Serious Accidents

Jul. 2021

Announcement of the Draft Enforcement Decree to the Serious Accidents Punishment Act
- Key Aspects and Implications -

On July 9, 2021, the Korean government released a proposed enforcement decree (the "Draft Enforcement Decree") to the newly enacted Serious Accidents Punishment Act ("SAPA"). The government will finalize the Draft Enforcement Decree after the public comment period from July 12, 2021 to August 23, 2021. The Ministry of Employment and Labor (the "MOEL") also released an explanatory memorandum which provides guidance on the key aspects of the SAPA and the Draft Enforcement Decree.

The Draft Enforcement Decree and the MOEL’s explanatory memorandum bear significance since they clarify the key aspects of the SAPA. Meanwhile, certain grey areas still remain which are likely to cause confusion in the early stages of enforcement. Therefore, it is advisable for companies to establish and implement a safety and health management system that is adequate and tailored to the characteristics and size of the business prior to implementation of the SAPA, and to undertake regular compliance monitoring (in consideration of the Draft Enforcement Decree) to mitigate risks.

Meanwhile, the aforementioned grey areas are anticipated to be further clarified through guidelines and policies prepared by relevant government bodies including the MOEL in the future.

1. Key Aspects of the Draft Enforcement Decree

A. Scope of Occupational Diseases (Article 2 of the Draft Enforcement Decree)

With respect to “people suffering from a work-related illness prescribed by Presidential Decree” under Article 2(2)(c) of the SAPA, Article 2 of the Enforcement Decree categorizes 24 types of illnesses as occupational diseases, including acute poisoning due to exposure to chemical materials (subsections 1 to 13), and diseases transmissible by blood that may occur among people engaged in healthcare and collective accommodation facilities (subsection 17). In particular, socially controversial diseases related to the cerebrovascular and cardiovascular system, musculoskeletal system, occupational cancer, etc. have been excluded from the scope of occupational diseases.

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B. Duty to Ensure Occupational Health and Safety to Prevent Serious Industrial Accidents (Articles 4 & 5 of the Draft Enforcement Decree)

Article 4 of the SAPA stipulates the duty of business owners and responsible executives to ensure health and safety to prevent serious industrial accidents, namely:

(i) establish and implement a health and safety system by utilizing sufficient resources (including human resources and finances) necessary to prevent accidents;
(ii) if an accident occurs, establish and implement adequate contingency plans to prevent reoccurrence;
(iii) comply with any improvement orders and corrective orders issued by a governmental authority; and
(iv) implement measures that are necessary to comply with all applicable health and safety laws/regulations.

Articles 4 and 5 of the Draft Enforcement Decree specify the duties to ensure health and safety which fall under the foregoing paragraphs (i) to (iv) as follows.

(1) Establish and implement a health and safety system (Article 4 of the Draft Enforcement Decree)

<table>
<thead>
<tr>
<th>Health &amp; safety policies and objectives (subsection 1)</th>
<th>• Develop health and safety objectives and management policies for each business or workplace.</th>
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<tbody>
<tr>
<td>Identify, analyze, and improve hazardous &amp; risk factors (subsection 2)</td>
<td>• Establish guidelines on the identification, analysis, and improvement of hazardous &amp; risk factors depending on the characteristics of each workplace and relevant work activities for each business or workplace, and monitor performance. (This may be substituted for risk assessment that is conducted pursuant to Article 36 of the Occupational Safety and Health Act (the “OSHA”)).</td>
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| Personnel; Budget; Organization (subsection 3) | • Assign health and safety professionals (i.e., health & safety managers, chief health & safety officers, and occupational health physicians) at least in a number required under the OSHA.  
• If any such professional concurrently performs other tasks (see Articles 17(3) and 18(3) of the OSHA), sufficient time must be allowed for the professional to perform health and safety tasks pursuant to the MOEL’s Public Notice. |
| Budget (subsection 4) | • Establish an adequate budgeting system to hire personnel and acquire health and safety facilities and equipment, and to execute and manage such budget in line with the intended purpose. |
| Organization (subsection 5) | • A business or workplace with more than 500 full-time employees, or a construction company in the top 200 ranking in terms of construction capability, must establish an organization dedicated to health and safety. |
| **Gather feedback from engaged persons (subsection 6)** | • Gather feedback from engaged persons at least once semi-annually  
• (If there is a necessity to prevent accidents) Establish and implement improvement measures based on opinions from engaged persons. (This may be substituted for discussion, deliberation, and resolution through the Industrial Health & Safety Committee or the Health & Safety Council under the OSHA.) |
| **Respond to hazards which require urgent attention (subsection 7)** | • Develop countermeasures such as suspension of work, evacuation, reporting, removal of risk/hazard factors, etc.  
• Establish procedures such as search & rescue, prevention of further damages, and reporting incidents in the event of occurrence of a serious industrial accident.  
• Checking and monitoring at least once semi-annually |
| **Subcontracting (subsection 8)** | • Develop criteria and procedures for assessment of (i) capabilities and technologies for the prevention of accidents and (ii) adequate expenses and period for health & safety management, and check & monitor performance |

(2) Implement managerial measures that are necessary to ensure compliance with all applicable health and safety laws (Article 5 of the Draft Enforcement Decree)

| **Monitor & report performance of duties (subsection 1)** | • Monitor performance of duties under the relevant health and safety laws, and receive reports on the monitoring results at least once semi-annually. This may be outsourced to an institution designated by the MOEL. |
| **Implement improvement measures (subsection 2)** | • (If the duties are not being performed) Implement measures to ensure the performance of the duties by utilizing personnel, budget, etc. |
| **Health & safety education/training (subsection 3)** | • Confirm whether health & safety education/training has been provided in relation to hazardous and harmful work activities  
• (If it is confirmed that health and safety education/training has not been provided) Implement measures such as ordering the education/training and securing the relevant budget |

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C. Duty to Ensure Health and Safety for Prevention of Serious Public Accidents (Articles 10 to 13 of the Draft Enforcement Decree)

Article 9(1) and (2) of the SAPA pertains to the obligations of business owners and responsible executives to ensure health and safety relating to materials or products, public use facilities or public transportation, etc., namely:

(i) establish and implement a health and safety system by utilizing sufficient resources (including human resources and finances) necessary to prevent accidents;
(ii) if an accident occurs, establish and implement adequate contingency plans to prevent reoccurrences;
(iii) comply with any improvement orders and corrective orders issued by a governmental authority; and
(iv) implement measures that are necessary to comply with all applicable health and safety laws/regulations.

Articles 10 to 13 of the Draft Enforcement Decree specify the duties to ensure health and safety which fall under the foregoing paragraphs (i) to (iv) as follows:

(1) Materials and Products (Articles 10 & 11 of the Draft Enforcement Decree)

- Measures for establishment & implementation of a health and safety system (Article 10 of the Draft Enforcement Decree)

<table>
<thead>
<tr>
<th>Personnel (subsection 1)</th>
<th>• Assign an adequate number of health and safety personnel pursuant to relevant laws</th>
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<td>• Confirm whether adequate tasks have been assigned for the prevention of serious public accidents</td>
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<td>Budget (subsection 2)</td>
<td>• Review whether adequate budget has been set aside to retain health &amp; safety personnel, facilities, equipment, etc. necessary to prevent serious public accidents</td>
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<td>• Execution of the budget in line with the intended purpose</td>
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<td>Work process (subsection 3)</td>
<td>• Establish and implement work processes including the following matters:</td>
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<td>- Check and monitor hazardous &amp; risk factors</td>
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<td>- Report, request measures to be taken, and implement improvement measures if any hazardous and risk factors are detected</td>
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<td>- Develop procedures for notifying &amp; reporting any occurrences of serious public accidents, measures for prevention of further damages, as well as measures for improvement upon investigation into the cause of the relevant accident</td>
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These Newsletters and Legal Updates are circulated to provide information to the clients and potential clients of Yoon & Yang LLC. These Newsletters and Legal Updates do not contain the legal advice or official position of Yoon & Yang LLC on any particular legal issues. If you encounter any legal issues relating to the contents of these Newsletters and Legal Updates, please obtain the counsel or advice of legal professionals.
### Identification, monitoring & improvement (subsection 4)

- Check and monitor personnel and budget at least twice annually (at least once semi-annually)
- (If measures for prevention of serious public accidents are deemed insufficient) Implement measures for improvement relating to personnel, budget planning & execution, etc.

- Implement managerial measures that are necessary to ensure compliance with all applicable health and safety laws (Article 11 of the Draft Enforcement Decree)

### Monitory & reporting of performance of duties; improvement measures (subsection 1)

- Monitor performance of duties or receive reports of monitoring results (consignment to an external professional institution is possible) pursuant to relevant laws at least twice annually (at least once semi-annually)
- (If deemed necessary for performance of duties) Implement adequate measures relating to personnel dispatch, additional budget planning and execution, etc.

### Education/Training on performance of duties (subsection 2)

- Confirm, or receive reports on confirmation results as to whether education/training has been provided on performance of duties pursuant to relevant laws
- (If it is confirmed that health and safety education/training has not been provided) Implement measures or instruct measures to be taken so that necessary education/training is provided

#### (2) Public use facilities and public transportation (Articles 12 & 13 of the Draft Enforcement Decree)

- Measures for establishment and implementation of a health and safety system (Article 12 of the Draft Enforcement Decree)

### Personnel (subsection 1)

- Confirm or receive annual reports on (i) scale and mobilization of manpower needed to implement safety plan and (ii) whether adequate tasks have been assigned to health & safety personnel

### Budget (subsection 2)

- Confirm or receive annual reports on (i) scale and mobilization of manpower needed to implement safety plans and (ii) whether the budget has been executed in compliance with the intended purpose

### Safety plan (subsection 3)

- Develop a safety plan including the following matters (however, this measure may be substituted for confirmation or receiving reports on the establishment and contents of a facility management plan in accordance with the Special Act on the Safety Control and Maintenance of Establishments, and an implementation plan pursuant to the Railway Safety Act)
  - Secure organization and manpower (including equipment in the case of public transportation)
  - Conduct safety inspections or detailed safety inspections, provide maintenance repair services
  - Maintenance, including repairs and supplementations/reinforcements
<table>
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<th>Section</th>
<th>Description</th>
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<tr>
<td>Safety inspection (subsection 4)</td>
<td>• Confirm or receive annual reports on whether adequate safety inspections have been carried out</td>
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| Risk management (subsection 5)  | • Establish a risk management plan including the following matters (this measure may be substituted for confirmation or receiving reports on the establishment and contents of a safety management system in the case of railways and aircrafts)  
  - Identify, monitor & improve hazardous and risk factors  
  - Report, request measures to be taken, and implement improvement measures if any hazardous and risk factors are detected  
  - Develop measures such as emergency search & rescue, emergency safety inspections, and prevention of further damages, improvement measures regarding reporting incidents and investigating causes, and conducting evacuation drills in cases of emergencies or crises |
| Identification, monitoring & improvement (subsection 6) | • Identify and monitor at least twice annually (at least once semi-annually) regarding personnel, budget, safety plan, safety inspection, etc.  
  • Implement measures necessary for revision of the safety plan, additional staffing and budgeting & its execution, etc. |
| Measures to be taken upon discovery of hazardous & risk factors (subsection 7) | • Implement measures necessary for requesting supplementation and reinforcement of design, installations, and manufacturing, and restricting use |
| Related to subcontracting, etc. (subsection 8) | • Check (i) capability regarding prevention of accidents and management of safety and (ii) payment of adequate costs to secure safety, and taking required measures such as requesting for countermeasures |
| Monitoring & reporting of performance of duties; improvement measures (subsection 1) | • Confirmation of performance of duties or receive reports of monitoring results (consignment to an external specialized organization is possible) pursuant to relevant laws at least once annually, and instruct performance of duties or improvement/supplementation if required |
| Education on performance of duties (subsection 2) | • Receive confirmation/reports on whether safety managers or employees engaged in repairs & inspections have completed the relevant education/training, and take necessary measures upon non-completion of such education/training |

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The MOEL released an explanatory memorandum pertaining to the key aspects of the SAPA and the Draft Enforcement Decree. With respect to statutory interpretation of the SAPA which has been a highly controversial topic, the MOEL has presented the following interpretation criteria.

### 2. Key Points of the MOEL’s Explanatory Memorandum

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<th>Responsible Executive, etc.</th>
<th>Actual control, management &amp; operation</th>
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| • “A person who represents a business and is authorized and responsible for supervising such business”  
  - Refers to the representative director of a company, the president of an organization, the head of an agency, etc., that is, a person who is granted the authority and responsibility irrespective of title and position and who is granted de facto authority and responsibility irrespective of title and position  
  - If there are multiple representative directors, determination shall be made in full consideration of job description, responsibilities/authorities, and decision-making structure, etc. |
| • “A comparable individual who is responsible for the health and safety matters of a business”  
  - Has the final decision-making authority on health and safety matters: chief health & safety officer, production representative, etc. (if a company operates several workplaces, it is difficult to view the chief health & safety manager of a single workplace as a responsible executive) |
| • “Or”: does not imply an optional relationship (that is, even if there is a responsible executive functioning as a health and safety manager, the representative director’s responsibility will not be exempted), and individual determination be made as to who is actually responsible for to ensuring health and safety |
| • Refers to cases where it is possible to recognize, identify and control hazardous and risk factors due to having substantial control and management rights over the relevant place, establishment or facility → Construed similarly to “control and management of contractor” which is one of the requirements to fall under a place of business of a contractor (employer) pursuant to Article 10(2) of the OSHA |

The content in this newsletter has been prepared for general informational purposes only and should not be regarded nor relied upon as legal advice.

Yoon & Yang’s Serious Accident Task Force consists of top-tier professionals who are well-equipped to provide timely legal advice and consulting to companies in regards to the SAPA and the Draft Enforcement Decree based on its accumulated expertise and knowledge over the years in the area of occupational safety and health. Our attorneys are currently advising numerous leading conglomerates and companies in Korea and will be able to guide you through the process of submitting comments to the Draft Enforcement Decree as well as implementing internal policies that will be required in order to comply with the SAPA.
For further information about the SAPA, Draft Enforcement Decree and related regulations, please contact the professionals listed below.

**Contacts**

**Jae Ok Kim**  
kimjo@yoonyang.com  
+82-2-6182-8386

**TAE HWAN OH**  
thoh@yoonyang.com  
+82-2-6003-7597

**CHAN-KEUN PARK**  
ckpark@yoonyang.com  
+82-2-6003-7528

**YOUNG MIN KIM**  
kimym@yoonyang.com  
+82-2-6003-7123

**SEONG HONG**  
shong@yoonyang.com  
+82-2-6003-7792

**Sung Uk Park**  
sunguk.park@yoonyang.com  
+82-2-6182-8325