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Occupational Safety and Health (Constructions Works) (Design and Management) Regulations 2024

Introduction

Following the coming into force of the amendments to the Occupational Safety and Health Act 1994 ("**OSHA**"), as well as the Occupational Safety and Health (Plant Requiring Certificate of Fitness) Regulations 2024 and the Occupational Safety and Health (Licensed Person) Order 2024, on 1 June 2024, the Minister of Human Resources has further made two new regulations under the OSHA:

- i. the Occupational Safety and Health (Fee for Registration of Competent Person and Registered Training Provider) Regulations 2024; and
- ii. Occupational Safety and Health (Construction Work) (Design and Management) Regulations 2024 ("**OSHA Construction Regulations**").

This Update focuses on some significant duties and obligations of the parties involved in a construction project introduced under the OSHA Construction Regulations.

Application of the OSHA Construction Regulations

The OSHA Construction Regulations apply to all places of work in which a project is carried out, i.e. any project which includes or is intended to include construction work, and includes all planning, design, management or other work involved in a project until the end of the construction phase.

Under the OSHA Construction Regulations, "construction work" is widely defined to mean the construction of any building, civil engineering or engineering construction work and includes:

- i. the construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or maintenance including cleaning which involves the use of water or an abrasive at high pressure, or the use of corrosive or toxic substances, de-commissioning, demolition or dismantling, of a structure;

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- ii. the preparation for an intended structure, including site clearance, exploration, investigation and excavation, and the clearance or preparation of the site or structure, for use or occupation at its conclusion;
- iii. the assembly on site of prefabricated elements to form a structure or the disassembly on site of the prefabricated elements which immediately before such disassembly, formed a structure;
- iv. the removal of a structure, or of any product or waste resulting from any demolition or dismantling of a structure, or from disassembly of prefabricated elements which immediately before such disassembly, formed such a structure;
- v. the installation, commissioning, maintenance, repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which are normally fixed within or to a structure;

but does not include the exploration for, or extraction of, mineral resources, or preparatory activities carried out at a place where the exploration or extraction is carried out.

This would essentially capture all and any projects in Malaysia which involve any construction works.

Client's Duties

The OSHA Construction Regulations impose various obligations on a client, i.e. any principal or any person for whom a project is carried out, including:

- i. duties in relation to project management, such as allocation of sufficient time, funds and other resources and carrying out of the construction work without any risk to the safety and health of persons affected by the project so far as is practicable;
- ii. duties on the provision of pre-construction information, as well as preparation of a construction phase plan by the principal construction work contractor and a safety and health file by the principal construction work designer;
- iii. duties to take reasonable steps to ensure that the principal construction work designer and the principal construction work contractor comply with their duties specified under the OSHA Construction Regulations;
- iv. appointment of principal construction work designer (for pre-construction phase) and principal construction work contractor if there is more than one construction work contractor working on the project;

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- v. notify the Director General of Occupational Safety and Health ("**DG**") as soon as practicable before the construction phase begins where a construction work on a construction site is scheduled to last longer than 30 working days or exceed 500 person days. "Working day" means any day on which construction work takes place, while "person day" means any day or part of a day when someone is expected to carry out construction work, whether he carries out any physical work at construction site or not.

For a domestic client, i.e. a client for whom a project is being constructed or carried out, which the project is not in the course or furtherance of a business of that client, the duties above (apart from (iv)) are to be carried out by the construction work contractor, the principal construction work contractor or the principal construction work designer (as the case may be).

It can be seen from above that one of the objectives of the OSHA Construction Regulations is to impose the duties set out above on the commercial clients as the risks involving health and safety are potentially larger in such projects. Any client who contravenes any of the duties above shall be guilty of an offence and shall, on conviction, be liable to:

- i. a fine not exceeding RM100,000 or to imprisonment for a term not exceeding one year or to both for contravention of duty (iv) above; and
- ii. a fine not exceeding RM500,000 or to imprisonment for a term not exceeding one year or to both for contravention of other duties above.

General Duties on Safety and Health

The OSHA Construction Regulations impose some general duties on the persons involved in a project, including the following:

- i. any construction work designer or construction work contractor appointed to work on a project shall have the skills, knowledge and experience, and if they are an organisation, the organisational capability necessary to fulfil the role that they are appointed to undertake, in a manner that secures the safety and health of any person involved in or affected by the project;
- ii. any person with any duty or function under the OSHA Construction Regulations shall cooperate with any other person working on or in relation to a project, at the same or an adjoining construction site, to the extent necessary to enable any person with any duty or function to fulfil that duty or function;

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- iii. any person working on a project under the control of another person shall report to that person anything they are aware of in relation to the project which is likely to endanger their own safety or health or the safety or health of others; and
- iv. any person who is required by the OSHA Construction Regulations to provide any information or instruction shall ensure the information or instruction is comprehensive and able to be provided as soon as practicable.

Any person who contravenes any of the duties above shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding one year or to both.

Duties of Contractors and Designers

In addition to the above, the OSHA Construction Regulations provide for specific duties on construction work designers, principal construction work designers, construction work contractors and principal construction work contractors in relation to the safety and health element of a project.

1. Duty not to commence/carry out work under certain circumstances

An important duty to note is that a construction work contractor or a construction work designer shall not commence/carry out any construction work in relation to a project unless he is satisfied that the client is aware of his duties as client specified under the OSHA Construction Regulations.

2. General principles of prevention

Further, the OSHA Construction Regulations introduce the "general principles of prevention" which need to be taken into account and complied with by the contractors and designers in carrying out the construction work. These principles are:

- i. avoiding risks;
- ii. evaluating the risks which cannot be avoided;
- iii. controlling the risks at source;
- iv. adapting the work to the individual, especially with regard to the design of place of construction work, the choice of plant and the choice of working and production methods, for purposes of – in particular – reducing monotonous work and work at a predetermined work-rate and reducing their effect on health;
- v. adapting to the technical progress;
- vi. replacing the dangerous by the non-dangerous or the less dangerous;

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- vii. developing a coherent overall prevention policy which covers technology, work organisation, working conditions, social relationships and the influence of factors relating to the working environment;
- viii. giving priority to collective protective measures over individual protective measures; and
- ix. giving appropriate instructions to employees.

3. Construction phase plan

During the pre-construction phase, and before the set-up of a construction site, the principal construction work contractor shall draw up a construction phase plan or make arrangements for the construction phase plan to be drawn up.

The construction phase plan shall specify the safety and health arrangements and site rules, taking into account, where necessary, the industrial activities taking place on the construction site and, where applicable, shall include specific measures concerning work which falls within one or more of the categories as specified in the Fourth Schedule of the OSHA Construction Regulations.

The principal construction work designer shall assist the principal construction work contractor in preparing the construction phase plan by providing to the principal construction work contractor all information which is in the control or knowledge of the principal construction work designer that is relevant to the construction phase plan.

The principal construction work contractor shall ensure that, throughout the project, the construction phase plan is appropriately reviewed, updated and revised so that it continues to be sufficient to ensure that the construction work is carried out, so far as is practicable, without any risk to safety or health.

4. Safety and health file

During the pre-construction phase, the principal construction work designer shall prepare a safety and health file appropriate to the characteristics of the project which shall contain any information relating to the project which is likely to be needed during any subsequent project to ensure the safety and health of any person. The principal construction work designer shall also ensure that the safety and health file is appropriately reviewed, updated and revised to take into account the work and any changes that have occurred.

During the project, the principal construction work contractor shall provide to the principal construction work designer any information in his possession which is relevant to the safety and health file and such information shall be included in the safety and health file.

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Upon completion of the project, the principal construction work designer (or where there is no principal construction work designer, the principal construction work contractor) shall present the safety and health file to the client.

5. Duties of principal construction work contractor to engage with worker

The principal construction work contractor shall:

- i. make and maintain any arrangements enabling the principal construction work contractor and the workers engaged in construction work to cooperate in developing, promoting and checking the effectiveness of measures to ensure the safety, health and welfare of the workers;
- ii. consult the workers or their representatives in matters connected with the project which may affect the safety, health or welfare of the workers, in so far as they or their representatives have not been similarly consulted by their employer; and
- iii. ensure that the workers or their representatives can inspect and take copies of any information in relation to the project which is in the possession or knowledge of the principal construction work contractor, or which is required by the OSHA Construction Regulations to be provided by the principal construction work contractor, which relates to the safety, health or welfare of the workers at the construction site, but does not include any information the disclosure of which would be against the interests of national security, as well as information that relates specifically to an individual, unless that individual has consented to the information being disclosed.

6. Site safety supervisor

The principal construction work contractor shall appoint a competent person who is a site safety supervisor to assist him in complying with the duties imposed upon him by or under the OSHA Construction Regulations.

Minimum Welfare Facilities Required for Construction Sites

The OSHA Construction Regulations further provides for the minimum welfare facilities required for construction sites, which include the following items:

- i. sanitary conveniences;
- ii. washing facilities;
- iii. drinking water;

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- iv. changing rooms and lockers;
- v. facilities for rest; and
- vi. place of worship.

Duties are imposed on the client, the principal construction work contractor and the construction work contractor to ensure that the facilities provided comply with the minimum requirements set out in the OSHA Construction Regulations.

General Requirements for All Construction Sites

The OSHA Construction Regulations also provide for general requirements applicable to a construction site, i.e. any place where construction work of a project is being carried out or the area to which the workers have access, but does not include any place of work within the site which is designated for purposes other than construction work.

A construction work contractor carrying out construction work shall comply with these general requirements so far as they affect the construction work contractor or any worker under their control or relate to any matter within the control of the construction work contractor.

The general requirements provided under the OSHA Construction Regulations relate to:

- i. safe construction workplace;
- ii. good order and security of site;
- iii. stability of structure;
- iv. demolition or dismantling;
- v. explosive;
- vi. excavation;
- vii. cofferdams and caisson;
- viii. report on inspection;
- ix. energy distribution installation;
- x. prevention of drowning;
- xi. traffic route;
- xii. vehicle;
- xiii. prevention of risk from fire, flooding or asphyxiation;
- xiv. emergency procedure;
- xv. emergency route and exit;
- xvi. fire detection and fire-fighting;
- xvii. fresh air;
- xviii. temperature and weather protection; and
- xix. lighting.

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Safety and Health Assistance

Any person who holds any duty under the OSHA Construction Regulations may appoint another person to assist him in undertaking the measures needed to take to comply with the requirements imposed upon him by or under the OSHA Construction Regulations.

Any person seeking an appointment to assist any person who holds the duty under the OSHA Construction Regulations shall not accept the appointment to a project unless he has the skills, knowledge, training and experience, and, if the person is an organisation, the organisational capability, necessary to fulfil the role or function that the organisation is appointed.

Conclusion

Considering the risks to safety and health of persons involved in construction works, the introduction of the OSHA Construction Regulations is a welcome development to make the construction sites a safer workplace for all persons involved.

All parties involved in construction projects should therefore be aware of and comply with all the duties imposed under the OSHA Construction Regulations. Such parties are encouraged to check their contracts for compliance with the new OSHA Construction Regulations and consider if variation / change in laws provisions can be invoked, especially if these provisions pose additional requirements to the construction works.

It is particularly important to note that any non-compliance will provide a ground for the contractors and/or designers to suspend their works.

Should you require further information or any advice on the above or any other matters pertaining to projects, energy and infrastructure, please feel free to reach out to any member of our team listed below.

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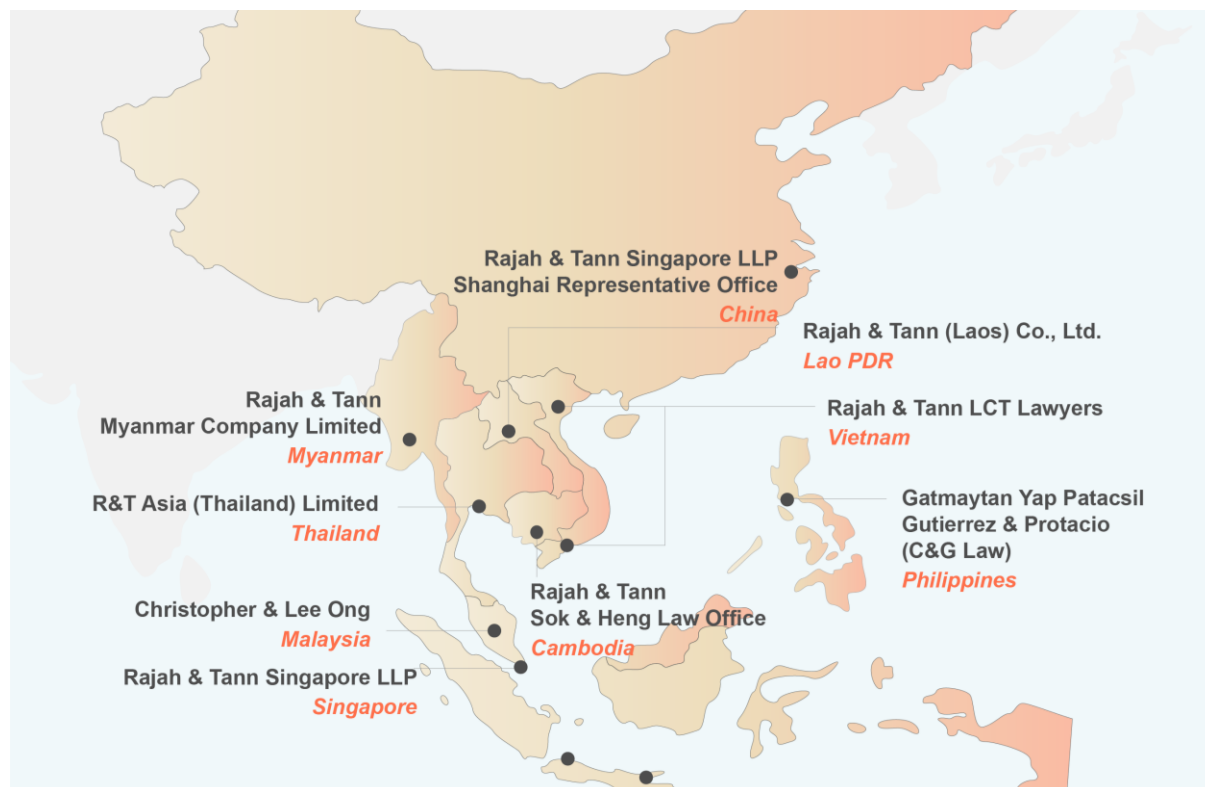
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