

Alert: Enforcement of the Serious Accidents Punishments Act

On January 27, 2022, the Serious Accidents Punishment Act (the "SAPA") will enter into effect in Korea. Aimed at prevention and decrease of the serious accidents causing death or serious injury at workplace or facilities/transportation open for access by general public, the SAPA obligates the responsible executives to take appropriate measures to ensure health and safety of workplaces and public facilities/transportation and provides for sanctions of fine or imprisonment in the event of a serious accident. Foreign companies having presence in Korea must be aware of the SAPA and recommended to take appropriate measures and produce documents evidencing that its plan-do-check-act cycle has been duly taken.

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What is the SAPA and which companies are subject to SAPA

On January 27, 2022, the Serious Accidents Punishment Act (the "SAPA") will enter into effect in Korea. Following the general norms of enhanced ESG regulations which can simply be described as "take appropriate measures, or pay for the result," the SAPA is expected to induce companies to proactively establish and implement health and safety measures that will help reduce the number of deaths, serious injuries and illnesses of workers in the workplace as well as casualties and illnesses arising out of defects in design, manufacture, establishment or maintenance of the products, facilities open for public access or the means of public transportation. While a number of large companies have already begun taking steps to improve the health and safety management systems to prepare for the new regulations under the SAPA, it is still never too late to take affirmative steps and possible actions to avoid possible exposure for senior executives and/or the company itself.

For the first two (2) years after SAPA takes effect on January 27, 2022, SAPA will be applicable to any workplace or place of business (whether a subsidiary or joint venture, branch or other types of business presence in Korea) that employs fifty (50) or more employees. After that, all workplace except those with five employees or less will become subject to the SAPA.

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What are to be done by the responsible executives and what are the risks of sanction

With the enforcement of the SAPA, the responsible executives (being defined as the representative director and/or any person who would hold the power to decide on the health and safety matter) are required to establish a system for management of health and safety matters laying out appropriate human resources and budgets necessary to prevent serious accidents, taking into account the characteristics and size of the workplace under their substantial control. In the event a serious workplace accident¹ occurs, which could have been avoided if appropriate measures had been taken (e.g., collapse of a crane resulting in death of workers which could have been avoided if appropriate preventive measures had been taken), the responsible executives might be subject to criminal penalty of imprisonment for at least one-year and/or a fine up to KRW 1 billion in cases of deaths, or imprisonment up to seven years and/or a fine up to KRW 100 million in cases of injury or illness.

The responsible executives are further required to take appropriate measures to procure health and safety of the users from the defects in (i) design, manufacture and management of raw materials or products manufactured or distributed in the workplace under their substantial control or (ii) design, installation or maintenance of the public facilities or the means of public transportation under their substantial control. In the event a serious public accident² occurs which could have been avoided had the appropriate measures been taken (e.g., subway accident resulting in passenger casualties which could have been avoided if appropriate periodic maintenance had been taken), the responsible executives might be subject to criminal penalty of imprisonment of at least one-year and/or a fine up to KRW 1 billion in cases of deaths, or imprisonment up to seven years and/or a fine up to KRW 100 million in cases of injury or illness.

The relevant company or institution might also be subject to a fine of up to KRW 5 billion in cases of deaths and/or up to KRW 1 billion in cases of injury or illness.

Specific actions to be considered to tackle the requirements under the SAPA

Indeed, it is not the first time that representatives of Korean companies are required to take certain measures to promote health and safety of the workplaces. The SAPA, however, expands the existing framework of the Occupational Safety and Health Act ("OSHA") which significantly enhances the criminal risk on the representatives. Since the notion of the responsible executives would likely be interpreted as the person who has final say on the overall health

¹ 1 or more deaths; 2 or more injuries from the same accident, requiring treatment for at least 6 months; 3 or more occupational illness cases resulting from the same cause within 1 year

² 1 or more deaths; 10 or more injuries from the same accident, requiring treatment for at least 2 months; 10 or more illness cases caused by the same reason, requiring treatment for at least 3 months

and safety matter of the workplace, a simple replacement of the representative director from a foreigner CEO to a local CEO would not be an appropriate measure to proactively cope with the regulations under the SAPA.

While the SAPA and the enforcement decree thereunder still leaves certain notions that are not fully clarified (e.g., responsible executives subject to punishment; substantial control; nature of causal relationship between violation of laws and casualties, etc.), the SAPA induces companies to implement so called “plan, do, check, act” cycle (PDCA Cycle) to ensure health and safety of the workplace and public facilities/transportation under the company’s substantial control and to mitigate risks for the company and its responsible executives:

- (1) Company-wide Implementation System: establish health and safety objectives; establish and implement health and safety policy
- (2) Risk Assessment: assess risks; identify hazard factors; review methods for mitigation
- (3) PDCA Cycle: implement accident prevention activities
- (4) Documentation: prepare, manage and preserve appropriate documents

More specifically, specific items for assessment and improvement of health and safety management systems can be categorized as follows:

Policy and Objective	<ul style="list-style-type: none"> • Establish safety & health policy and objectives • Assessment on achievement of set objectives
Organization	<ul style="list-style-type: none"> • At least 3 health and safety experts in accordance with OSHA for organizations with +500 employees
Hazard Identification; Inspections for Areas of Improvement	<ul style="list-style-type: none"> • Develop procedures for identifying, reviewing, reducing hazardous risk factors • At least bi-annually review whether the procedures are being implemented properly and take necessary action accordingly
Safety & Health Budget	<ul style="list-style-type: none"> • Allocate adequate budget to hire personnel and acquire facilities, equipment, etc. necessary for accident prevention • Ensure the above budget is properly used in accordance with its purpose
Safety and Health Personnel	<ul style="list-style-type: none"> • Allocate safety & health personnel in accordance with OSHA • Assign and monitor roles and responsibilities of persons in charge
Hear Opinions of Workers	<ul style="list-style-type: none"> • Establish procedures for soliciting opinions from workers regarding safety and health matters • Bi-annually review whether (i) workers’ opinions are being properly heard in accordance with the above procedures and (ii) establish improvement measures accordingly
Emergency Risk Management	<ul style="list-style-type: none"> • Prepare and implement a manual for emergency situations • Check compliance of the manual bi-annually
Third-Party Contracting, Consignment & Outsourcing	<ul style="list-style-type: none"> • Develop assessment criteria & procedures for ensuring the safety and health of workers • Capacity & technology to prevent accidents • Adequate expenses for safety and health management
Managerial Measures on Compliance of Safety & Health-related Laws	<ul style="list-style-type: none"> • Review whether compliance of safety & health-related laws bi-annually and take necessary measures • Review whether mandatory safety and health education is being provided to workers bi-annually and take necessary measures accordingly

Voluntary efforts recommended under the SAPA

With less than a week left before the SAPA enters into effect, how the SAPA will be applied remains as unpredictable as the accident itself. Nevertheless, for the past year, Yoon & Yang LLC has partnered with more than fifty (50) companies, large and medium, foreign and domestic, to prepare for the enforcement of the SAPA and has developed checklists to proactively tackle the new requirements under the SAPA to promote public health and safety while mitigating risks to the company and its executives at the same. Although the SAPA follows the norm of "take action, or take sanction" to coerce the companies to improve their health and safety measures, the greatest incentive, would be the voluntary efforts of both the company and employees to see their workplaces and society in general remain free of grief or loss.

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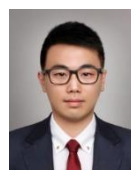
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