

OCCUPATIONAL SAFETY AND HEALTH ACT 1994

An Act to make further provisions for securing the safety, health and welfare of persons at work, for protecting others against risks to safety or health in connection with the activities of persons at work, to establish the National Council for Occupational Safety and Health and for matters connected therewith.

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I PRELIMINARY

Short title and application.

1.

(1) This Act may be cited as the Occupational Safety and Health Act 1994.

(2) Subject to subsection (3), this Act shall apply throughout Malaysia to the industries specified in the First Schedule.

(3) Nothing in this Act shall apply to work on board ships governed by the Merchant Shipping Ordinance 1952, the Merchant Shipping Ordinance 1960 of Sabah or Sarawak or the armed forces.

Prevailing laws.

2.

(1) The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other written law relating to occupational safety and health.

(2) In the event of any conflict or inconsistency between the provisions of this Act and that of any other written law pertaining to occupational safety and health, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other written law shall, to the extent of the conflict or inconsistency, be construed as superseded.

Interpretation.

3.

(1) In this Act, unless the context otherwise requires—

"contract of service" means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract;

"Council" means the National Council for Occupational Safety and Health established under section 8;

"Employee" means a person who is employed for wages under a contract of service on or in connection with the work of an industry to which this Act applies and --

(a) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the industry, whether such work is done by the

employee at the place of work or elsewhere;

(b) who is employed by or through an immediate employer at the place of work of the industry or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the industry or which is preliminary to the work carried on in or incidental to the purpose of the industry; or

(c) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

"employer" means the immediate employer or the principal employer or both;

"government" means the Federal Government, the Government of a State or a local government;

"immediate employer" in relation to employees employed by or through him, means a person who has undertaken the execution at the place of work where the principal employer is carrying on his trade, business, profession, vocation, occupation or calling, or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the trade, business, profession, vocation, occupation or calling of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such trade, business, profession, vocation, occupation or calling, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer;

"industry" means the public services, statutory authorities or any of the economic activities listed in the First Schedule;

"occupier", in relation to a place of work, means a person who has the management or control of the place of work;

"officer" means the occupational safety and health officer appointed under subsection 5(2) and includes the Director General, Deputy Directors General, Directors, Deputy Directors and Assistant Directors of Occupational Safety and Health;

"place of work" means premises where persons work or premises used for the storage of plant or substance;

"plant" includes any machinery, equipment, appliance, implement or tool, any component thereof and anything fitted, connected or appurtenant thereto;

"practicable" means practicable having regard to--

(a) the severity of the hazard or risk in question;

(b) the state of knowledge about the hazard or risk and any way of removing or mitigating the hazard or risk;

(c) the availability and suitability of ways to remove or mitigate the hazard or risk; and

(d) the cost of removing or mitigating the hazard or risk;

"premises" include --

- (a) any land, building or part of any building;
- (b) any vehicle, vessel or aircraft;
- (c) any installation on land, off shore installation or other installation whether on the bed of or floating on any water; and
- (d) any tent or movable structure;

"prescribed" means prescribed by this Act or the regulations;

"principal employer" means the owner of an industry or the person with whom an employee has entered into a contract of service and includes

- (a) a manager, agent or person responsible for the payment of salary or wages to an employee;
- (b) the occupier of a place of work;
- (c) the legal representative of a deceased owner or occupier; and
- (d) any government in Malaysia, department of any such government, local authority or statutory body; secretary means the secretary appointed under subsection 12(1);

self-employed person means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others;

substance means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour or any combination thereof;

substance for use at work means any substance intended or supplied for use, whether exclusively or not, by persons at work;

supply in relation to any plant or substance, means the supply by way of sale, exchange, lease, hire or hire purchase, whether as principal or agent for another;

trade union means any association or combination of workmen or employers within the meaning of the Trade Union Act 1959.

(2) For the purposes of this Act, risks arising out of the activities of persons at work shall be treated as including risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking and the condition of premises so used or any Part of them.

(3) For the purposes of this Act

- (a) work means work as an employee or as a self-employed person;
- (b) an employee is deemed to be at work throughout the time when he is at his place of work but not otherwise; and
- (c) a self-employed person is at work throughout such time as he devotes to work as a self-employed person.

The objects of this Act are

- (a) to secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work;
- (b) to protect person at a place of work other than persons at work against risks to safety or health arising out of the activities of persons at work;
- (c) to promote an occupational environment for persons at work which is adapted to their physiological and psychological needs;
- (d) to provide the means whereby the associated occupational safety and health legislations may be progressively replaced by a system of regulations and approved industry codes of practice operating in combination with the provisions of this Act designed to maintain or improve the standards of safety and health.

PART II APPOINTMENT OF OFFICERS

5.

- (1) The Minister shall appoint a public officer to be the Director General of Occupational Safety and Health, in this Act referred to as the Director General for the purpose of exercising the powers, performing the functions and discharging the duties assigned to him under this Act.
- (2) The Minister may appoint, from among public officers, such numbers of Deputy Directors General, Directors, Deputy Directors, Assistant Directors and other occupational safety and health officers as may be necessary for the purposes of this Act.
- (3) If for any reason the Director General is unable to exercise the powers or discharge the duties of his office, the power shall be had and may be exercised and the duties shall be discharged by the Deputy Director General.
- (4) Subject to such limitations as may be prescribed by regulations made under Part XIV of this Act, an officer appointed under subsection (2) shall perform all the duties imposed, and may exercise all the powers conferred, upon the Director General under this Act, and every duty so performed and power so exercised shall be deemed to have been duly performed and exercised for the purposes of this Act.

6.

- (1) The Director General may, as he deems fit, appoint a person or an independent inspecting body from any of the industries to advise or assist him in carrying out the objects and purposes of this Act.
- (2) A person or an independent inspecting body appointed under subsection (1) shall be paid such allowance, fee or reimbursement as the Minister may determine.
- (3) An officer appointed under subsection 5(2) and a person or an independent inspecting body appointed under subsection (1), shall be subject to the control, direction and supervision of the Director General.
- (4) The Director General and all officers appointed under subsection 5(2), and a person or an independent inspecting body appointed under subsection (1), shall be deemed to be public servants within the meaning of the Penal Code.

7.

- (1) The Director General shall issue to every officer appointed under this Act a certificate of

authorization which shall be produced on demand to the occupier or any person in charge of a place of work which the officer intends to enter pursuant to this Act.

(2) In the case of the Director General, his certificate of authorization shall be issued by the Minister.

PART III NATIONAL COUNCIL FOR OCCUPATIONAL SAFETY AND HEALTH

8.

There shall be established a council called the National Council for Occupational Safety and Health

9.

(1) The Council shall consist of not less than twelve and Council not more than fifteen members who shall be appointed by the Minister, of whom -

(a) three persons shall be from organizations representing employers;

(b) three persons shall be from organizations representing employees;

(c) three or more persons shall be from Ministries or Departments whose responsibility is related to occupational safety and health; and

(d) three or more persons, or whom at least one shall be a woman, shall be from organizations or professional bodies the activities of whose members are related to occupational safety and health and who, in the opinion of the Minister, are able to contribute to the work of the Council.

(2) The Minister shall appoint from among the persons mentioned in subsection (1) a Chairman and a Deputy Chairman of the Council.

10.

The provisions of the Second Schedule shall apply to the members of the Council.

11.

(1) The council shall have power to do all things expedient or reasonably necessary for or incidental to the carrying out of the objects of this Act.

(2) The Council may, and when requested by the Minister to do so shall, carry out investigations and make reports and recommendations to him with regard to any matter relating to the objects of this Act and, in particular, but without prejudice to the generality of the foregoing provisions, with regard to -

(a) changes it considers desirable to occupational safety and health legislation;

(b) the improvement of the administration and enforcement of occupational safety and health legislation;

(c) the fostering of a co-operative consultative relationship between management and labour on the safety, health and welfare of persons at work;

(d) the special problems with respect to occupational safety, health and welfare of women, handicapped persons and other groups in the community;

- (e) the establishment of adequate methods of control of industrial chemicals at a place of work;
- (f) the statistical analysis of occupationally related deaths and injuries;
- (g) the provision of health care facilities at a place of work;
- (h) the fostering of the development and adoption by law of industry codes of practice related to occupational safety, health and welfare;
- (i) the development of rehabilitation plans and facilities to assist persons injured at a place of work.

12.

- (1) The Minister shall appoint a public officer from the office of the Director General to be the secretary to the Council.
- (2) The Council may, with the approval of the Minister, arrange for the use of the services of any staff or facility of the office of the Director General.

13.

- (1) The Council may—
 - (a) establish committees in respect of different industries for the purpose of assisting the Council to perform its functions in relation to industry codes of practice; and
 - (b) establish such other committees as it thinks fit for the purpose of assisting the Council to perform its other functions.
- (2) A committee shall consist of such number of persons as may be appointed by the Council from among its members.
- (3) Notwithstanding the provision of subsection (2), the Council may invite any person or a representative of any organization to advise a committee established under subsection (1) in the carrying out of its functions.
- (4) A person appointed under subsection (2) or invited to be a member of a committee under subsection (3) may be paid such allowance as may be determined by the Council with the approval of the Minister.

14.

The Council shall, as soon as practicable, after the 30th June but before the 31st December of each year, prepare and forward to the Minister a report of its activities for a period of twelve months ending on the 30th June of each year.

PART IV GENERAL DUTIES OF EMPLOYERS AND SELF EMPLOYED PERSONS

15.

- (1) It shall be the duty of every employer and every self-employed person to ensure, so far as is practicable, the safety, health and welfare at work of all his employees.
- (2) Without prejudice to the generality of subsection (1), the matters to which the duty extends include in particular
 - (a) the provision and maintenance of plant and systems of work that are, so far as is

practicable, safe and without risks to health;

(b) the making of arrangements for ensuring, so far as is practicable, safety and absence of risks to health in connection with the use or operation, handling, storage and transport of plant and substances;

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is practicable, the safety and health at work of his employees;

(d) so far as is practicable, as regards and place of work under the control of the employer or self-employed person, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of the means of access to and egress from it that are safe and without such risks;

(e) the provision and maintenance of a working environment for his employees that is, so far as is practicable, safe, without risks to health, and adequate as regards facilities for their welfare at work.

(3) For the purposes of subsections (1) and (2) -

(a) employee includes an independent contractor engaged by an employer or a self-employed person and any employee of the independent contractor; and

(b) the duties of an employer or a self-employed person under subsections (1) and (2) extend to such an independent contractor and the independent contractor's employees in relation to matters over which the employer or self-employed person

(i) has control; or

(ii) would have had control but for any agreement between the employer or self-employed person and the independent contractor to the contrary.

16.

Except in such cases as may be prescribed, it shall be the duty of every employer and every self-employed person to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the safety and health at work of his employees and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.

17.

(1) It shall be the duty of every employer and every self-employed person to conduct his undertaking in such a manner as to ensure, so far as is practicable, that he and other persons, not being his employees, who may be affected thereby are not thereby exposed to risks to their safety or health.

(2) It shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons, not being his employees, who may be affected by the manner which he conducts his undertaking, the prescribed information on such aspects of the manner in which he conducts his undertaking as might affect their safety or health.

18.

(1) An occupier of non-domestic premises which has been made available to persons, not being his employees, as a place of work, or as a place where they may 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 for use by persons using the premises, and any plant or substance in the premises or provided for use there, is or are safe and without risks to health.

(2) A person who has, by virtue of a contract or lease or otherwise, an obligation of any extent in relation to

(a) the maintenance or repair of a place of work or any means of access thereto or egress therefrom; or

(b) the prevention of risks to safety and health that may arise from the use of any plant or substance in the place of work, shall for the purpose of subsection (1) be deemed to have control of the matters to which his obligation extends.

19.

A person who contravenes the provisions of section 15, 16, 17 or 18 shall be guilty of an offence and shall on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART V GENERAL DUTIES OF DESIGNERS, MANUFACTURERS AND SUPPLIERS

20.

(1) It shall be the duty of a person who designs, manufactures, imports or supplies any plant for use at WORK-

(a) to ensure, so far as is practicable, that the plant is do designed a constructed as to be safe and without risks to health when properly used;

(b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a); and

(c) to take such steps as are necessary to secure that there will be available in connection with the use of the plant at work adequate information about the use for which it is designed and has been tested, and about any condition necessary to ensure that, when put to that use, it will be safe and without risks to health.

(2) It shall be the duty of a person who undertakes the design or manufacture of any plant for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is practicable, the elimination or minimisation of any risk to safety or health to which the design or plant may give rise.

(3) It shall be the duty of a person who erects or installs any plant for use by persons at work to ensure, so far as is practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

21.

(1) It shall be the duty of a person who formulates, manufactures, imports or supplies any substance for use at work

(a) to ensure, so far as is practicable, that the substance is safe and without risks to health when properly used;

(b) to carry out or arrange for the carrying out of such testing and examination as may be

necessary for the performance of the duty imposed on him by paragraph (a); and

(c) to take such steps as are necessary to ensure that there will be available in connection with the use of the substance at work adequate information about the results of any relevant test which has been carried out on or in connection with the substance and about any condition necessary to ensure that it will be safe and without risks to health when properly used.

(2) It shall be the duty of a person which undertakes the manufacture or supply of any substance for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is practicable, the elimination or minimisation of any risk to safety or health to which the substance may give rise.

22.

(1) Nothing in section 20 and 21 shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of the section.

(2) Any duty imposed on a person by any of the preceding provisions of this Part shall extend only to things done in the course of a trade, business or other undertaking carried on by him, whether for profit or not, and to matters within his control.

(3) Where a person designs, formulates, manufactures, imports or supplies any plant or substance for or to another on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is practicable, that the plant or substance will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed by paragraphs 20 (1) (a) and 21 (1) (a) to such extent as is reasonable having regard to the terms of the undertaking.

(4) Where a person (hereinafter referred to as the ostensible supplier) supplies any plant or substance for use at work to another (hereinafter referred to as the customer) under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, and the ostensible supplier

(a) carries on the business of financing the acquisition of goods by others by means of such agreements; and

(b) in the course of that business acquired his interest in the plant or substance supplied to the customer as a means of financing its acquisition by the customer from a third person (hereinafter referred to as the effective supplier), the effective supplier and not the ostensible supplier shall be treated for the purposes of this Part as supplying the plant or substance to the customer, and any duty imposed by sections 20 and 21 on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(5) For the purposes of this Part a plant or substance is not to be regarded as properly used where it is used without regard to any relevant information or advice relating to its use which has been made available by a person by whom it was designed, manufactured, imported or supplied.

23.

A person who contravenes the provisions of section 20 or 21 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART VI GENERAL DUTIES OF EMPLOYEES

24.

(1) It shall be the duty of every employee while at work-

(a) to take reasonable care for the safety and health of himself and of other persons who may be affected by his acts or omissions at work;

(b) to co-operate with his employer or any other person in the discharge of any duty or requirement imposed on the employer or that other person by this Act or any regulation made thereunder;

(c) to wear or use at all times any protective equipment or clothing provided by the employer for the purpose of preventing risks to his safety and health; and

(d) to comply with any instruction or measure on occupational safety and health instituted by his employer or any other person by or under this Act or any regulation made thereunder.

(2) A person who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

25.

A person who intentionally, recklessly or negligently interferes with or misuses anything provided or done in the interests of safety, health and welfare in pursuance of this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

26.

No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of this Act or any regulation made thereunder.

27.

(1) No employer shall dismiss an employee, injure him in his employment, or alter his position to his detriment by reason only that the employee-

(a) makes a complaint about a matter which he considers is not safe or is a risk to health;

(b) is a member of a safety and health committee established pursuant to this Act; or

(c) exercises any of his functions as a member of the safety and health committee.

(2) No trade union shall take any action on any of its members who, being an employee at a place of work-

(a) makes a complaint about a matter which he considers is not safe or is a risk to health;

(b) is a member of a safety and health committee established pursuant to this Act; or

(c) exercises any of his functions as a member of the safety and health committee.

(3) An employer who, or a trade union which, contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to a term of imprisonment not exceeding one year or to both.

(4) Notwithstanding any written law to the contrary, where a person is convicted of an offence under this section the Court may, in addition to imposing a penalty on the offender, make one or both of the following orders:

- (a) an order that the offender pays within a specific period to the person against whom the offender has discriminated such damages as it thinks fit to compensate that person;
- (b) an order that the employee be reinstated or reemployed in his former position or, where that position is not available, in a similar position.

PART VII SAFETY AND HEALTH ORGANIZATIONS

28.

(1) Where it appears to the Minister that in any of the industries or class or description of industries—

- (a) cases of illness have occurred which he has reason to believe may be due to the nature of the process or other conditions of work;
- (b) by reason of changes in any process or in the substances used in any process or, by reason of the introduction of any new process or new substance for use in a process, there may be risk of injury to the health of persons employed in the process;
- (c) persons below the age of sixteen years are or are about to be employed in work which may cause risk of injury to their health; or
- (d) there may be risk of injury to the health of persons employed in any of the occupations specified in the Third Schedule, or from any substance or material brought to the industries to be used or handled therein or from any change in the conditions in the industries, he may make regulations requiring such reasonable arrangements as may be specified in the regulations to be made for the medical surveillance and medical examination, not including medical treatment of a preventive character, of the persons or any class of persons employed in the industries or class or description of industries.

(2) Regulations made under this section may require the medical surveillance to be carried out by persons registered with the Director General, and may prescribe the qualifications and other conditions which are to be satisfied in order to be registered for the purpose of this section.

(3) A person who contravenes the provisions of this section or any regulation made thereunder shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

29.

(1) This section shall apply to such class or description of industries as the Minister may, by order published in the Gazette, specify.

(2) An occupier of a place of work to which this section applies shall employ a competent person to act as a safety and health officer at the place of work.

(3) The safety and health officer shall be employed exclusively for the purpose of ensuring the due observance at the place of work of the provisions of this Act and any regulation made thereunder and the promotion of a safe conduct of work at the place of work.

(4) The safety and health officer shall possess such qualifications or have received such

training as the Minister may, by notification in the Gazette, from time to time prescribe.

(5) An occupier who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to a term of imprisonment not exceeding six months or to both.

30.

(1) Every employer shall establish a safety and health committee at the place of work accordance with this section if-

- (a) there are forty or more persons employed at the place of work; or
- (b) the Director General directs the establishment of such a committee at the place of work.

(2) The composition of a safety and health committee established under subsection (1), the election or appointment of persons to the committee, the powers of the members of the committee, and any other matter relating to the establishment or procedure of the committee shall be as prescribed .

(3) Every employer shall consult the safety and health committee with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the safety and health at the place of work of the employees, and in checking the effectiveness of such measures.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

31.

The safety and health committee established at a place of work pursuant to section 30

(a) shall keep under review the measures taken to ensure the safety and health of persons at the place of work;

(b) shall investigate any matter at the place of work-

(i) which a member of the committee or a person employed thereat considers is not safe or is a risk to health; and

(ii) which has been brought to the attention of the employer;

(c) shall attempt to resolve any matter referred to in paragraph (b) and, if it is unable to do so, shall request the Director General to undertake an inspection of the place of work for that purpose; and

(d) shall have such other functions as may be prescribed.

PART VIII NOTIFICATION OF ACCIDENTS, DANGEROUS OCCURRENCE, OCCUPATIONAL POISONING AND OCCUATIONAL DISEASES, AND INQUIRY

32.

(1) An 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.

(2) Every registered medical practitioner or medical officer attending to, or called in to visit, a patient whom he believes to be suffering from any of the diseases listed in the Third Schedule of the Factories and Machinery Act 1967, or any disease named in any regulation or order made by the Minister under this Act, or occupational poisoning shall report the matter to the Director General.

33.

(1) If in the opinion of the Director General, an inquiry ought to be held into the nature and cause of the accident, dangerous occurrence, occupational poisoning or occupational disease, he may cause such an inquiry to be held by an occupational safety and health officer.

(2) The Director General may appoint one or more persons of engineering, medical or other appropriate skills or expertise to serve as assessors in any such inquiry.

(3) Every person not being a public officer serving as an assessor in the inquiry may be paid an allowance at such rate or rates as the Minister may determine.

34.

For the purpose of holding an inquiry under this Act, an occupational safety and health officer shall have the power to administer oaths and affirmations, and shall be vested with the powers of a First Class Magistrate for compelling the attendance of witnesses and the production of documents, maintaining order and otherwise duly conducting the inquiry, and all persons summoned to attend the inquiry shall be legally bound to attend.

PART IX PROHIBITION AGAINST USE OF PLANT OR SUBSTANCE.

35.

(1) Notwithstanding any written law to the contrary, the Director General may by order published in the Gazette prohibit the use of any plant or substance which in his opinion is likely to affect the safety and health of persons and work.

(2) Where the Director General proposes to exercise his power under subsection (1) he shall, before making the order, consult any Government department or other body which appears to him to be appropriate.

36.

A person who is aggrieved by an order made under subsection 35(1) may, within thirty days of the order, lodge an appeal with the secretary to the Council who shall transmit the appeal to an appeal committee appointed by the Minister under section 63.

PART X INDUSTRY CODES OF PRACTICE

37.

(1) The Minister may, upon the recommendation of the Council or the Director General, approve industry codes of practice comprising such directions as may appear to him to be necessary or proper for the guidance of persons in complying with the requirements of the provisions of this Act.

(2) The Minister may, upon the recommendation of the Council or the Director General, from time to time revise the industry codes of practice by amending, deleting, varying or adding to the provision of the industry codes of practice.

(3) An industry code of practice may—

(a) consist of any code, standard, rule, specification or provision relating to occupational safety or health approved by the Minister; or

(b) apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the industry code of practice is approved or as amended, formulated or published from time to time.

(4) The Minister shall cause to be published in the Gazette the approval of an industry code of practice and the amendment or revocation thereof.

38.

In any proceedings under this Act or any regulation made thereunder in which it is alleged that a person has contravened or failed to comply with a provision of the Act or any regulation made thereunder in relation to which an approved industry code of practice was in effect at the time of the alleged contravention or failure

(a) the approved industry code of practice shall be admissible in evidence in the proceedings; and

(b) if the court is satisfied in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that

(i) a provision of the approved industry code of practice is relevant to the matter; and

(ii) the person failed at any material time to observe the provision of the approved industry code of practice, the matter shall be taken as proved unless the court is satisfied that in respect of the matter the person complied with a provision of the Act otherwise than by way of observance of the provision of the approved industry code of practice.

PART XI ENFORCEMENT AND INVESTIGATION

39.

(1) An occupational safety and health officer, in this Part referred to as the officer, may, for the purpose of carrying out the objects of this Act or any regulation made thereunder, at any reasonable time and upon the production of his certificate of authorization enter, inspect and examine any place of work other than a place used solely for residential purposes;

Provided that he may enter the residential place with the consent of the owner or if he has reasonable cause to believe that a contravention of this Act or any regulation made thereunder has or is likely to be committed.

(2) In exercising his powers under subsection (1), an officer may—

(a) make examination and investigation of any plant, substance, article or other thing whatsoever as may be necessary to ascertain whether or not this Act or any regulation made thereunder has been complied with;

(b) direct that the place of work or any part thereof, or anything therein, shall be left undisturbed, whether generally or in particular respects, for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (a);

(c) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (a);

(d) take samples of any article or substance found in the place of work which he has power to enter, and of the atmosphere in or in the vicinity of the place of work;

(e) require any person employed in a place of work in which any of the diseases named in the Third Schedule of the Factories and Machinery Act 1967 or any disease named in any regulation or order made by the Minister under this Act has occurred or is likely to occur, to be medically examined by a medical officer or a registered medical practitioner.

(3) Where an officer is of the opinion that a plant or substance has caused or is likely to cause a danger to safety and health, he may—

(a) cause it to be dismantled or subjected to any process or test at any convenient place and at such reasonable time as he may appoint, but not so as to damage or destroy it:

(b) take possession of it and detain it for so long as is necessary for all or any of the following purposes;

(i) to examine it and do to it anything which he has power to do;

(ii) to ensure that it is not tampered with before his examination of it is completed;

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the provisions of this Act or regulation made thereunder.

(4) Where an officer is a medical officer he may—

(a) carry out such medical examination as may be necessary for the purposes of his duties under this Act or regulation made thereunder; and

(b) exercise such other powers as may be necessary or are conferred under subsections (2) and (3).

(5) An officer may for the purposes of this section seek whenever necessary the assistance of the police if he has reasonable cause to apprehend any serious obstruction in the execution of his duty.

(6) Without prejudice to subsection (5), on entering any place of work or residential place by virtue of subsection (1), an officer may bring with him—

(a) any other person duly authorized by the Director General; or

(b) any equipment or material required for any purpose for which the power of entry is being exercised.

40.

In every case where information is given on oath to a Magistrate that there is reasonable cause for suspecting that there is in a place of work or residential place any article, thing, book, document, plant, substance, installation or part thereof which has been used to commit or is intended to be used to commit an offence under this Act or any regulation made thereunder, he shall issue a warrant under his hand by virtue of which an officer named or referred to in the warrant may enter the place of work or residential place at any reasonable time by day or night, and search for and seize or seal the article, thing, book, document, plant, substance, installation or part thereof.

41.

Where an officer is satisfied upon information received that he has reasonable grounds for believing that, by reason of delay in obtaining a search warrant, any article, thing, book, document, plants, substance, installation or part thereof in a place of work or residential place used to commit or intended to be used to commit an offence under this Act or any regulation made thereunder is likely to be removed or destroyed, he may enter the place of work or residential place without a warrant and seize or seal the article, thing, book, document, plant, substance, installation or part thereof found therein:

Provided that it shall be an offence for a person without lawful authority to break, tamper with or damage the seal or remove the article, thing, book, document, plant, substance, installation or part thereof or to attempt so to do.

42.

(1) An officer may, in the exercise of his powers under section 40 or 41, if it is necessary so to do-

- (a) break open any outer or inner door of a place of work or residential place and enter thereinto;
- (b) forcibly enter the place and every part thereof;
- (c) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect; and
- (d) detain every person found in the place until the place has been searched.

(2) The officer seizing any article, thing, book, document, plant, substance, installation or part thereof under section 40 or 41 shall prepare a list of the things seized and forthwith, or as soon as is practicable, deliver a copy of the list signed by him to the occupier, or his agent or servant present in the premises, and if the premises are unoccupied the officer shall, wherever possible, post a list of the things seized on the premises.

43.

(1) Upon entering any place of work an officer shall take all reasonable steps to notify the employer and the safety and health committee of the entry.

(2) Upon concluding an inspection, an officer shall give to the employer and the safety and health committee information with respect to his observations and any action he proposes to take in relation to the place of work.

(3) Where an officer proposes to take and remove a sample from a place of work for the purposes of analysis, he shall notify the employer and the safety and health committee and after having taken the sample he shall where possible

- (a) divide the sample taken into as many parts as are necessary and mark and seal or mark and fasten up each part in such a manner as its nature will permit;
- (b) if required by the employer or the safety and health committee, deliver one part each to the employer or the safety and health committee
- (c) retain one part for future comparison; and

(d) if an analysis of the sample is to be made, submit another part to an analyst for analysis.

44.

(1) An officer shall have the power to investigate the commission of any offence under this Act or any regulation made thereunder

(2) An officer may, in relation to any investigation in respect of an offence committed under this Act or any regulation made thereunder, exercise the special powers in relation to police investigation except that the power to arrest without warrant given by the Criminal Procedure Code in any seizable offence may not be exercised by him.

(3) Upon completion of his investigation, the officer shall immediately give all information relating to the commission of the offence to an officer in charge of a police station and a police officer may, by warrant, arrest any person who may have committed an offence under this Act or any regulation made thereunder.

45.

(1) An officer making an investigation under section 39 or 44 may examine orally any person who appears to him to be acquainted with the facts and circumstances of the case

(2) The person referred to in subsection (1) shall be legally bound to answer all questions relating to the case put to him by the officer:

Provided that the person may refuse to answer any question if the officer fails or refuses on demand to produce to him the certificate of authorization issued by the Director General to the officer under subsection 7(1):

Provided further that the person may refuse to answer any question to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth whether or not the statement is made wholly or partly in answer to questions .

(4) An officer obtaining information from a person shall first inform the person of the provisions of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by him or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

(6) Where an officer uses the assistance of an interpreter, any inquiry or requisition to a person made on behalf of the officer by the interpreter shall, for all purposes, be deemed to have been actually made by the officer, and any answer thereto made to the interpreter shall be deemed to have been actually made to the officer.

46.

The owner or occupier of, or employer, any place of work and the agent or employee of the owner, occupier or employer shall provide such assistance as the officer may require for any entry, inspection, examination or inquiry or for the exercise of his powers under this Act.

47.

A person who

- (a) refuses access to a place of work to an officer or a person assisting him;
- (b) obstructs the officer in the exercise of his powers under this Act or any regulation made thereunder, or induces or attempts to induce any other person to do so;
- (c) fails to produce any document required under this Act by the officer;
- (d) conceals the location or existence of any other person or any plant or substance from the officer;
- (e) prevents or attempts to prevent any other person from assisting the officer; or
- (f) in any other way, hinders, impedes or opposes the officer in the exercise of his powers under this Act or any regulation made thereunder, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

48.

(1) If an officer is of the opinion that a place of work, plant, substance or process is likely to be a danger, or is likely to cause bodily injury or is a serious risk to the health of any person, or is likely to cause damage to any property, he shall serve an improvement notice on the person under whose control the place of work, plant, substance or process lies, requiring the person to take measures to remove the danger or rectify any defect within such period as he shall therein specify, and in every such case the place of work, plant, substance or process shall not be used or operated even after the period of expiry of the notice until the danger has been removed or the defect made good to the satisfaction of the officer.

(2) If an officer is of the opinion that the defect in subsection (1) is likely to cause immediate danger to life or property, he shall serve a prohibition notice prohibiting the use or operation of the place of work, plant, substance or process until such time that any danger posed is removed and the defect made good to the satisfaction of the officer.

(3) An improvement notice or a prohibition notice under subsection (1) or (2) shall

(a) state that the officer is of the opinion that in respect of the plant, substance or process at the place of work, there is occurring or may occur an activity which is or is likely to be a danger or is likely to cause bodily injury or a serious risk to the health of any person or is likely to cause damage or is likely to cause immediate danger to life or property, and state the reasons for the opinion; and

(b) where in the officer's opinion the activity concerned is a contravention or is likely to be a contravention of any provision of this Act or any regulation made thereunder, specify the provision and state the reasons for the opinion.

(4) An officer may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remove any danger, likely. danger, risk, matter or activity to which the notice relates and the directions may refer to any approved industry code of practice.

(5) Without prejudice to the provision of subsection (2) an officer may, if he considers it necessary, proceed to render inoperative the place of work, plant, substance or process by any means he may deem best suited for the purpose.

(6) Where such an action is taken by the officer under subsection (5) he may, if he deems fit,

recover the cost of the action from the occupier or person having responsibility or control of the place of work, plant, substance or process.

49.

(1) A person to whom an improvement or a prohibition notice is issued under section 48 must comply with the same notwithstanding that an appeal against its issuance has been lodged.

(2) A person who without reasonable excuse fails to comply with any improvement or prohibition notice issued under section 48 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both, and to a further fine of five hundred ringgit for each day during which the offence continues.

50.

(1) A person who is aggrieved by a notice issued by an officer under section 48 may, within thirty days from the date of such notice, appeal to the Director General who may, after considering the appeal, by order in writing confirm, revoke or vary the notice.

(2) A person who is aggrieved with a decision of the Director General made under subsection (1) may, within thirty days from the date of the decision, appeal to an appeal committee appointed by the Minister under section 63.

(3) Where an improvement or a prohibition notice is issued by the director General or the Deputy Director General in the exercise of the powers conferred under section 48, the appeal shall be made to an appeal committee appointed by the Minister under section 63.

PART XII LIABILITY FOR OFFENSES

51.

A person who by any act or omission contravenes any provision of this Act or any regulation made thereunder shall be guilty of an offence, and if no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a fine not exceeding one thousand ringgit for every day or part of a day during which the offence continues after conviction.

52.

(1) Where a body corporate contravenes any provision of this Act or any regulation made thereunder, every person who at the time of the commission of the offence is a director, manager, secretary or other like officer of the body corporate shall be deemed to have contravened the provision and may be charged jointly in the same proceedings with the body corporate or severally, and every such director, manager, secretary or other like officer of the body corporate shall be deemed to be guilty of the offence.

(2) A person may be proceeded against and convicted under the provision of subsection (1) whether or not the corporation has been proceeded against or has been convicted under that provision.

53.

(1) Where a trade union by any act or omission contravenes any provision of this Act or any regulation made thereunder every officer, employee and person purporting to act on the instruction of any officer of the trade union shall be deemed to have contravened the provision and may be charged jointly in the same proceedings with the trade union or severally, and every such officer, employee or person shall be deemed to be guilty of the offence.

(2) A person may be proceeded against and convicted under the provision of subsection (1) whether or not the trade union has been proceeded against or has been convicted under that provision.

54.

A person who would be liable under this Act or any regulation made thereunder to any penalty for anything done or omitted if the thing had been done or omitted by him personally shall be liable to the same penalty if the thing had been done or omitted by his agent.

55.

It shall be a defence if any proceedings against a person for an offence under this Act or any regulation made thereunder to satisfy the court that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

56.

Where a person convicted in respect of an offence under this Act or any regulation made thereunder is a body corporate or a trade union, it shall only be liable to the imposition of a fine provided therefor.

57.

A person who aids or abets the commission of an offence under this Act shall be punished with the punishment provided for the offence.

58.

Subject to the provisions of this Act and any regulation made thereunder, no person shall incur any personal liability for any loss or damage caused by any act or omission by him in carrying out the duties under this Act or any regulation made thereunder, unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

59.

Nothing in Parts IV, V and VI and the relevant industry code of practice shall be construed as—

(a) conferring a right of action in a civil proceeding in respect of any contravention, whether by act or omission, of any provision of those Parts;

(b) conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings; or

(c) affecting the extent, if any, to which a right of action arises or civil proceedings may be taken with respect to breaches of duties imposed by other legislation in regard to safety and health.

60.

In any proceedings for an offence under this Act or any regulation made thereunder consisting of a failure to comply with a duty or requirement to do something so far as is practicable, or to use the best practicable means to do something, it shall be for the accused to prove that it was not practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

61.

Prosecutions in respect of offenses committed under this Act or any regulation made thereunder may, with the prior written consent of the Public Prosecutor, be instituted and conducted by an

occupational safety and health officer or by an officer specially authorized in writing by the Director General subject to the provision of the Criminal Procedure Code.

62.

(1) The Minister may, by order in the Gazette, prescribe any offence under this Act or any regulation made thereunder as an offence which may be compounded.

(2) The Director General may at any time before conviction compound any of the offenses prescribed under subsection (1) as an offence which may be compounded by collecting from the person reasonably suspected of having committed the offence a sum of money not exceeding the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence:

Provided that the Director General shall not exercise his powers under this section unless the person in writing admits that he has committed the offence and requests the Director General to deal with the offence under this section.

PART XIII APPEALS

63.

(1) The Minister shall appoint appeal committees for the purpose of considering any appeal made under section 36 or 50.

(2) An appeal committee shall consist of a Chairman to be appointed by the Minister from among members of the Council and two other persons to be appointed by the Minister who, in his opinion, have wide experience and knowledge in matters relating to the subject matter of the appeal.

(3) Every member of an appeal committee may be paid an allowance at such rate or rates as the Minister may determine.

64.

(1) An appeal committee may, after hearing an appeal, confirm, revoke or vary an order made by the Director General under section 35, a decision made by the Director General under subsection 50(1), or an improvement or a prohibition notice issued by the Director General under section 48.

(2) An appeal committee shall decide and communicate expeditiously its decision to the person making the appeal.

65.

The decision of an appeal committee shall be final and conclusive and shall not be questioned in any court.

PART XIV REGULATIONS

66.

(1) The Minister may make regulations for or with respect to the safety, health and welfare of persons at work in order to achieve the objects of this Act.

(2) In particular and without prejudice to the generality of subsection (1), such regulations may-

(a) regulate or prohibit-

- (i) the manufacture, supply or use of any plant;
- (ii) the manufacture, supply, storage, transport or use of any substance; and
- (iii) the carrying on of any process or the carrying out of any operation;
- (b) prescribe the requirements with respect to the design, construction, guarding, siting, installation, commissioning, examination, repair, maintenance, alteration, adjustment, dismantling, testing, marking or inspection of any plant;
- (c) prescribe the requirements with respect to the examination, testing, analysis, labelling or marking or any substance;
- (d) prescribe the time and the manner in which employers or other specified persons are required to examine, test, analyse, label or mark any substance;
- (e) prescribe the requirements to abstain from eating, drinking or smoking in any circumstances involving risk of absorption of any substance or risk of injury or poisoning arising out of the use of any substance;
- (f) prescribe the requirements with respect to the instruction, training and supervision of persons at work;
- (g) prescribe the procedure for employers to notify any accident, dangerous occurrence, occupational poisoning or occupational disease;
- (h) prescribe the arrangements to be made with respect to the taking of any action or precaution to avoid, or in event of, any accident or dangerous occurrence;
- (i) prohibit or require the taking of any action in the event of any accident or dangerous occurrence;
- (j) prescribe the requirements with respect to the provision and use in specified circumstances of protective clothing or equipment and rescue equipment;
- (k) prescribe the standards in relation to the use of, including standards of exposure to, any physical, biological, chemical or psychological
- (l) regulate and require the monitoring by employers or occupiers of conditions at a place of work including the health of their employees;
- (m) secure the provision of adequate welfare facilities by employers for persons at work;
- (n) require the employers to keep and preserve records and other documents;
- (o) prescribe the composition, powers, functions and procedures of safety and health committees and regulate the election or appointment of members of the committees and other related matters;
- (p) prescribe the manner of holding inquiries under section 33 and of hearing appeals under section 36 or 50;
- (q) prescribe the fees payable or chargeable for doing any act or providing any service for the purposes of this Act or any regulation made thereunder;

(r) prescribe the offenses which may be compounded and the method and procedure to be complied with;

(s) prescribe the requirements for engaging a medical officer and the procedures for the registration of the medical officer;

(t) prescribe the requirements for employing a safety and health officer, the training required of a safety and health officer and the procedures for registration;

(u) prescribe any other matter which may appear to the Minister to be expedient or necessary for the better carrying out of the Act.

PART XV MISCELLANEOUS

67.

(1) Save for an inquiry under this Act or in any court proceedings relating to the commission of an offence under this Act or any regulation made thereunder, no person shall disclose any matter including any manufacturing or commercial secret which has come to his knowledge or which he has acquired while performing his duties under this Act.

(2) A person who contravenes the provision of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

SCHEDULES

FIRST SCHEDULE

(Subsection 1(2))

1.

Manufacturing

2.

Mining and Quarrying

3.

Construction

4.

Agriculture, Forestry and Fishing

5.

Utilities;

(a) Electricity;

(b) Gas;

(c) Water; and

(d) Sanitary Services

6.

Transport, Storage and Communication

7.

Wholesale and Retail Trades

8.

Hotels and Restaurants

9.

Finance, Insurance, Real Estate and Business Services

10.

Public services and Statutory Authorities

SECOND SCHEDULE

(Section 10)

1.

The members of the Council shall hold office for a term of three years or for such shorter period as the Minister may specify and shall be eligible for reappointment for maximum of two terms.

2.

(1) A member of the Council may at any time—

(a) resign from the Council by a notice in writing to the Minister: or

(b) be removed from the Council by the Minister for permanent incapacity or other sufficient cause, and upon such resignation or removal the term for which he was appointed shall be deemed to have expired.

(2) Where any question arises as to whether any incapacity or cause exists or whether any incapacity is temporary or permanent or any cause is sufficient, the decision of the Minister shall be final.

3.

(1) The following persons shall be disqualified from being appointed to or being members of the Council;

(a) a person who has been found or is declared to be of unsound mind;

(b) a bankrupt;

(c) a person who has been convicted of any offence involving fraud, dishonesty or moral turpitude, or any offence relating to occupational safety and health under any law made thereunder; or

(d) a person who is otherwise unable or incapable of performing the functions as a member of the Council.

(2) A member of the Council appointed under subsection 9(1) shall cease to be a member

(a) if he fails to attend three consecutive meetings of the Council without the permission in writing of the Chairman;

(b) if he becomes disqualified under subparagraph (1); or

(c) if his appointment is revoked by the Minister.

4.

(1) The Minister shall summon the first meeting of the Council and thereafter the Council shall meet not less than once in three months at such place as the Chairman may appoint.

(2) The Chairman shall call a meeting of the Council on the request of any two members of the Council and such request shall be in writing with the reason therefor.

(2) The Council may, and when requested by the Minister to do so shall, carry out

(3) At any meeting of the Council the Chairman shall preside, and in his absence the members shall elect one of their numbers to preside over the meeting.

(4) The quorum of the Council shall be six.

(5) If on any question to be determined by the Council there is an equality of votes, the Chairman or, in the case where the Chairman is absent, the member presiding over the meeting, shall have a casting vote.

(6) Subject to subparagraphs (3), (4) and (5) the Council shall determine its own procedure.

(7) The Council shall cause proper records of its proceedings to be kept.

5.

There shall be paid such allowances to members of the Council for attending meeting of the Council as the Minister may determine.

6.

A member of the Council who has a pecuniary interest whether direct or indirect in any matter to be considered by the Council shall declare the nature of that interest at every meeting at which the matter is considered.

7.

No member of the Council shall incur any personal liability for any loss or damage caused by any act or omission in administering the affairs of the Council unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

THIRD SCHEDULE

(Paragraph 28 (1) (d))

Occupations Involving Special Risk to Health

1.

Any occupation involving the use or handling of, or exposure to, the fumes, dust or vapour of silica, asbestos, raw cotton dust, lead, mercury, arsenic, phosphorus, carbon bisulphide, benzene, organic-phosphate, nitrous fumes, cadmium, beryllium or pesticides

2.

Any occupation involving the use or handling of, or exposure to, tar, pitch, bitumen, mineral oil including paraffin, chromate acid, chromate or bichromate of ammonium, potassium, zinc or

sodium.

3.

Any occupation involving exposure to x-rays, ionizing particles, radium or other radioactive substances or other forms of radiant energy.

4.

Any occupation or process carried on in compressed air.



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