PREFACE

The construction industry in Malaysia has made tremendous progress in recent years and the increase in their activities have affected the general public’s safety and health. Construction sites create a risk not only for the construction worker, but also for the public who are situated or live close to the work site.

The Department of Occupational Safety and Health (DOSH) and other government agencies have regulations that lay down the legal requirements to ensure the safety and health of not only the workers at the place of work but also the public as well.

Deficiencies in taking preventive measures against occupational health and security incidents can have significant consequences for the company. Investing in preventative measures helps to mitigate potential consequences and ultimately be beneficial for all, as it creates a positive impact on the individual’s health, safety and wellbeing as well as a company’s operations and productivity.

Occupational safety and health is a statutory obligation for employers that is not only beneficial and crucial to employees but a critical success factor for business.
FOREWORD

Safety and Health at the workplace are important elements to enhance business performance as it directly impacts the bottom line and the overall wellbeing of employees. Lately, the construction industry has been in the limelight for all the wrong reasons. Too many lapses in high-profile construction projects, resulting in fatalities and losses. This has caused the Department of Occupational Safety and Health (DOSH) to conduct a stricter monitoring process on construction projects.

In any construction project, a mediocre safety performance is not acceptable. The condition at construction sites may pose hazards and risks. A slight mistake may be catastrophic.

In adhering to established standards, the Construction Industry Development Board has introduced the Safety and Health Assessment System in Construction (SHASSIC) to enable an independent assessment and evaluation of safety and health performance at construction sites.

The assessment system is designed to improve OSH performance and management on site and fulfil legal compliance to relevant legislations and regulations: such as the Factories and Machinery (Building Operation and Works of Engineering Construction) (Safety) Regulations 1986 and OSH Act 1994.

The right OSH management system, combined with strong cooperation between employers and employees and a well-planned OSH arrangement at the construction site, would improve safety and health conditions at the workplace and thus avoid catastrophe.

MEF hopes that this white paper would serve as a meaningful guide for the construction players and would ultimately contribute towards a safer and healthier work environment.

Datuk Hj Shamsuddin bin Bardan
Executive Director

INTRODUCTION

While safety at work on construction projects is never a debatable topic, its implementation in full most certainly is. This remains a fact even with the existence of the Occupational Safety and Health Act 1994 (OSHA), the main legislation in Malaysia that governs safety and health in the construction industry.

The level of awareness and compliance is generally low, although it is a comprehensive set of standards. The responsibilities of employers are clearly stipulated in the Act, whereby they are obliged to provide information, instructions, training and supervision to ensure the safety and health of their employees. This refers to the Duty of Care which in this context includes both the moral and legal obligations of an employer. Complimentary to each other, legal obligations refer to acting prudently to avoid the risks of exposures leading to ill health and moral obligations refer to the commitment to provide a safe work environment and to maintain the wellbeing of employees.

One of the missions of the International SOS Foundation is to encourage the development of an international instrument to address the prevention and mitigation of the risks as well as guidance on what should be done when an accident, illness or security situation occurs. Hence, this publication aims at providing guidance to employers in the construction sector in Malaysia, on workplace safety and health best practices. Its intention is to help organisations implement Duty of Care in action, as the prevention of accidents and the mitigation of their impact to the workers and possibly the public, brings tangible returns to the business.

We are thankful to the Malaysian Employers Federation and Shearn Delamore & Co respectively for their insights on the main legislations, overview of the construction industry and reference cases in Malaysia.
ABOUT US

International SOS Foundation
Established in 2011, the International SOS Foundation has the goal of improving the safety, security, health and welfare of people working abroad or on remote assignments through the study, understanding and mitigation of potential risks.

The escalation of globalisation has enabled more individuals to work across borders and in unfamiliar environments; exposure to risks which can impact personal health, security and safety increases along with travel. The Foundation is a registered charity and was started with a grant from International SOS. It is a fully independent, non-profit organisation.

www.internationalsosfoundation.org

Malaysian Employers Federation
Malaysian Employers Federation (MEF) is the central organisation of private sector employers in Malaysia recognised nationally, regionally and internationally. Established in 1953, MEF provides employers with advice, guidance and assistance in all aspects of labour laws and industrial relations matters such as conditions of work, disciplinary problems, retrenchment, hours of work and overtime, union recognition and union claims on terms and conditions of employment. MEF’s Vision is to be the leader in the development of human resources and the promotion of good employment practices and harmonious industrial relations.

www.mef.org.my

Shearn Delamore & Co
Shearn Delamore & Co is one of the oldest and largest law firms in Malaysia, with over 350 staff, comprising a team of 52 partners providing full range of legal solutions in all practice areas of a commercial law practice. Shearn Delamore & Co has also recently won the award for Malaysian Law Firm of the Year by the Chambers Asia Pacific 2014. The firm’s vision is to consistently provide solutions for the real world with a practical and results oriented approach by meeting the challenges of the business world without compromising on integrity or quality.

www.sheardelamore.com
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OVERVIEW FROM THE LEGAL PERSPECTIVE

Occupational Health and Safety in the Construction Industry

Over the years the construction industry in the country accumulated the highest number of work fatalities. According to the statistics provided by the Department of Occupational Safety and Health ("DOSH") for the year 2016 there were 99 fatalities reported for the construction industry. In this article we wish to highlight the main legislations which govern Occupational Health and Safety and specifically the legal obligations imposed on employers in maintaining Occupational Health and Safety.

Legal obligations imposed by provisions of the law exist side by side with an employer’s common law duty to maintain a safe working environment for its employees.

Main legislations

Occupational Safety and Health Act 1994 ("OSHA")

OSHA specifically provides that the construction industry is one of the many industries covered under the Act. There is a general duty imposed on employers and self-employed persons to their employees that it must ensure, so far as practicable, the safety, health and welfare at work of all its employees.

This duty even extends to other individuals who are not its employees as follows:

a) To ensure that the conduct of the undertaking does not expose others to any risk to their safety or health

b) To ensure that a non-domestic premise which has been made available to others, not being its employees, as a place of work, or as a place where they use a plant or substance provided for their use there, shall take such measures as are practicable to ensure that the premises, all means of access thereto and egress therefrom available is or are safe and without risks to health.

There is also a duty to prepare and as often as may be appropriate, to revise a written statement of this general policy with respect to safety and health at work of its employees and the organisation, and arrangements for time being in force for carrying out that policy, and to bring the statement any revision of it to the notice of all its employees.

A failure to adhere to these basic requirements above may result on conviction to a fine not exceeding RM50,000, to imprisonment for a term not exceeding two years or to both.

To achieve compliance with the above, the Act amongst other provides that the following would need to be complied with:

a) An occupier of a place of work would need to employ a competent person to act as a safety and health officer at the place of work.

b) Every employer shall establish a safety and health committee at the place of work if amongst other there are forty or more persons employed at the place of work.

The safety and health officer shall be employed exclusively for the purpose of ensuring the observance of the Act and its regulations, and to promote a safe conduct of work at the place of work.

Amongst categories of employers who are required to employ a safety and health officer are:

- Any building operation where the total contract price of the project exceeds RM20 million
- Any engineering construction work where the total contract price of the project exceeds RM20 million

The regulations governing the working of the safety and health officer can be found on the Occupational Safety and Health (Safety and Health Officer) Regulations 1997.

A contravention of this requirement may on conviction be liable to a fine not exceeding RM5,000 or to a term of imprisonment not exceeding six months or to both.

An employer:

- Shall provide the safety and health officer adequate facilities including training equipment, and appropriate information to enable the safety and health officer to conduct his duties
- Shall permit the safety and health officer at least once in a year to attend any continuous education programme to enhance his knowledge on occupational safety and health

- Shall keep under review the measures taken to ensure the safety and health of persons at the place of work.
- Shall investigate any matter at the place of work.

The regulations governing the working of the safety and health committee can be found on the Occupational Safety and Health (Safety and Health Committee) Regulations 1996.

A contravention of this requirement may on conviction be liable to a fine not exceeding RM5,000 or to a term of imprisonment not exceeding six months or to both.
Factories and Machinery Act 1967

This is an Act that governs the control of factories with respect to matters relating to the safety, health and welfare of persons. It also includes provisions in relation to the registration and inspection of machinery.

The occupier shall at all times maintain all safety appliances and machinery.

The Factories and Machinery (Building Operations and Works of Engineering Constructions) (Safety) Regulations 1986 provides amongst others as follows:

a) The Main contractor of a worksite shall appoint a part-time site safety supervisor who shall spend at least 15 hours per week exclusively on safety supervision and on promoting the safe conduct of work generally within the site.

b) Every contractor other than the main contractor in charge of the worksite who employs more than 20 persons to carry out work on the worksite shall appoint a part-time contractor’s safety supervisor who shall spend at least 5 hours per week exclusively on safety supervision and on promoting the safe conduct of work generally by its employees.

The main contractor of a worksite in which 50 or more persons are for the time being employed (whether by it or by other contractors) shall establish a safety committee (on which both employees and management are represented) for the purpose of keeping under review conditions in the worksite which may affect the safety and health of the persons employed therein.

Accidents and Injuries

In addition to the obligations to maintain safety and health as shown above, there are also legal obligations to report any instances of accidents or injuries.

The Employees’ Social Security (General) Regulations 1971 provides that an employer shall immediately after the receipt of the notification of such injuries shall complete and submit the accident report in the prescribed form.

The Occupational Safety and Health Act 1994 states that the employer shall notify the nearest occupational safety and health office of any accident, dangerous occurrence, occupational poisoning or occupational disease which has occurred or is likely to occur at the place of work.

The Factories and Machinery Act 1967 also has a similar provision whereby any accident which:
- Causes loss of life to any person
- Causes serious bodily injury to any person
- Causes bodily injury to any person or that person is prevented from following its normal occupation for more than three clear days excluding the day of accident or
- Causes serious damage to machinery or other property

or any dangerous occurrence takes place in any factory or in connection with any machinery, the occupier shall report the accident or dangerous occurrence to the Inspector having jurisdiction for the area in which the accident or dangerous occurrence has taken place by the quickest means available and subsequently with the least possible delay report in writing to the Inspector in the prescribed form the facts of the matter so far as they are known to him.

Conclusion

Recent incidents of fatalities not only at construction sites but areas surrounding the construction sites have received wide coverage in the media in the past year. This in turn has placed the construction industry under the spotlight and scrutiny of not only the authorities but the public at large.

Hence, the time may be right for participants in the construction industry to once again revisit the issue of health and safety starting from the very basic principles in health and safety such as:

- Identifying existing health and safety policies and reviewing them to ensure its compliance with existing legal obligations
- Identifying health and safety issues applicable to the work site. To take into consideration not only physical safety but also health issues
- Having qualified practitioners in HSE, medical practitioners and legal to assist your organisation
EMPLOYER’S RESPONSIBILITIES

An overview of OSH in the Construction Sector

The construction sector is a significant contributor to Malaysia’s economy. The construction sector generated RM31.9 billion in the third quarter of 2016 and grew 10.7% as compared to the same period in 2015. However, despite its steady growth, workplace accidents resulting in injuries and death continue to be prevalent. Many companies in the construction sector have much to improve in terms of safety and health and some have faced prosecution by DOSH for poor safety performance. Generally, construction sites remain as high-risk work environments that have claimed too many lives.

According to DOSH’s accident statistics up to December 2016 (Appendix), the construction industry recorded 99 deaths, 5 suffered permanent disability while 129 suffered non-permanent disability. Currently the death toll is at 7 for every 100,000 workers which is the highest compared to Singapore (6), Australia (4) and the United Kingdom (2).

In the past two years, the construction sector has been in the spotlight for all the wrong reasons. Major accidents at construction sites which occurred in 2015 include the passenger hoist accident in Precinct 15, Putrajaya (March 25); floor collapse in Pulau Sebang Melaka (June 22); and telework accident at Eco City, Kuala Lumpur (June 26). In 2015, a total of 1,305 construction sites nationwide were inspected by DOSH with an issuance of 1,293 Notice of Improvement and 597 Notice of Prohibition.
Fatal cases in the construction industries

There have been many fatalities at construction sites despite rigorous steps taken by the authorities. The following are three incidents that claimed the lives of workers in 2016:

**CASE 1**

15 Oct 2016: Worker struck by a falling hook block and load at a construction site in Kuala Lumpur. The wire rope of a tower crane broke and caused the hook block to fall and strike the worker. This caused the worker to suffer severe bodily injuries which lead to his death. The incident was classified as fatal case and reported to DOSH.

**CASE 2**

16 Sept 2016: Worker fell from height at a construction site in Pulau Pinang. The worker was walking on a wooden plank towards the adjacent scaffold and accidentally fell. Due to the height of the fall the victim succumbed to severe injuries and died. The contributing factor in the accident was that there was no ‘Working at Height’ Safe Procedure established.

**CASE 3**

27 May 2016: Worker buried alive due to landslide as he was installing formwork boards on the trench wall at a construction site in Sarawak. While he was working, the landslide covered and buried him causing him to suffocate by compression. It was revealed that the work was conducted without safe operating procedures for ‘Working Inside Trench’ and there were no Hazard Identification, Risk Assessment and Risk Control conducted prior to commencement of work.

In order to reduce accidents at construction sites, DOSH developed a safety checklist guideline in 2015 for construction sites to ensure that the safety aspect is being considered prior to starting work:

- Checklist for working at height.
- Checklist for concrete work.
- Checklist for hoisting / lifting operations.

The checklist is an important part of safety intervention in construction work activities in addition to the OSH Act 1994 and Factory and Machinery Act 1967. The Safety and Health Officers and Site Safety Supervisor should actively advocate and promote the usage of the checklist to improve the overall safety level at construction sites.

Construction companies are also encouraged to implement the Construction Occupational Health and Safety Management Systems Guidelines, which were recommended by the Japan Construction OSH Association (JOSHA) to the National Council for OSH in 2008.

**Enforcement by DOSH**

Based on the DOSH Annual Report 2015, except for January, accidents at construction sites occurred every month. This has resulted in active inspection by DOSH at construction sites nationwide. A total of 237 construction companies with poor OSH compliance were investigated by DOSH of which 88 involved fatalities.

Construction companies were also charged for non-legal compliance under the OSH Act 1994 and the Factories and Machinery Act 1967, including the following:

- Offence related to Safety and Health Committee - 184 cases
- Working at height - 388 cases
- Scaffold - 256 cases
- Machines - 117 cases
- Safe Operating Procedure, Hazard Identification, Risk Assessment, Risk Control and Lifting Plan - 62 cases
- Concrete - 93 cases
- Competent Person, Safety and Health Officer and Site Safety Supervisor - 65 cases

**Prosecution by DOSH**

DOSH has aggressively prosecuted construction companies for violations of OSH legal requirements which carry penalties and terms of imprisonment. The following were three cases involving construction sites:

**CASE 1**

11 Oct 2016: Construction company charged under Section 17(1) of the OSH Act 1994 which requires employer to conduct his undertakings in such manner as to ensure, so far as is practicable that he and other person, not being his employees, who may be affected are not exposed to health or safety risks. The company was fined RM65,000 for not establishing a Safety System of Work.

**CASE 2**

22 Sept 2016: Construction company charged for three offences under Section 10 (e) Factories and Machinery Act 1967. The charges were:

- Failure to install sturdy fencing at the working level to avoid person from falling
- Failure to provide safety measures while performing roof work which includes usage of safety harness and safety belts for work above 10 feet in height
- Failure to provide safety measures for plastering job and includes the usage of safety harness and safety belts for work above 10 feet in height

The company was fined a total of RM21,200 for the offences.
CASE 3

29 April 2016: A fatal accident occurred at a construction site. The scaffolding structure collapsed on top of two workers and they died on the spot due to severe injuries. The company was fined RM20,000 under section 17(1) OSH Act 1994.

In addition to that, the company was also fined RM3,000 for failure to submit the approved JKKP 6 form to the nearest DOSH office under regulation 5(1) (b)(ii) OSH (Notification and Reporting of Accident, Dangerous Occurrence, Occupational Poisoning and Occupational Disease) Regulation 2004.

CASE 4

22 Oct 2013: Construction company failed to immediately notify the nearest DOSH office by the quickest means possible on a work-related accident in which a worker was severely injured. The company was fined RM3,000 under regulation 5(1) (a)(ii) OSH (Notification and Reporting of Accident, Dangerous Occurrence, Occupational Poisoning and Occupational Disease) Regulation 2004.

CASE 5

15 Oct 2010: Construction company fined RM10,000 or 1-month imprisonment under section 15 (1) OSH Act for failure of supervising confined space work. Any confined space work is classified as high risk and should have strict Safety and Health Procedure which at minimum should conform to the Confined Space Code of Practices published by DOSH.

Conclusion

Safety and Health is very important for the construction sector. It is undeniable that the construction sector is a significant contributor to the national economy, but this should not be at the expense of the safety and health of workers. Records show that companies that perform poorly in safety and health face prosecution by the authorities. Construction companies as a whole should put safety and health as its core value of doing business.
The key objectives of any business in mitigating occupational health and safety risks are to ensure duty of care for employees, prevent loss of lives and safeguarding brand reputation.

An employer’s duty of care to their employees includes taking all the necessary steps as below, which are reasonably possible to ensure their health, safety and wellbeing.

These steps taken can be a key factor in building trust and reinforcing commitment to employees and can help improve staff retention, boost productivity and pave the way for greater employee engagement.

Employers also have a moral and ethical duty not to cause or fail to prevent, physical or psychological injury and must fulfil their responsibilities with regard to personal injury and negligence claims.

Any such negligence claims will have a negative impact on the company’s brand reputation. Hence, it is important to have preventative measures in place to mitigate this risk.

Some common characteristics of a successful employer’s duty of care include:

- Clear job descriptions for all employees
- Clear internal safety and health policies
- Undertaking risk assessments, creating and updating risk registers
- Creating a safe work environment
- Providing adequate training and feedback on performance
- Ensuring that staff do not work excessive hours - Fatigue management of employees
- Providing areas for rest and relaxation

- Protecting staff from bullying or harassment from internal or third parties
- Protecting staff from discrimination
- Providing communication channels for employees to raise concerns or grievances
- Providing employee assistance programme - EAP

It is important that these companies seek professional advice prior to the commencement of a construction project. Good and appropriate planning and preparation prior to the start of construction means getting it right first time, avoiding delays and penalties and costly rework.

Legal Matters on Occupational Health and Safety Risks

Legally, as pointed out by Sheam Delamore, employers must abide by relevant health and safety regulations as well as employer’s common law duty of care. However, not all companies are aware of such regulations or the best practices to be undertaken to ensure the health, safety and wellbeing of their employees.

An example of a case in point related to medical care is the set-up of an on-site medical clinic, for which registration and licensing are required from the Ministry of Health and it must be registered under the name of a qualified Malaysian doctor.

The clinic design and layout must strictly comply with the set specifications by the Ministry of Health. In implementing best practices for mitigating occupational health and safety risks, consideration should also be given to ensure the most effective mitigation of potential medical cases on site.

The number of these cases often correlates to the number of employees working on site. Hence the running curve on site will be one of the factors that determine the number of medical personnel required on site.

Other factors to be considered in planning an adequate medical facility on site are:

- The remoteness of the site and distance to the nearest local medical facilities
- The standard of healthcare at these facilities
- Distance to the nearest centre of medical excellence
- Appropriate medical transportation options are available
- Type of operations on site; whether high, medium or low risk

The above factors will then determine:

- The number of medical personnel
- The medical qualification needed
- Type and quantity of medical equipment, drugs and consumables according to the risk
- Logistic consideration for medical evacuation
- The need for a centralised response centre to coordinate all these activities
- Drug and alcohol testing on site
- Fitness to work assessment
- First aid training
Providing medical support to a construction site in a remote location can prove to be challenging, additional consideration needs to be factored in if construction is in a remote location. Very often an integrated approach is required. This includes performing a site health review and health risk assessment during the feasibility stage to determine the medical and other risk factors to be mitigated.

Following this study, preventive programmes should be developed and implemented. For example, road fatalities are quite common due to the movement of large vehicles on construction sites. Safe driving practices and awareness should be implemented.

Communicable diseases in the project area in remote locations are usually more prevalent and include common tropical diseases, such as dengue fever, malaria and chikungunya. Preventive programmes such as employee education, mosquito bite avoidance and selected chemoprophylaxis or recommended vaccinations should also be implemented.

Environmental hazards such as haze, heat waves, venomous snakes, floods and mudslides are some further examples of additional risks posed while working in remote locations. Health, Safety and Environmental Induction programmes for all workers prior to arrival on-site are therefore recommended.

Mass casualty incidents are not uncommon especially in high risk and large-scale construction operations. Employers are encouraged to develop a Medical Emergency Response Plan ("MERS") and Mass Casualty Incident Preparedness to cater for such incidents. These recommendations should be reviewed and updated regularly for appropriateness by experts.

Applying best practices and standards to construction sites enable companies to:

- Have appropriate preparedness in mitigating occupational safety and health risks
- Ensure compliance with both statutory and common law obligations
- Build trust and promote a feeling of safety which motivates employees to be more productive
- Prevent financial loss due to loss time injuries, costly management of medical cases and negligence claims
- Safeguard their brand reputation
- Be an Employer of Choice

### APPENDIX

#### Occupational Health and Safety in the Construction Industry

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Overall total: 3702

Source: Department of Occupational Safety and Health (DOSH) www.dosh.gov.my
Date of Update: 21.3.2017