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Launch of the Code of Practice on Chief Executives' and Board of Directors' Workplace Safety and Health Duties

Introduction

The Code of Practice on Chief Executives' and Board of Directors' Workplace Safety and Health Duties ("**COP**") was launched on 19 September 2022, and is expected to be gazetted as an Approved COP by October 2022. Once gazetted, the COP will be relevant in the event of offences under the Workplace Safety and Health Act 2006 ("**WSH Act**"), as the Courts can consider compliance to the COP in determining the liability of the organisation and its management team.

The COP was launched by the Workplace Safety and Health Council¹ of the Tripartite Alliance for Workplace Safety and Health and the Ministry of Manpower ("**MOM**") following a public consultation on the draft version of the COP ("**draft COP**") conducted from 12 August 2022 to 8 September 2022. For more information on the earlier public consultation, please see our Legal Update [here](#).

The launch of the COP is particularly relevant in light of the poor safety record and the increase in the number of workplace fatalities in Singapore in 2022. The Government has refocused its attention and vigilance on workplace safety and health ("**WSH**"), highlighting the WSH obligations of employers and occupiers, including Chief Executives and Board of Directors (collectively referred to here as "**Company Directors**"). It should be noted that WSH includes both physical health and mental well-being, and that organisations should ensure that both aspects are addressed in their WSH policies.

The COP 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. In this Update, we highlight the key principles and measures in the COP, and the effect of the COP being gazetted as an Approved COP.

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

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Effect of the COP

The COP functions in tandem with the existing WSH duties imposed on Company Directors, meaning that the failure to comply with the COP's principles and measures could result in serious consequences, particularly in light of the tough stance that MOM seeks to take to improve WSH.²

In particular, the COP is relevant in determining whether Company Directors have breached their statutory duties under the WSH Act to exercise due diligence to prevent WSH lapses. Where an organisation breaches its WSH duties regarding the maintenance of safety, health and welfare, its Company Directors are also deemed to be guilty of the offence unless they have exercised due diligence. These offences are punishable by fine or imprisonment, or both.

Where the COP has not been complied with, Company Directors may find it difficult to show that they have exercised the due diligence required of them, thus opening them up to statutory penalty. Once the COP has been gazetted as an Approved COP, the Courts can consider compliance with the COP when determining a WSH Act offence. Adherence to the principles of the COP could thus be seen as a mitigating factor to avoid liability under the WSH Act.

Organisations and Company Directors should be aware that MOM has indicated that it intends to gazette the COP as an Approved COP by October 2022.³

Scope of WSH and Mental Health

The COP will apply to all companies, regardless of industry type and organisation size. Company Directors should calibrate the measures based on the relevance to their organisations, including industry type and nature of exposure to risks and hazards.

Organisations and businesses should note that WSH includes both safety and health, which includes mental well-being, as highlighted by MOM.⁴ Although the focus of WSH efforts has traditionally been on the front of physical safety, employers should ensure that they do not neglect the mental health aspect of WSH. The COP thus applies even in industries that have no manual work and little risk of physical injury.

Organisations operating in such industries, such as those with primarily office or retail operations whose employees are desk or station-based, often run the risk of treating WSH duties as an afterthought, or as something that is meant to apply to other types of businesses. However, the inclusion of mental health in the scope of WSH brings into focus the fact that WSH is the responsibility of all employers

² See Speech by Minister for Manpower Dr Tan See Leng at the Workplace Safety and Health Conference 2022, available [here](#).

³ *Ibid*.

⁴ *Supra* note 2.

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across all industries. Company Directors in industries without manual work should be aware that the COP is relevant to their management decisions as well.

Organisations that already have WSH policies and processes in place should also ensure that such policies do not only cover the physical safety of their employees, but their mental well-being as well. Company Directors should keep in mind the wide scope of WSH when applying the COP principles in their organisations.

Principles and Measures

The measures outlined in the COP are aimed at integrating WSH into organisational processes and establishing clear responsibilities of Company Directors. This includes key steps such as setting WSH as a regular agenda item in Board meetings, demanding effective WSH standards from suppliers, and setting up an internal WSH reporting system.

The wording of the principles in the draft COP from the earlier public consultation has been slightly amended in the version of the COP that was launched, though the spirit of the principles remains the same. The principles and measures in this updated version of the COP are summarised in the table below.

Principles	Measures
Principle 1: Ensure WSH is integrated into business decisions and have clarity of roles and responsibilities of Chief Executive and individual members of the Board of Directors in leading WSH.	Measure 1: Assign and document WSH roles and responsibilities of individual Company Director(s).
	Measure 2: Establish the WSH policy, standards and strategic goals for the organisation.
Principle 2: Continuously build a strong WSH culture, set the tone and demonstrate visible leadership in embodying and communicating highly effective WSH standards.	Measure 3: Publish the organisation's WSH commitment, and review, endorse and track the organisation's WSH targets and performance regularly.
	Measure 4: Set WSH as a regular agenda item in management/board meetings.
	Measure 5: Ensure sufficient resource allocation to WSH.
	Measure 6: Facilitate direct reporting of WSH issues to the Company Directors.
	Measure 7: Acquire WSH knowledge.

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Principles	Measures
	Measure 8: Conduct engagements to understand processes, workers' concerns and communicate the need to prioritise WSH.
	Measure 9: Set and demand effective WSH standards and performance from vendor and partners.
Principle 3: Ensure that WSH management systems are highly effective and reviewed regularly.	Measure 10: Ensure effectiveness of WSH management systems and maintain oversight of compliance with safe work procedures.
	Measure 11: Ensure suitable, adequate and timely risk assessment.
	Measure 12: Recognise and reward workers' efforts toward achieving good WSH performance.
	Measure 13: Endorse immediate remedial/disciplinary actions to address workers' repeated non-compliance with safe work procedures.
Principle 4: Empower workers to actively engage in WSH.	Measure 14: Ensure processes are in place for workers to receive information on WSH risks and safe work procedures in a timely manner.
	Measure 15: Set up reporting systems, encourage proactive reporting and, ensure proper follow-up to address WSH issues.
	Measure 16: Commit resources and protected time for workers to undergo WSH training and refresher courses.
	Measure 17: Involve workers in the joint development and implementation of strategies/programmes to improve WSH.

Concluding Words

The COP provides a vital guide for Company Directors in terms of WSH performance and management, marking a path towards improved WSH standard for employees and away from potential breaches of WSH-related duties. The COP does not add new obligations as such to the gamut of duties and responsibilities that directors have. What it does is provide guidance for management and the board as to the steps it should be taking to ensure that WSH is at the top of mind for the business. It effectively makes WSH a board agenda item.

The introduction of the COP means that organisations should revisit their existing WSH framework and policies to determine if they are in compliance with the principles set out in the COP, and if not, what changes need to be made to adhere to the COP. To the extent that an organisation does not have a WSH framework in place, now is the time to review and introduce it, regardless of the size of the organisation. As it does so, organisations must consider the specific risks and hazards of their relevant industry and implement accordingly. The COP is applicable to all organisations and not just traditional industries.

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A key focus of the COP is to ensure organisations address mental well-being as well as physical safety and health, as the failure to consider mental health issues could result in Company Directors being found to have failed to comply with the COP. It may be challenging to consider and provide for mental health, and guidance is highly recommended.

For further queries on the COP or WSH duties, please feel free to contact our team below.

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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

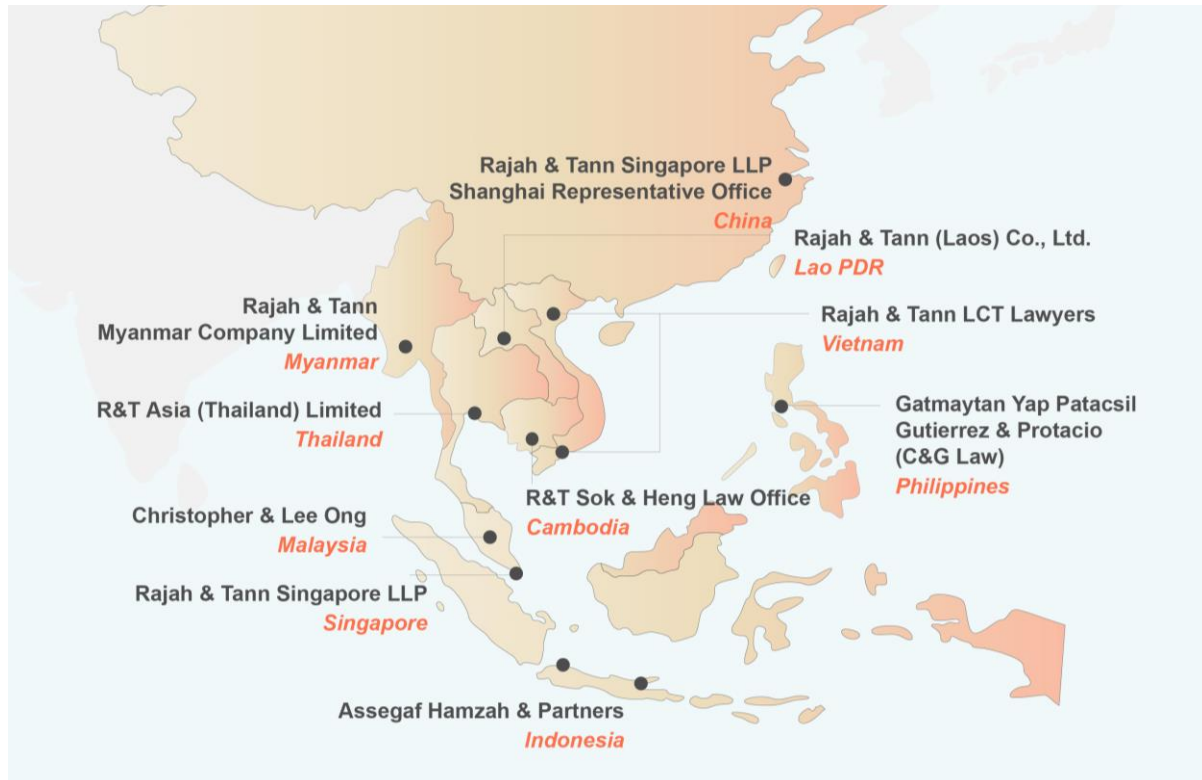
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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