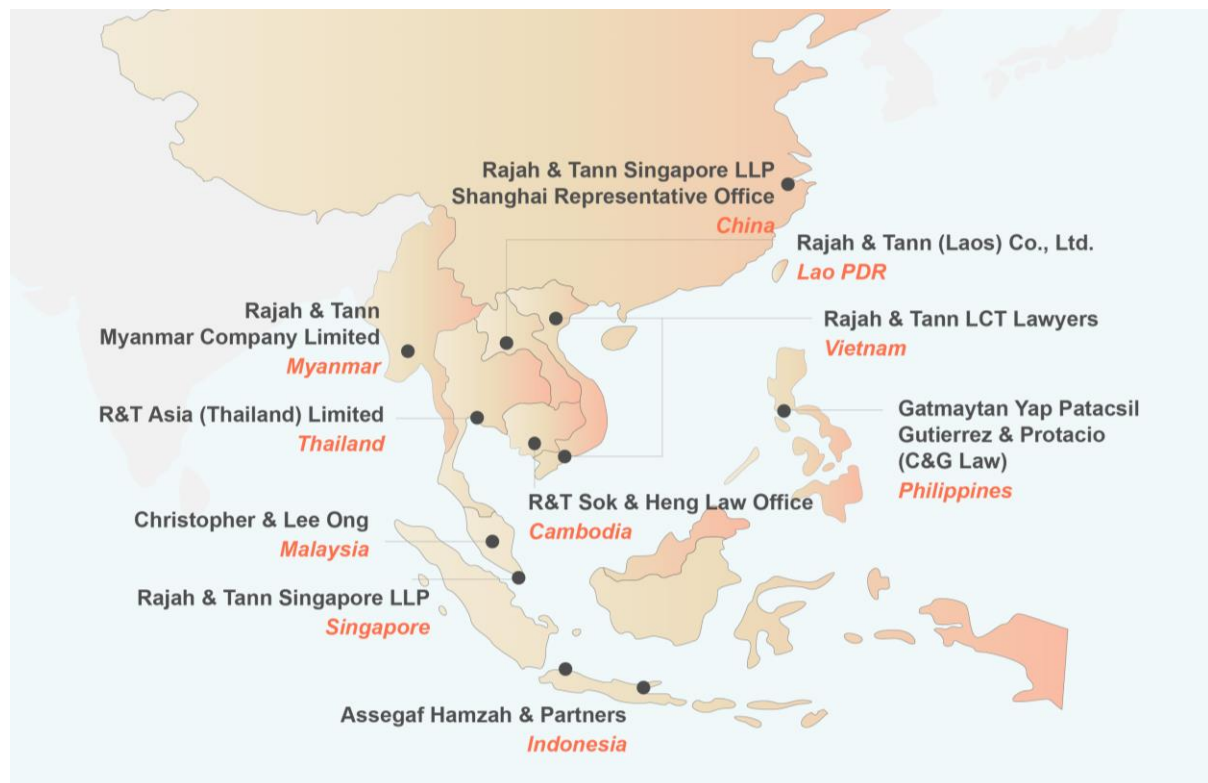
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