Private International Law Dimensions of Singapore's New Legislation to Combat Online Harms

Guest post by Professor YEO Tiong Min, Yong Pung How Chair Professor of Law, Yong Pung How School of Law, Singapore Management University

Much has been in the news about governmental endeavours to protect children from the ills of social media, which has partially eclipsed the equally important issue of social media being used to cause online harms to both the young and not so young alike. The Online Safety (Relief and Accountability) Act 2025 (OSRAA) came into effect in Singapore on 29 June 2026, with the objective to strengthen the protection of victims against various types of emerging online harm, including intimate image abuse, image-based child abuse, doxxing, online harassment, and online stalking. The statute established the Online Safety Commission that can make orders to hold accountable those who post harmful content (Communicators), control the hosting of the harmful content (Administrators), or host the harmful content (Platforms).

In addition to regulatory orders, the OSRAA provides civil law relief to victims by imposing duties on: (a) Communicators (not to communicate, publish or engage in conduct relating to specified online harm); (b) Administrators (not to create, set up, or administer online locations that facilitate the conduct of online harm with intention or knowledge that such harm would ensue, and to take reasonable measures to address such harms upon notification); and Platforms (to take reasonable measures to address specified online harms upon notification). Victims can seek civil remedies, including damages and injunctions, from the Singapore court.

Online harms inevitably happen in the borderless world of electronic communications. Of significance to private international law are the following provisions in the OSRAA:

Tort treated as taking place in Singapore

101. For the purposes of any proceedings for a tort under Part 10, 11 or 12, that tort is to be treated as having taken place in Singapore if any act or omission or any part of an act or omission that is an element of the tort —

(a) was initiated or occurred in or from Singapore;

(b) is perceived by one or more persons in Singapore; or

(c) caused damage, loss or harm suffered in Singapore.

Limits to exclusion of liability

102.—(1) This Act has effect despite any provision or term to the contrary in any contract, agreement or notice and any provision or term in a contract, agreement or notice is void if and to the extent that —

(a) it is inconsistent with Part 11 or 12;

(b) it purports to exclude or limit the jurisdiction of the courts of Singapore for a claim made under Part 11 or 12; or

(c) it purports to prevent a person from making a claim under Part 11 or 12.

(2) Subsection (1) does not apply to a provision or term of a contract, agreement or notice that is fair and reasonable having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract, agreement or notice was made.

(3) In determining for the purposes of subsection (2) whether a provision or term of a contract, agreement or notice is fair and reasonable, the court is to take into consideration the prescribed matters.

(4) To avoid doubt, section 26(1) of the Electronic Transactions Act 2010 (which relates to the limitation of liability of network service providers) does

not apply in relation to any liability under the provisions of Part 12 or 13 in relation to the liability of an online service provider.

Section 101

Section 101 is clearly intended to affect private international law, since the concept of the place of the tort has no legal significance within Singapore domestic law. The substantive tortious duties are enumerated in Parts 10 (Communicators), 11 (Administrators) and 12 (Platforms). Section 101 situates the relevant statutory tort within Singapore upon the occurrence of any one of the disjunctive connections in subsections (a), (b), and (c). The connections in (a) and (c) are standard ways to measure the connections of a tort to a particular jurisdiction, but there is no weighing of these factors against countervailing factors pointing elsewhere. Further, the connection in section 101(b) can be pretty tenuous. There is clear intention to locate the tort in Singapore so long as there is some connection with Singapore. Section 101 has significant implications for both jurisdiction and choice of law analysis.

The Singapore court has *in personam* jurisdiction over defendants who are served in Singapore, or who are served outside Singapore with the permission of the court. Permission for service out of jurisdiction may be granted when: (a) the claim has sufficient nexus with Singapore; (b) Singapore is the forum conveniens; and (c) there is a serious issue to be tried on the merits. Locating the tort in Singapore immediately secures a sufficient nexus with Singapore by reinforcing the tort gateway (which strictly only requires a tort to occur partially in Singapore), although sufficient nexus can already be established simply by invoking a power of the court under a Singapore statute (which will be the case here). Moreover, it triggers a presumption that Singapore is forum conveniens. This is not a legal presumption but a factual one arising from the likelihood of the location of the events, evidence and witnesses as well as the applicable law (more on this below) being of significance in the evaluation of the forum conveniens question. Thus, this presumption may not be a high hurdle to the defendant who wishes to object to the Singapore court exercising jurisdiction if the connections to Singapore are otherwise fragile. The legislative intention of the scope of protection of the administrative measures (ie, orders made by the Online Safety Commission) is clear: only Singapore citizens, permanent residents, and persons with a prescribed connection with Singapore (eg, legal migrant workers in

Singapore) can raise a complaint to the Commission. It is indicative, however, that even though there is no express limitation in the statutory tort provisions, the primary legislative target of protection by the tortious duties are people connected with Singapore. Forum conveniens becomes the critical tool for the Singapore court to sieve out cases with minimal connections with Singapore, in particular cases where a foreigner is opportunistically seeking to take advantage of the Singapore statute to make OSRAA tort claims against another foreign entity.

Under Singapore private international law, the choice of law rule for torts is double actionability subject to a flexible exception. The claim must succeed as a tort under domestic law (in this case, OSRAA), and civil liability in respect of the same claim must also be made out under the law of the place of the tort. Where section 101 applies to deem Singapore to be the place of the tort, the second limb of double liability will be tested under Singapore law. The result is that Singapore law will apply exclusively to the tort so long as one of the connections under section 101 is made out under the general rule of double actionability. Given especially the span of section 101(b), it will be a rare case brought before the Singapore court that will not trigger section 101. In such a rare case, the common law test of substance of the tort will determine where the tort occurred instead. This requires an evaluation of the connections of the events constituting the tort to determine where in substance the tort occurred. If even the section 101 connections are not satisfied, then it is highly unlikely that the tort will be found to have occurred in substance in Singapore. In the eventuality that the tort is found to have occurred outside Singapore (assuming it is not already filtered out through forum non conveniens), double actionability will require civil liability to be satisfied under the foreign law of the place of the tort in addition to the OSRAA under Singapore law (as the law of the forum), and it will be unlikely that Singapore law can displace foreign law under the flexible exception given the paucity of connections with Singapore. The result is that the claimant can only recover the common denominator between the law of the forum and the law of the foreign place of the wrong.

Insofar as the tort is located in Singapore, there remains the possibility of the flexible exception being invoked to apply the law of a foreign country with the closest connection to the parties and the tort, displacing Singapore law. The flexible exception will be invoked only in exceptional circumstances where the

connections with Singapore are so fortuitous that the application of the general rule of double actionability will lead to serious injustice to the parties. Thus, in most cases involving victims with connections in Singapore, the Singapore court is likely to have and exercise jurisdiction, and to apply OSRAA to the facts.

This is consistent with the intention of Parliament to protect residents of Singapore. The operation of section 101 appears to have the practical effect of imbuing the OSRAA torts with the character of overriding forum mandatory rules that will apply to all cases with specified connections to Singapore, albeit under the cloak of connecting factor design. This technique, rather than a straightforward forum mandatory rule approach, leaves a safety valve for the courts to apply foreign law in exceptional cases. Thus, the important work of drawing the limits to the extraterritorial reach of the OSRAA is left to the judiciary applying private international law, at both the jurisdictional (forum conveniens) and the choice of law (exception to double actionability) levels.

This deliberate general overriding effect over otherwise connected foreign legal systems arises from a powerful legislative concern to protect victims of online harms, as well as a legitimate concern that foreign laws may not have adequate rules to protect victims of online harm given the novelty and scale of such harms committed using new technologies. However, one problem that could emerge in the future is where a connected foreign law provides stronger protection to the victim than the OSRAA. In such a case, Section 101 will result in the lower level of protection under Singapore law being afforded to the victim, even if the foreign law would be applicable under the common law if the section had not existed (provided the law of the place of the wrong applies to the exclusion of the law of the forum under the flexible exception, or if the Singapore court decides to excise the law of the forum limb of double actionability in an exercise of judicial law reform). The simple solution is to sue outside Singapore, but this type of choice of law arbitrage requires wherewithal beyond the means of most victims. Second, in endorsing – albeit impliedly – the place of the wrong as the connecting factor for torts, the legislation may impede further judicial development of this aspect of the common law choice of law rule. It will not be an obstacle to the removal of the law of the forum limb (as the Canadian and Australian courts have done), but it may prevent further consideration of alternatives to the place of the tort as a connecting factor (even though it remains as the sole connecting factor in Canadian and Australian torts choice of law). A connecting factor relying on the

concept of locating a tort in a physical place appears increasingly out of touch with the realities of human interactions in the modern world.

Another possible interpretation of section 101 is that it sets out the connecting factors for a unilateral choice of law rule for the application of the OSRAA torts, displacing the common law multilateral approach to the extent that the statute applies. This will also lead to the application of Singapore domestic law once any connection in section 101 is found. However, there is no flexible exception in this statutory choice of law rule. The language of the provision does not direct the application of Singapore law; it modifies the meaning of the connecting factor of the place of the tort by replacing the common law test of the substance of the tort with a statutory test, a connecting factor which has been clearly established as part of Singapore private international law for torts. The statutory language is more consistent with legislative intention to ride on the common law multilateral choice of law approach, and there is nothing in the Parliamentary materials to suggest the contrary.

Section 102

Section 102 is directed at the issue of Administrators and Platforms excluding or limiting potential liability under the OSRAA by the use of contractual terms or non-contractual notices. Beyond standard exclusion of substantive liability clauses and notices, the section also catches exclusions practically effected by means of an arbitration clause, an exclusive choice of foreign court agreement or even a mediation agreement that takes the dispute out of the reach of the Singapore courts (section 102(1)(b)). Whether this is indeed the effect will depend on what remedies are available in the alternative forum, and whether mediation agreements which normally only impose temporary restraint on recourse to courts will have that effect may depend on the terms of the agreement and the underlying factual matrix. Exclusion cannot, however, be done using a choice of foreign law clause as party autonomy is not recognised under the Singapore torts choice of law rule in its present form. Section 102 also prevents Administrators and Platforms from invoking the protection, found in the Electronic Transactions Act, against liability as a network service provider. Nevertheless, section 102 allows for exclusion or limitation of liability where it is fair and reasonable in the circumstances at the time of the contract or notice, taking into account the relative bargaining positions of the parties and the extent to which the term or notice makes it more convenient or cost-effective to resolve the dispute between

the parties (as prescribed pursuant to section 102(3)).

The question arises whether Section 102 applies when the contract containing the relevant term excluding or limiting liability is governed by foreign law. Nothing in Section 102 expressly renders the provision to be an international or overriding mandatory rule that will apply irrespective of the relevance of foreign law by choice of law analysis. The concept of evasion has very limited application in Singapore private international law. A contract is governed by the law expressly or impliedly chosen by the parties provided the choice is legal, bona fide and not against public policy. In the absence of party choice, a contract is governed by the system of law objectively most closely connected with the contract. Circumvention has a residual role in contract choice of law where a choice of law by the parties may not be given effect to if the sole purpose of the choice is to evade the rules of the otherwise applicable foreign law (ie, a non-bona fide choice). This limitation has never been applied in Singapore law, as it is improbable that parties' choice has only a single and evasive purpose. In any event, the likely consequence is that the contract will be governed by the objective proper law rather than the law of the forum.

The choice of law approach to contractual defences against tortious liability lacks clarity under Singapore private international law. The general approach to the contractual exclusion or limitation of tort liability was advocated in O. Kahn-Freund, "Delictual Liabiity and the Conflict of Laws" (1968) 11 *Hague Recueil* 1 at 142-145 and endorsed in P.M. North, "Contract as a Tort Defence in the Conflict of Laws" (1977) 76 ICLQ 914 at 922 *et seq*: whether tort liability allows for exclusion or limitation at all is a question of *admissibility* of the contract defence which is a tort issue, while the *validity* of the contract term in question raises a contract issue. On the premise of Singapore law applying to the substantive tort liability, whether liability under the OSRAA can be limited or excluded raises a question of tort governed by Singapore law, so Section 102 is engaged as the applicable law to the issue. This is clearly the correct approach when it is a notice rather than a contract term that is the agent of exclusion or limitation. However, in the case of contractual exclusion or limitation, the applicable law of the contract is still relevant to govern the validity of the clause. This in turn raises the further characterisation question: do the conditions of validity under section 102 (reasonableness) raise questions of admissibility or validity? That they set limits to party autonomy might incline towards a contractual characterisation, but the

limits are dictated by policies in tort law. Arguably they go to the admissibility of the defence to the extent that they are designed to safeguard the principles of tort liability (Kahn-Freund, supra, at 144). On this view, foreign law has limited significance under section 102. The only role for foreign law would be to determine contractual validity *per se* (ie, whether subject to duress, misrepresentation, etc), and there is no need to resort to forum mandatory rule reasoning to apply section 102.

On the other hand, the Singapore court may take a leaf from the majority of the English Court of Appeal in *Sayers v International Drilling Co NV* [1971] 1 SLR 1176 to characterise the contractual defence to tort liability as a contractual issue, and apply the proper law of the contract. This may be a compelling argument in the case of a dispute resolution clause because the exclusion will clearly arise from a contractual promise not to sue in the Singapore court. It is uncontroversial under Singapore private international law that the validity of a choice of court or arbitration clause is governed by the law applicable to the clause as a contract issue (except under the Hague Convention on Choice of Court Agreements 2005 where the private international law of the chosen court applies). On this approach, Administrators and Platforms might rely on dispute resolution clauses governed by foreign law to take themselves out of the reach of OSRAA by taking the case out of the Singapore jurisdiction. Outside of international conventions, two responses are possible. First, the effect of a jurisdiction agreement on the jurisdiction of the Singapore court is a matter of procedure governed by the law of the forum and thus section 102 applies. Second, section 102 may be interpreted as a mandatory and overriding provision, or as a source of fundamental public policy, in order to give effect to the strong protective policy of the OSRAA. Thus, the Singapore court is likely to test any dispute resolution clause that has the practical effect of limiting or excluding tort liability under the OSRAA for enforceability under Section 102, in addition to assessing its contractual validity under the law applicable to the clause.

Finally, international conventions may also be engaged in the application of Section 102. The Singapore Convention on Mediation (2018) is not relevant at this point because it only applies to the resulting settlement agreements and not to the validity or enforcement of mediation agreements. The Hague Convention on Choice of Court Agreements (2005) is unlikely to be activated by a choice of court agreement in this context because consumer contracts are out of scope.

Singapore did not make a reservation to exclude non-commercial cases in acceding to the New York Convention (1958), so it can apply. In the rare case that the Hague Convention should apply, and in a case where the New York Convention applies, recourse will likely be made to Singapore public policy to justify applying section 102 to determine whether the clause is null and void. Non-arbitrability arguments may be also invoked in the case of the New York Convention, but it is unlikely that Parliament intended to exclude arbitration of OSRAA tort disputes altogether given the possibility of upholding the clause within the bounds of Section 102. In any event, under Singapore private international law, arbitrability at the jurisdiction stage is governed by the law applicable to the arbitration agreement and the law of the seat (though non-arbitrability may also arise as a defence at the subsequent enforcement stage). For a foreign-seated arbitration agreement governed by foreign law, the only practical argument for the victim is that the agreement is null and void for contravention of the public policy of the forum. Statute can be a source of common law public policy. Whether Singapore public policy is actually contravened on the facts will however depend on the parameters in section 102.