

1.0 OSH REGULATORY FRAMEWORK

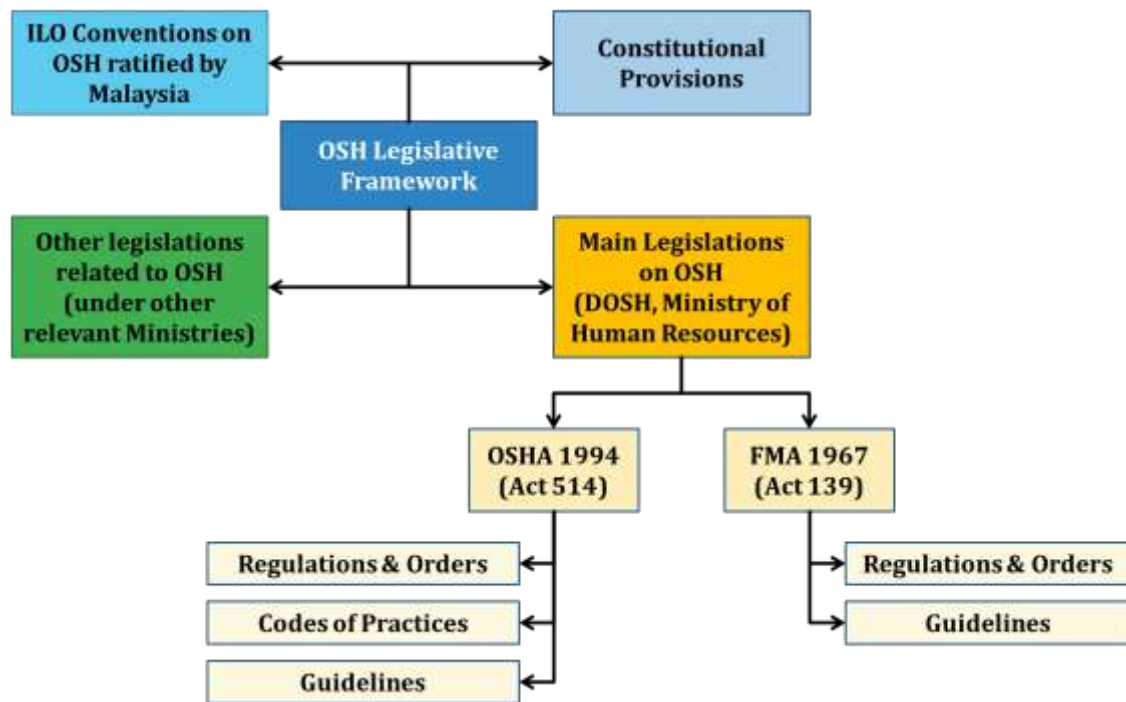


Figure 1.1: Summary of OSH Legislative Framework in Malaysia

1.1 Provisions of the Federal Constitution

The Federal Constitution of Malaysia is the supreme law of Malaysia. The constitutional rights under the Federal Constitution of Malaysia encompass the right to livelihood under Article 5 of the Constitution, and within the spirit and intent of Article 8 that all persons are equal before the law and entitled to equal protection of the law. The right of employment is paralleled to other constitutional rights and the development of the labor legislation in the country has always protected the labor force, including ensuring safe and healthy working environment for all workers.

1.2 Main Legislations on Occupational Safety and Health (OSH)

The main legislations directly related to the occupational safety and health matters for the industries are the Occupational Safety and Health Act 1994 (OSHA 1994) and the Factories and Machinery Act 1967 (FMA 1967), which are enforced by the Department of Occupational Safety and Health (DOSH) under the Ministry of Human Resources.

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The Department of Occupational Safety and Health (DOSH) is the government agency mainly responsible for administering, managing, and enforcing legislation related to occupational safety and health (OSH) in this country with the vision to cultivate OSH culture in every workplace and to make every job and task safe and healthy for the worker. DOSH is responsible for ensuring the safety, health and welfare of people at work, as well as protecting other people and public from safety and health hazards arising from the activities in the following sectors,

Manufacturing

Mining and Quarrying

Construction

Hotels and Restaurant

Agriculture, Forestry and Fishing

Transport, Storage and Communication

Public Services and Statutory Authorities

Utilities - Gas, Electricity, Water and Sanitary Services

Finance, Insurance, Real Estate and Business Services

Wholesale and Retail Trades

1.2.1 Occupational Safety and Health Act 1994 (Act 514)

The Occupational Safety and Health Act 1994 (OSHA 1994) provides the legislative framework to promote, stimulate and encourage high standards of safety and health at work. The Act 514 contains a clear statement that 'the responsibility for occupational safety and health at workplace are shared between the employers and the workers since the employers are the ones who provide the working environment which gives rise to hazards at work and the workers are the ones who have to work with these hazards'.

The self-regulatory approach requires the employer to establish effective safety organization and performance through self-regulation schemes, designed to suit the industry or the organization. Therefore, there must be consultation between the employers, workers and the government to discuss any issue on safety and health at work; and it requires co-operation between the employers and the workers to safeguard and improve the quality of safety and health at workplaces.

OSHA 1994 defines the general duties of employers, employees, the self-employed, designers, manufacturers, importers and suppliers of plant or substances. The salient features of the Act include the establishment of the National Council for Occupational Safety and Health (NCOSH), the duty to formulate Safety and Health Policy, the appointment of Safety and Health Officer in certain classes of industries, the establishment of Safety and Health Committee at the place of work and the use of

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Approved Industry Codes of Practice as evidence of compliance to safety and health provisions.

1.2.1.1 Regulations and Orders

The Regulations and Orders made under the Act are the:

Regulation	Year
Occupational Safety and Health (Employers' Safety and Health General Policy Statements (Exception) Regulations	1995
Occupational Safety and Health (Control of Industrial Major Accident Hazards) Regulations	1996
Occupational Safety and Health (Safety and Health Committee) Regulations	1996
Occupational Safety and Health (Classification, Labeling of Safety Data Sheet of Hazardous Chemicals) Regulations	2013
Occupational Safety and Health (Safety and Health Officer) Regulations	1997
Occupational Safety and Health (Prohibition of Use of Substance) Regulations	1999
Occupational Safety and Health (Use and Standards of Exposure of Chemicals Hazardous to Health) Regulations	2000
Occupational Safety and Health (Notification of Accident, Dangerous Occurrence, Occupational Poisoning and Occupational Diseases) Regulations	2004
Occupational Safety and Health (Safety and Health Officer) Orders	1997
Occupational Safety and Health (Prohibition of Use of Substance) Orders	1997

1.2.1.2 Codes of Practice

Apart from the Regulations and Orders made under the Act 1994, the Industry or Approved Codes of Practice, were also formulated as important documentations under Part X of the Act, and listed under four classifications as in Table 1.1.

Table 1.1: List of Codes of Practices Regulated by DOSH

Chemical Management		Year
1	Industry Code of Practice On Chemicals Classification and Hazard Communication	2014

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2	Industry Code of Practice on Indoor Air Quality	2010
Industrial Hygiene		Year
1	Industry Code of Practice for Safe Working in a Confined Space	2010
Occupational Health		Year
1	Code of Practice on Prevention and Eradication of Drug, Alcohol and Substance Abuse in the Workplace	2005
2	Code of Practice on Prevention and Management of HIV/AIDS at the Workplace	2001
Transportation		Year
1	Code of Practice for Road Transport Activities	2010
2	Code of Practice on Safety, Health and Environment for Transportation Sector (SHE Code)	2007

1.2.1.3 Guidelines

In order to assist the industries in complying with the legislations, the Department of Occupational Safety and Health (DOSH) formulates Guidelines, explaining the requirements for compliance as categorized in Table 1.2.

Table 1.2: List of Guidelines Published by DOSH

NO.	AGRICULTURE, FORESTRY & FISHING	YEAR
1	Guidelines on Occupational Safety and Health in Logging Operations	2004
2	Guidelines on Occupational Safety and Health in Fishing and Aquaculture Operations	2003
3	Guidelines on Occupational Safety and Health in Agriculture	2002
NO.	BUILDING CONSTRUCTION & ENGINEERING WORK	YEAR
1	Guidelines for Approval of Design Scaffolding	2016
2	Guidelines for Public Safety and Health at Construction Sites	2007
3	Guidelines for the Prevention of Falls at Workplaces	2007
4	Guidelines on Trenching for Construction Safety	2000
5	Guidelines on Occupational Safety and Health in Tunnel Construction	1998

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NO.	CHEMICAL	YEAR
1	Guidelines on Mercury Management in Oil and Gas Industry	2011
2	Guide for the Generic Use of Assessment of Health Risk Arising From the Use of Chemical Hazardous to Health	2006
3	Guidelines on Storage of Hazardous Chemicals: A Guide for Safe Warehousing of Packaged Hazardous Chemicals	2005
4	Guidelines on the Use of Personal Protective Equipment Against Chemicals Hazards	2005
5	Guidelines on the Monitoring of Airborne Contaminant for Chemicals Hazardous to Health	2002
6	Guidelines on the Control of Chemicals Hazardous to Health	2001
7	Guidelines for the Preparation of a Chemical Register	2000
8	Assessment of the Health Risks Arising from the Use of Hazardous Chemical in the Workplace (2 nd Edition)	2000
9	Guidelines on Method of Sampling and Analysis for Airborne Lead	1997
NO.	COMPETENCY	YEAR
1	Guidelines for Certification of Scaffolding Operator Training Centre	2016
2	Guidelines of Point System for Continuous Education Program	2011
3	Guidelines for Registration of Training Centre for Site Safety Supervisor	2011
4	Guidelines of Employee Training, Registration of Training Centre and Operation of Confined Space Training Course	2008
5	Guidelines for Certification of Crane Operator Training Centre	2004
6	Guidelines for Application of Safety and Health Officer Training Centre	2003
7	Guidelines for the Registration of Assessors, Hygiene Technician and Occupational Health Doctor	2000
8	Examination Syllabus for Engineer's Certification of Competency (Steam and Internal Combustion Engines) Examination	1996
9	Guidelines for Registration - Responsible Person for Tower Crane Installer-Maintainer / Passenger & Goods Hoisting Machine & Gondola	-
NO.	ERGONOMIC	YEAR
1	Guidelines on Occupational Vibration	2003
2	Guidelines on Occupational Safety and Health for Seating at Work	2003
3	Guidelines on Occupational Safety and Health for Working with Video	2003

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	Display Unit (VDU's)	
4	Guidelines on Occupational Safety and Health for Standing at Work	2002
NO.	GENERAL	YEAR
1	Guidelines On Contract Management	2015
2	Guidelines for The Factories and Machinery (Special Scheme Inspection) (Risk-Based Inspection)	2014
3	Guidelines in Courier Services Industry	2015
4	Guidelines on Occupational Safety and Health Act 1994 (Act 514)	2006
5	Guidelines on Occupational Safety and Health (Notification of Accident, Dangerous Occurrence, Occupational Poisoning & Occupational Disease) Regulations 2004 (NADOPOD)	2005
6	Guidelines on Occupational Safety and Health in the Service Sector	2004
7	Guidelines on Gender Issues in Occupational Safety & Health	2003
8	Guidelines for Media Professionals	2000
9	Guidelines on Occupational Safety and Health in the Office	1996
10	Guidelines for the Protection of Employees Against the Effects of Haze at Workplaces	-
11	Guidelines on Occupational Safety and Health Management Systems (OSHMS)	-
NO.	HIRARC	YEAR
1	Guidelines for Hazard Identification, Risk Assessment and Risk Control (HIRARC)	2008
NO.	INDUSTRIAL HYGIENE	YEAR
1	Guidelines On Heat Stress Management At Workplace	2016
2	Guidelines on Occupational Safety and Health for Design, Inspection, Testing and Examination of Local Exhaust Ventilation System	2008
3	Guidelines for Control of Occupational Noise	2005
NO.	OCCUPATIONAL HEALTH	YEAR
1	Guidelines on Aedes Mosquito Control in Construction Sites	2015
2	Guidelines on Occupational Health Services	2005
3	Guidelines on Preventing and Responding to Drugs and Alcohol Problems in the Workplace	2004

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4	Guidelines on First Aid in the Workplace (2nd Edition)	2004
5	Guidelines on Reproductive Health Policy & Programmes at the Workplace	2002
6	Guidelines on Medical Surveillance	2001
7	Guidance for the Prevention of Stress and Violence at the Workplace	2001

1.2.2 Factories and Machinery Act 1967 (Act 139)

Another important legislation enforced by the Department of Occupational Safety and Health is the Factories and Machinery Act 1967, which was enacted to supersede the Machinery Ordinance 1953 of the States of Malaya. There were 16 Regulations promulgated under the Act. The Act 139 was enacted in 1967 and it is the legislation applicable until today to provide for the control of factories with respect to matters relating to the safety, health and welfare of person therein, the registration and inspection of machinery and for matters connected therewith.

The FMA 1967 was amended in 2006 and gazetted on September 14, 2006, and enforced on January 1, 2007. The rationale for amending the FMA 1967 was to provide for the provision giving the power to the Minister to issue license to individual or company carrying out activities under the Act; to update, improve and clarify unclear or vague provisions; to ensure the relevancy of the provisions contained in the Act with the current development and to ease the enforcement of the law; as well as to increase the amount of fine suitable to the current situation.

The Act contains the following Regulations:

- 1. Factories and Machinery (Steam Boiler and Unfired Pressure Vessel (Amendment) Regulations 2005.**
- 2. Factories and Machinery (Electric Passengers and Good Lifts) Regulations 1970.**
- 3. Factories and Machinery (Fencing of Machinery and Safety) Regulations 1970.**
- 4. Factories and Machinery (Person in Charge) Regulations 1970.**
- 5. Factories and Machinery (Safety, Health and Welfare) Regulations 1970.**
- 6. Factories and Machinery (Administration) Regulations 1970.**
- 7. Factories and Machinery (Certificate of Competency - Examinations) Regulations 1970.**
- 8. Factories and Machinery (Notification, Certificate of Fitness And Inspection) (Amendment) Regulations 2004.**
- 9. Factories and Machinery (Lead Regulations) 1984.**

10. Factories and Machinery (Asbestos Process) Regulations 1986.

11. Factories and Machinery (Building Operations & Works of Engineering Construction (Safety) Regulations 1986.

12. Factories and Machinery (Noise Exposure) Regulations 1989.

13. Factories and Machinery (Mineral Dust) Regulations 1989.

14. Factories and Machinery (Exemption to Petroleum Nasional Berhad) Order 2013.

15. Factories and Machinery (Special Scheme of Inspection) (Risk-based Inspection) Regulations 2014.

16. Factories and Machinery (Exemption to Certificate of Fitness for Hoisting Machine) Order 2015.

1.3 Other Legislations Related to Occupational Safety and Health (OSH) (Related Legislations Enforced by the Relevant Ministries)

Apart from the main legislations on OSH as explained above, there are other legislations, which extend the protection of safety and health during employment and relate to the workplace. Legislations Related to OSH are enforced by other relevant ministries, In Sabah and Sarawak, the State Governments also enacted the State Ordinances which also concern with safety and health matters.

❖ Ministry of Human Resources

- Petroleum (Safety Measures) Act 1984 (Act 302)
- Employment Act 1955 (Act 265)
- Labour Ordinance (Sarawak Cap 76) As Amended by Act 2005 (A1237)
- Labour Ordinance (Sabah Cap. 67) As Amended by Act 2005 (A1238)
- Children and Young Persons (Employment) Act 1966 (Act 350)
- Employees' Social Security Act 1969 (Act 4)
- Workman's Compensation Act 1955 (Act 273)
- Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446)
- National Wages Consultative Council Act 2011 (Act 732)
- Human Resource Development Fund Act 2001 (Act 612)
- Industrial Relations Act 1967 (Act 177)
- Employment Information Act 1953 (Act 159)
- Private Employment Agencies Act 1981 (Act 246)

❖ Ministry of Finance

- Employees Provident Fund Act 1999 (Act 452)

❖ **Ministry of Natural Resources and Environment**

- Environmental Quality Act 1974 (Act 127)
- Mineral Development Act 1994 (Act 525)
- Biosafety Act 2007 (Act 670)

❖ **Ministry of Energy, Green Technology and Water**

- Gas Supply Act 1993 (Act 501)
- Electricity Supply Act 1990 (Act 447)

❖ **Ministry of Urban Wellbeing, Housing and Local Government**

- Fire Service Act 1988 (Act 341)
- Uniform Building by Laws 1984
- Street, Drainage and Building Act 1974

❖ **Ministry of Science, Technology and Innovation**

- Atomic Energy Licensing Act 1984 (Act 304)

❖ **Ministry of Agriculture**

- Pesticides Act 1974 (Act 149)

❖ **Ministry of Works**

- Construction Industry Development Board Act 1994 (Act 520)

❖ **Ministry of Health**

- Poison Act 1952 (Act 366)
- Prevention and Control of Infectious Diseases Act 1988

❖ **Ministry of Transport**

- Civil Aviation Act 1969 (Act 3)
- Malaysian Aviation Commission Act 2015 (Act 771)
- Merchant Shipping Ordinance 1952 [Ord. 70/52]

1.4 ILO Conventions Relating to Occupational Safety and Health and Labour-Related Ratified by Malaysia

Malaysia had ratified the International Labour Organization (ILO) Convention C187 (Promotional Framework for Occupational Safety and Health Convention 2006) as the government's commitment in ensuring the safety and health of employees in the country are protected, by meeting the safety standards set by the international body. This needs the employers and employees to cooperate and unite to improve the level of OSH in Malaysia. Prior to the Convention C187, Malaysia had ratified the C119 (Guarding of

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Machinery Convention 1963) with regard to the prohibition of the sale, hire and use of inadequately guarded machinery.

Malaysia is considering to ratify the ILO Convention C155 (Occupational Safety and Health Convention, 1981), the convention concerning Occupational Safety and Health and the Working Environment. The C155 Convention applies to all branches of economic activity to all workers in the branches of economic activity covered. While the process of ratifying the C155 Convention is taking place, Malaysia is moving towards its continuous effort of transformation and strategies implementation through its OSH Master Plan 2020 and the way forward for the revision of the updated Occupational Safety and Health Act (OSHA 1994) as the National Policy for OSH. This will be elaborated in **Element Two** of this OSH Profile.