

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 Council 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.

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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.

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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.

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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.

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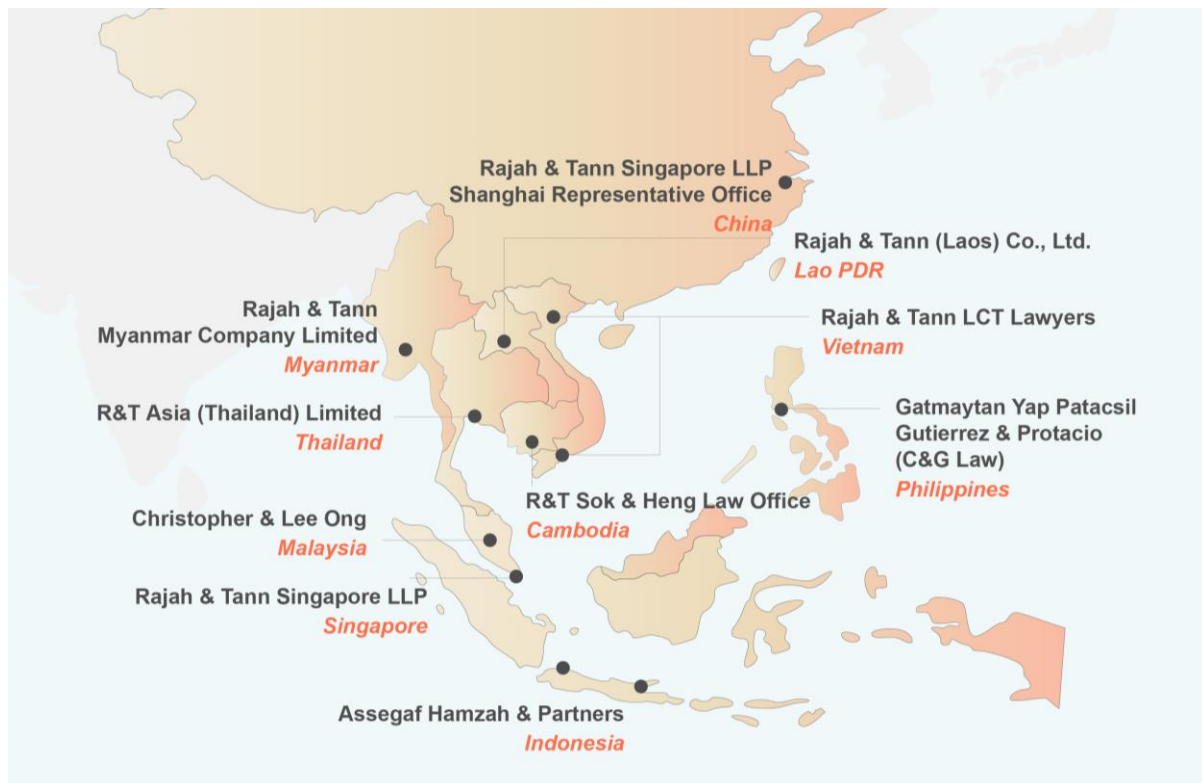
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