

The new law on foreign interference – what's next for businesses?

Businesses can have disclosure policies for themselves and their stakeholders, akin to conflict of interest disclosures. **By Eugene K B Tan and Benjamin Joshua Ong**

THE Foreign Interference (Countermeasures) Bill (Fica) was passed in Parliament on Monday after about 10 hours of impassioned debate. Despite the government agreeing to several amendments proposed by the Workers' Party, the substance was not changed in any significant way.

Although the government provided more details on how Fica is to operate, more details will be unveiled when it comes into operation.

What does all this mean for businesses? Fica seeks to provide the government with legislative tools to counter foreign interference in domestic politics, primarily conducted through hostile information campaigns and the use of proxies or "politically significant persons".

Legislating Fica is the easiest part. As Home Affairs and Law Minister K Shanmugam said on Monday: "Our people haven't even begun to realise what the problem is, and the nature of the problem."

Combating foreign interference requires more than a whole-of-government approach. A whole-of-society effort and resilience are needed to withstand the forces that seek to divide and destroy. Fica speaks more to the former. Concerted efforts must be undertaken to bolster society's understanding of the hows and whats of foreign interference – a form of asymmetric warfare which seeks to sow discord among people, and degrade trust and confidence in public institutions.

In other words, people – both individuals and businesses – are the very means of this warfare.

Fica and businesses

Companies, business associations, foreign firms with dealings in Singapore, and even clan associations and ethnic business networks here, have to keep Fica in mind as part of their operational risk management.

Globally, state and non-state actors – including businesses – make varying use of overt lobbying to influence and advance their interests in other states. There is nothing inherently wrong with this. However, where such efforts are covert and seek to undermine Singapore's political economy and the public interest (defined in Fica), Fica has them within its crosshairs.

In 2017, nine Singapore armoured personnel carriers were impounded in Hong Kong's port while being transported from Taiwan after military training exercises there.

There were many anecdotes of calls by segments of the business community to the government, at the urging of their foreign counterparts, for Singapore to seek China's assistance in getting the military vehicles released.

They were concerned that their business interests and relationships in China and Hong Kong would be detrimentally impacted by strained bilateral relations caused by the prolonged detention of the military hardware in Hong Kong.

Fica would probably not apply in such a case. Nevertheless, the episode illustrates the subtleties and complexities of foreign influence of state and non-state actors that could border on foreign interference, and the blurring of the dis-

inction between state and non-state, the public and private domains.

The bottom line is that businesses could be unwitting proxies for foreign actors seeking to influence our politics, economic and foreign policies.

To be clear, legitimate and illegitimate lobbying activities are to be expected in Singapore, a business hub and a city-state reliant on trade, outbound and inbound investments.

To mitigate the risk of foreign interference, individuals and organisations directly involved in activities directed towards political ends can be designated under Fica as "politically significant persons" and subject to countermeasures, including reporting requirements.

Businesses must be sensitive to the risk of being used for foreign interference. This could entail having appropriate disclosure policies for themselves and their stakeholders, akin to conflict of interest disclosures that many make regularly.

Such a practice will promote transparency, accountability, and scrutiny – all watchwords against foreign interference.

Some countries make such a practice compulsory. Australia requires all who engage in certain activities (such as lobbying and public communication) on behalf of a foreign principal to disclose details of those activities on a publicly-accessible register.

Although Singapore has no such requirement, businesses should consider keeping records of interactions with foreign partners and actions on behalf of foreign parties.

Businesses can better appraise for themselves who they are dealing with and to consider whether they are at risk of becoming vehicles for foreign subterfuge and subversion.

Such records could be kept internal, but disclosing them can promote a sense of transparency. Foreign businesses, meanwhile, should be prepared to offer the requisite assurances about the nature of their dealings in Singapore if any.

Clarifying limits to government powers

Business and other stakeholders may feel concern and uncertainty about Fica's precise reach. After all, on its face, Fica gives the government wide-ranging powers to impose restrictions on individuals and businesses.

One might wonder: Is a business with foreign dealings at risk of trouble if it expresses views on certain causes – say, as part of a corporate social responsibility initiative?

Must businesses avoid forming foreign ties just to err on the safe side? Are foreign businesses disempowered from communicating their views to the government?

In truth, there are important safeguards built into Fica that may not be immediately apparent. For example, Shanmugam pointed out that the authorities are legally bound to observe proportionality when using Fica.

This principle, though not explicit in Fica, limits the state's power and reduces the political risk faced by businesses.

Therefore, as the minister put it: "The vast majority of foreign dealings between Singapor-

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ean companies and their business counterparts will continue unchanged."

Despite its ostensibly broad wording, Fica is about preventing (often covert) foreign interference, not just any foreign involvement or even influence.

Some uncertainty will understandably remain. The government made many assurances and clarifications in Parliament. These assurances, though not codified in the law, do matter. They are certainly relevant when interpreting Fica and the limits to the state's powers under it.

More can be done to clarify. One possibility would be to codify those assurances clearly in subsidiary legislation under Fica.

The government should also consider stating specific examples of situations in which Fica is applicable. This would be similar to what the government did for the Protection from Online Falsehoods and Manipulation Act (Pofma).

These examples of when Pofma can and cannot be used provided more concrete assurance than the general principles stated in Parliament.

Further clarity will come when the government sees fit to invoke its powers under Fica.

Those affected may exercise their rights of appeal – whether to the Home Affairs Minister or to the Reviewing Tribunals. In doing so, they will make various arguments drawing on the government's assurances and clarifications.

The government has stated that the outcomes of appeals may be published, "depending on the facts and circumstances of the case".

Unless concerns of national security forbid it, this publication should take place as a matter of course to clarify how Fica operates in practice and bolster public trust and confidence in its use.

Continuing the conversation

Even then, there may still be outstanding legal questions. For example, if someone is dissatisfied with the outcome of an appeal to the Reviewing Tribunal or the minister, can a further challenge be brought through a judicial review application to the High Court?

Fica appears to limit judicial review to certain procedural grounds. It remains to be seen how the courts will respond to arguments that such limits are unconstitutional and of no effect.

Other possible questions involve constitutional rights. Under Article 14 of the Constitution, Singaporeans' freedoms of expression and association may only be restricted in certain circumstances.

Future debates about Fica and these fundamental freedoms will be keenly watched. In short, the conversation about Fica has only just begun, and will intensify further when Fica is deployed.

Moreover, Shanmugam stated that the government will "help businesses navigate how Fica applies to them".

But conversations about foreign interference must go beyond Fica. Agreeing with Leader of the Opposition Pritam Singh, Shanmugam spoke of the "importance of education about foreign interference and its dangers . . . Powers under Fica are only part of the picture".

Now that Fica is in place, the time has come to reveal the rest of the picture and the places of individuals, businesses, civil society, and bona fide engagement with actors of foreign origin and their ideas.

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