

7 August 2019

## Workers' Minimum Standards of Housing and Amenities (Amendment) Act 2019

### Introduction

The Workers' Minimum Standards of Housing and Amenities (Amendment) Bill 2019 (“**the Bill**”) was passed by the House of Senates on 31 July 2019 and is currently going through the necessary procedures before it comes into force. The Bill aims to raise the housing minimum standard and provision of basic amenities for workers in all employment sectors by amending the Workers' Minimum Standards of Housing and Amenities Act 1990 (“**Act 446**”). This is in line with the evolution of international labour standards especially in terms of compliance with the standards as practiced by developing countries. The Bill aims to help sustain the economic growth of the country and attract foreign investments especially in high-tech industries.

### Key issues to be aware of

#### 1. Scope of the Bill

- The Bill extends its scope to cover other employment sectors in addition to the estate sector in that Act 446 will be amended to now have the power to regulate minimum standards of accommodation for employees whose place of employment is other than the estates.
- Act 446 which currently applies throughout Malaysia will be amended to only apply to Peninsular Malaysia and the Federal Territory of Labuan.

#### 2. Definition of ‘employees’

- A general amendment is made to the English language text of Act 446 by substituting the word “worker” for the word “employee” to be consistent with the Employment Act 1955. The definition of the word “employee” has the meaning assigned to it in subsection 2(1) of the Employment Act 1955.

#### 3. Nursery

- The Bill further provides that an employer may be ordered by the Director General to provide a nursery if the employees collectively have at least 5 dependants under 4 years of age living with them. Currently, an employer is under such duty if there are at least 10 such dependants.

#### 4. Accommodation for employees working other than in an estate

- New sections are introduced to provide accommodation for employees who are employed to work at places other than in an estate. An employer or a centralised accommodation provider shall obtain a Certificate for Accommodation from the Director General. Failure to comply shall render the employer or centralised accommodation provider guilty of an offence. The accommodation provided to employees must be in compliance with the minimum standards required and necessary certifications for the building and construction must be secured. Decent and adequate amenities must also be provided to the employees.
- It is the employer's obligations to inform the Director General if his employee has occupied any accommodation provided by him or by a centralised accommodation provider.
- It is the duty and responsibilities of the employer and centralised accommodation provider to ensure the safety and health of employees who are provided with the accommodation, including taking preventive measures relating to fire safety, containing the spread of infectious disease and maintaining the accommodations.
- The employer and centralised accommodation provider must also appoint at least one person in charge of the accommodation who will be responsible for the employees' welfare and discipline.
- An employer who provides accommodation for his employee is not obligated to also provide accommodation for the employees' dependants.

#### 5. Offences and penalties

- New sections 28A and 28B are introduced into Act 446 for compounding offences. The proposed new section 28B protects the Minister, Director General and officers vested with powers from any action, suit, prosecution or other proceedings in respect of any act, neglect or default done or omitted in good faith.
- New section 29A is also introduced to provide that where an offence is committed by a company, limited liability partnership, firm, society or other body of persons, the director, compliance officer, partner, manager, secretary or other similar officer of the company, etc. may be charged severally or jointly in the same proceedings with the company, etc. and if the company, etc. is found guilty, the director, compliance officer, partner, manager, secretary or other similar officer shall be deemed to be guilty.
- The penalties are increased for an employer who fails to comply with any order made under section 5, 8, 12, 15 or 19 of Act 446. On conviction, employers will be liable to a fine not exceeding fifty thousand ringgit and to a further fine of one thousand ringgit a day for each day during which the offence continues.
- Any resident manager who fails to comply with section 20 Act 446 or with any requirement of the Medical Officer of Health under section 21 Act 446 commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and to a further fine of one thousand ringgit a day for each day during which the offence continues.

Our Employment Team will be happy to provide support in devising or reviewing the system(s), policies and guidelines to ensure compliance with the Bill and/or to mitigate risks.

## Employment Partners

### Siva Kumar Kanagasabai

skk@skrine.com

### Selvamalar Alagaratnam

sa@skrine.com

### Foo Siew Li

foo.siewli@skrine.com