

Employment & Benefits

Company Directors' Duties on Workplace Safety and Health

WSH Council Issues Public Consultation for Code of Practice for Chief Executives and Board of Directors

Introduction

Workplace safety and health ("**WSH**") is a key issue in Singapore across all industries. The Singapore Government has made significant efforts in ensuring WSH standards, establishing a range of legislation, regulations, codes and guidelines relating to WSH.

The WSH Council¹ of the Tripartite Alliance for Workplace Safety and Health now intends to issue a new code of practice focusing on the role of Company Directors. On 12 August 2022, the WSH Council issued a Public Consultation on the proposed Code of Practice on Chief Executives' and Board of Directors' WSH Duties ("**Code of Practice**"). The Public Consultation closes on **8 September 2022**.

Currently, Company Directors are already subject to certain statutory duties, both general and in relation to WSH. The proposed Code of Practice aims to provide greater clarity and strengthen ownership of the WSH duties of Chief Executives and Board of Directors (collectively referred to here as "**Company Directors**"). The Code of Practice sets out the principles that Company Directors should observe in improving WSH performance and management, as well as the practical measures that should be taken to give effect to these principles.

Company Directors and organisations would be well advised to closely review the provisions in the Code of Practice to determine whether and how to respond to the Public Consultation. Some of the questions to be considered include: How should the Code of Practice be implemented? Does industry type or organisation size make a difference? What are the consequences of non-compliance?

In this Update, we take a look at some of these issues, as well as highlight the key principles and measures in the Code of Practice.

Overview

Before considering the substantive provisions of the Code of Practice, it is important to understand the potential scope of the Code of Practice and its legal effect.

¹ Rajah & Tann Partner, Simon Goh, Head of Insurance & Reinsurance, sits as a Council Member of the WSH Council, where he also holds the position of Co-Chair of the Outreach and Engagement Committee.

Employment & Benefits

Who does it apply to? – The Code of Practice is relevant for all Company Directors, regardless of industry and organisation size. However, industry and organisation size may play a part in determining how the Code of Practice should be implemented, as elaborated on below.

What is its legal effect? – While the Code of Practice does not impose directly enforceable obligations on Company Directors, failure to comply with its principles and measures could result in serious consequences, particularly in relation to existing statutory duties of diligence.

For example, Company Directors owe a duty to use *reasonable diligence* in the discharge of their duties under the Companies Act 1967, the breach of which is an offence. On a more directly related note, the Workplace Safety and Health Act 2006 ("**WSH Act**") imposes statutory duties on persons at workplaces, including employers, occupiers and principals. Where an organisation breaches these provisions, the Company Directors are also deemed to be guilty of the offence unless, among others, they have exercised *due diligence*. These offences are punishable by fine or imprisonment, or both.

In this regard, compliance with the Code of Practice could be used as a mitigating factor in the event of a WSH Act offence so as to avoid such liability. Conversely, where the Code of Practice has not been observed, Company Directors may find it challenging to demonstrate that they have exercised the due diligence required of them, putting them at risk of being found in breach of their statutory duties.

However, it should be noted that compliance with the Code of Practice in and of itself does not equate to due diligence, and the degree of diligence exercised by Company Directors will still be assessed by the Court.

How should it be implemented? – The Code of Practice's principles can be fulfilled by effectively implementing the specific measures suggested, as well as other measures in line with these principles. Company Directors should calibrate the measures based on the relevance to their organisations, including industry type and nature of exposure to risks and hazards.

In this regard, although the Code of Practice applies to all industries, certain industries inherently bear a higher risk of workplace accidents and injuries, and greater hazards to employee safety. This would include the areas of construction, projects and manufacturing. Company Directors of organisations in such industries are thus encouraged to pay greater attention to the provisions of the Code of Practice as they would be especially relevant to their operations.

Similarly, although the Code of Practice applies regardless of organisation size, the extent of implementation necessary for compliance may differ. For example, larger companies may require more structured policies and processes, or greater resource allocation, in order to be said to fulfil the relevant principles. Rather than a one-size-fits-all solution, the proposed measures should be calibrated accordingly.

Client Update: Singapore

2022 AUGUST

Employment & Benefits

Principles and Measures

The principles and measures for Company Directors to observe and implement are summarised in the table below.

Principles	Measures
Principle 1: Ensure WSH is prioritised and have clarity of roles and responsibilities of Chief Executive and individual Board of Directors in leading WSH.	Assign and document WSH roles and responsibilities of individual Company Directors.
	Establish the WSH standards and strategies for the organisation.
Principle 2: Walk the talk in embodying and communicating good WSH standards.	Publish the organisation's WSH commitment, performance and targets annually.
	Set WSH as a regular agenda item in management/ board meetings.
	Ensure sufficient resource allocation to WSH.
	Facilitate direct reporting of WSH issues to the Company Directors.
	Acquire WSH knowledge.
	Conduct ground engagements to understand processes, workers' concerns and communicate the need to prioritise WSH.
Principle 3: Ensure that WSH management systems are effective and reviewed regularly.	Set and demand high WSH standards and performance from vendors/ partners.
	Ensure effectiveness of WSH management systems and maintain oversight of compliance with standard operating procedures.
	Ensure adequate and timely risk assessment.
	Recognise and reward workers' efforts toward achieving good WSH performance.
Principle 4: Empower workers to prioritise WSH.	Endorse immediate remedial/ disciplinary actions to address workers' non-compliance with safe work procedures.
	Ensure processes are in place for workers to receive information on WSH risks and standard operating procedures in a timely manner.
	Set up reporting systems, provide assurance to encourage proactive reporting and ensure proper follow-up to address WSH issues.

Client Update: Singapore

2022 AUGUST

Employment & Benefits

Principles	Measures
	Commit resources and protected time for workers to undergo WSH training and refresher courses.
	Involve workers in the joint development of strategies/ programmes to improve WSH.

Concluding Words

The Code of Practice is an important instrument for Company Directors, serving as both a guide for WSH performance and management, and a benchmark for compliance with statutory duties. Organisational leaders, such as C-suite executives and directors, should thus carefully review the provisions in the Code of Practice and seek to assess its potential implications, such as the extent of implementation that may be required and the consequences of non-compliance.

The WSH Council invites industry members to give their feedback on the proposed Code of Practice by **8 September 2022**. The Public Consultation is available [here](#), and the full draft Code of Practice is available [here](#).

Company Directors may wish to take the opportunity to submit their feedback on the Code of Conduct to raise any concerns or queries, in order to avoid finding themselves in situations of uncertainty. Parties wishing to discuss the issues and feedback in relation to the proposed Code of Practice should feel free to touch base with our team below, who will be glad to assist with any queries of guidance.

Contacts



Abdul Jabbar Bin Karam Din
Head, Corporate and
Transactional Group
Partner, Employment & Benefits

T +65 6232 0465

abdul.jabbar@rajahtann.com



Desmond Wee
Head, Corporate Commercial
Head, Employment & Benefits

T +65 6232 0474

desmond.wee@rajahtann.com



Jonathan Yuen
Head, Commercial Litigation
Head, Employment & Benefits
(Disputes)

T +65 6232 0161

jonathan.yuen@rajahtann.com



Luo Qinghui
Deputy Head, Employment &
Benefits (Disputes)

T +65 6232 0587

qing.hui.luo@rajahtann.com



Kala Anandarajah
Head, Competition & Antitrust
and Trade
Partner, Employment & Benefits

T +65 6232 0111

kala.anandarajah@rajahtann.com



Simon Goh
Head, Insurance & Reinsurance

T +65 6232 0645

simon.goh@rajahtann.com



Sim Chee Siong
Head, Construction & Projects

T +65 6232 0227

chee.siong.sim@rajahtann.com



Soh Lip San
Partner, Construction & Projects

T +65 6232 0228

lip.san.soh@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

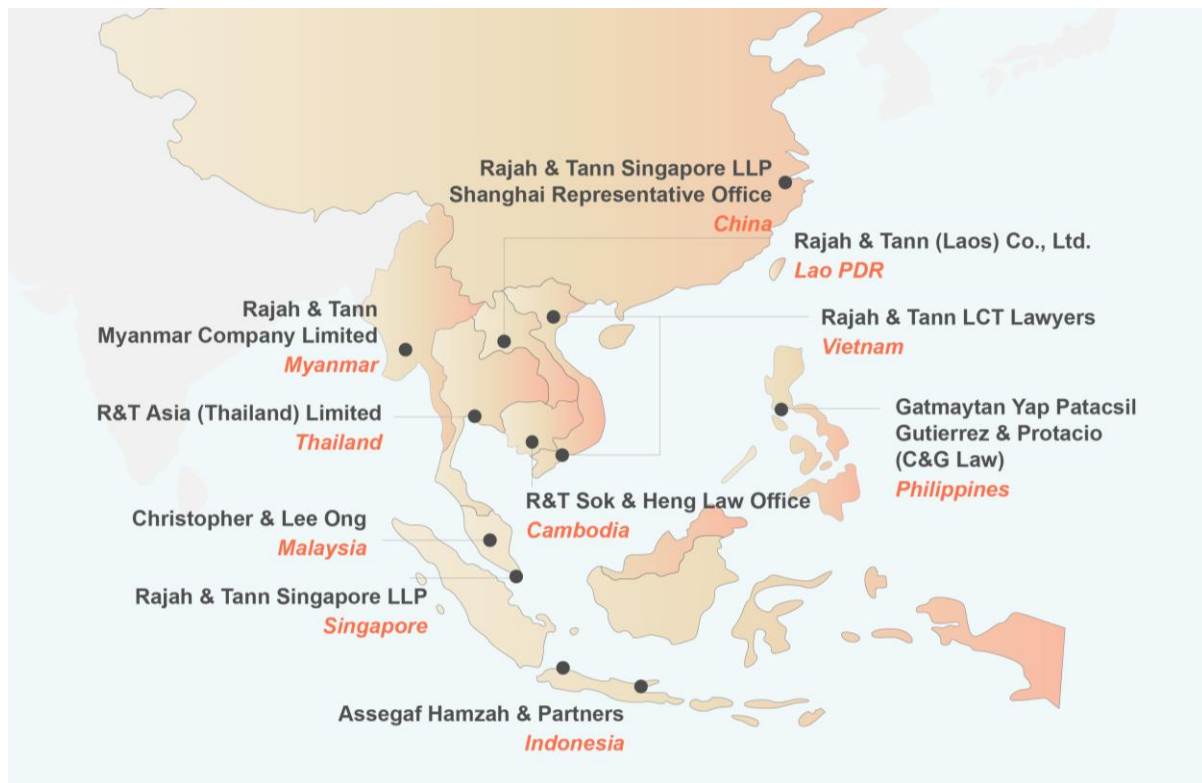
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge & Risk Management at eOASIS@rajahtann.com.