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## OCCUPATIONAL SAFETY AND HEALTH

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# OCCUPATIONAL SAFETY AND HEALTH (AMENDMENT) ACT 2022

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### **INTRODUCTION**

The [Occupational Safety and Health \(Amendment\) Act 2022](#) ("**Amendment Act**"), which was passed and gazetted in 2022, will come into force on 1 June 2024.

The Amendment Act is formulated to integrate the Occupational Safety and Health Act 1994 ("**OSHA**") and Factories and Machinery Act 1967 ("**FMA**") (repealed)<sup>1</sup> to provide a comprehensive safety and health legislation that applies across all industries. The amendments, among others, are to widen the application of OSHA, strengthen protection of employees, increase penalties and provide additional duties to employers.

This article will highlight the key amendments brought by the Amendment Act and discuss the possible benefits and challenges of the amendment.

### **THE AMENDMENTS**

#### **1. Widen scope and application to all workplace**

The scope and application of the Amendment Act is widen to include all places of work throughout Malaysia including the public service and statutory authorities<sup>2</sup> with the exception to domestic servants, armed forces and work on board ships governed under Merchant Shipping Ordinance<sup>3</sup>. Previously, the OSHA only applies to limited industries<sup>4</sup>.

Broadening the coverage will expand the duty of employers to ensure safety to any place where work is carried out and the expansion will ultimately promote improvements of workplace safety across all industries. With recent remote working trends and the Human Resource Minister assuring the applicability of the Act to remote workers<sup>5</sup>, such development are yet to be tested and challenges may arise on its practicability.

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<sup>1</sup> Factories and Machinery (Repeal) Act 2022 (Act 835) (Malaysia) s 3.

<sup>2</sup> Occupational Safety and Health (Amendment) Act 2022 (Act A1648) (Malaysia) s 1(2).

<sup>3</sup> Ibid., First Schedule.

<sup>4</sup> Occupational Safety and Health Act 1994 (Act 514) (Malaysia) s 1(2).

<sup>5</sup> Malaysia, Fourteen Parliament, Fourth Session, Hansard 27 October 2021, Bil. 20, pg 67.

## 2. New protection for employees

Pursuant to section 26A<sup>6</sup>, this new provision grants employees the statutory right to remove themselves from imminent danger at work and provides protection to the employees exercising such right from undue consequences and discrimination<sup>7</sup>. However, such right is subjected to the condition that the employer has been duly informed of the reasonable justification of the imminent danger but fails to take any action to remove the danger<sup>8</sup>. "Imminent danger" here refers to a serious risk of death or serious body injury to any person that is caused by any plant, substance, condition, activity, process, practice, procedure or place of work hazard<sup>9</sup>. This provision accords better protection to employees from danger and prevents any fear of repercussion for employees to exercise such right.

## 3. Additional duties for employers/principal on employees

The Amendment Act also provides additional duties for employers, self-employed person and principals which is a proactive approach towards reinforcing preventive safety culture in the workplace. Among the additional duties provided in the Amendment Act are as follows:

- i. Section 15(2)(f) provides the duty to develop and implement procedures for dealing with emergencies at work;
- ii. Section 18A provides the duty to ensure the safety of contractors and sub-contractors;
- iii. Section 18 B provides duty on employer, self-employed person and principal to conduct and implement risk assessment;
- iv. Section 29 provides the duty to appoint Occupational Safety Officer and Health Coordinator; and
- v. Section 31A provides the duty to ensure specific employees' attendance of occupational safety and health training course.

## 4. Increase of penalties for breach

Following the additional duties, the Amendment Act has significantly increase penalties for certain offences that will act as a deterrent for employers or principals who may disregard the safety regulations. For employers, self-employed persons and principals, the penalty is increased from RM50,000.00 to RM500,000.00<sup>10</sup> for breaching their respective duties, *inter alia*, to:

- i. ensure, so far as is practicable, the safety, health and welfare to work of all his employees<sup>11</sup>;
- ii. formulate a safety and health policy<sup>12</sup>;
- iii. ensure the safety and health to persons other than his employees<sup>13</sup>;
- iv. conduct a risk assessment in relation to the safety and health risk posed to any person who may be affected by his job at the place of work<sup>14</sup>; and

<sup>6</sup> Occupational Safety and Health (Amendment) Act 2022 (Act A1648) (Malaysia) s 26A.

<sup>7</sup> *Ibid.*, s 26A(2).

<sup>8</sup> *Ibid.*, s 26A(1).

<sup>9</sup> *Ibid.*, s 26A(3).

<sup>10</sup> *Ibid.*, s 19.

<sup>11</sup> *Ibid.*, s 15.

<sup>12</sup> *Ibid.*, s 16.

<sup>13</sup> *Ibid.*, s 17.

<sup>14</sup> *Ibid.*, s 18B.

- v. comply with any improvement or prohibition notice issued<sup>15</sup>.

For designers, manufacturers and suppliers, the penalty is also increased from RM20,000.00 to RM200,000.00<sup>16</sup> for breaching their duties enumerated in section 20 and section 21 of OSHA regarding the plant and substance for use at work.

## 5. Extension of liability to directors and officers of company

Liability on offences against OSHA may be extended to director, compliance officer, partner, manager, secretary or other similar officer of the company<sup>17</sup> unless if such person proves that the offence was committed without his knowledge and without his consent and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence<sup>18</sup>.

Extending the liability imposes a heightened duty of care on all directors and officers of the company that consequently will strengthen efforts on the formation of a safe, healthy, and conducive working environment.

## 6. Revised provisions of Notification of occupation, Installation and Inspection of plants

Following the repeal of FMA, the previous provisions are integrated in the Amendment Act which includes the changes on the requirement for a notice is expanded on any person who occupies or uses any premises as a place of work or undertakes any activity in a place of work<sup>19</sup>.

The amendments also provides for the appointment and power of a licensed person which includes authority to carry out inspection of any plant prescribed by the Minister and issue a certificate of fitness in respect of the plant inspected and demand, prescribe, collect and retain charges, fees or levy in respect of the services provided by the licensed person<sup>20</sup>. The installation of plant requires the written approval from the Director General<sup>21</sup> and may only operate after a certificate of fitness is issued by an officer or licensed person<sup>22</sup>.

## 7. New Fourth and Fifth Schedule

Additionally, the amendment inserts the Fourth Schedule which outlines what are serious bodily injuries which includes, among others, loss of consciousness due to asphyxia and electrical injury and the Fifth Schedule which sets out activities that must be performed by a competent person<sup>23</sup>.

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<sup>15</sup> Ibid., s 49(2).

<sup>16</sup> Ibid., s 23.

<sup>17</sup> Ibid., s 52.

<sup>18</sup> Ibid., s 52(b).

<sup>19</sup> Ibid., s 27A.

<sup>20</sup> Ibid., s 7A.

<sup>21</sup> Ibid., s 27B.

<sup>22</sup> Ibid., s 27C.

<sup>23</sup> Ibid., s 31B(1)(a).

## **CONCLUSION**

The operation of the Amendment Act is timely and fitting given the recent innovations reshaping the industrial landscape which necessitates review, adjustments and reinforcement of existing policies and laws.

It is imperative for corporations to stay across the latest legislation in order to ensure workplace safety, compliance of the law and protecting employees' well-being that consequently will enhance productivity.

## **Authors**



**Nan Muhammad Ridhwan Rosnan**  
(Partner)



**Muhammad Hibri Nazim**  
(Associate)



**Aiesyah Mustafa**  
(Associate)



**Saif Aslam Lokman**  
(Pupil-in-Chambers)

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