
Employment

The Revised Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 to Expand Coverage to All Employees and to Impose Other Additional Requirements on Employers & Centralised Accommodation Providers

Introduction

Until recently, employers were only required to comply with minimum standards of accommodation in relation to employees employed to work on estates. However, the Workers' Minimum Standards of Housing and Amenities (Amendment) Act 2019 ("**Amendment Act**") that came into force on 1 June 2020 has expanded the coverage of the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 ("**Act**") to include all other employees in Peninsular Malaysia and the Federal Territory of Labuan.

In this Update, we examine the changes and the additional requirements that have been implemented by the Amendment Act. Employers are to take note of the following key changes that will be enforced by the Ministry of Human Resources from 1 September 2020.

Changes Introduced by the Amendment Act

The Amendment Act introduced Part IIIA which governs the provision of accommodation to employees who are employed otherwise than to work in an estate ("**Accommodation**")¹.

Parties affected by the Amendment Act

The Amendment Act places the obligation on employers and centralised accommodation providers to comply with the minimum statutory requirements relating to Accommodation.

A centralised accommodation provider is defined as any person who:

¹ Section 24A of the Act

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- provides and manages any building used for the housing of employees employed by one or more employers; and
- supervises the services provided in such building for one or more employers,

but does not include an employer who provides accommodation for his own employees².

The Amendment Act only imposes an obligation on employers and centralised accommodation providers in relation to employees that are covered by the Employment Act 1955, namely employees earning less than RM2,000 and certain categories of manual or skilled laborers³. This would include both local and foreign workers who fall under this category of employees.

Principal obligation - Accommodation must be certified

Accommodation provided to employees must be certified with a Certificate for Accommodation. As such, employers or centralised accommodation providers are required to apply for a Certificate for Accommodation with the Department of Labour of Peninsular Malaysia (“DOL”)⁴.

Non-compliance with this requirement by an employer and/or centralised accommodation provider is an offence. An errant employer shall, on conviction, be liable to a fine not exceeding RM50,000. An errant centralised accommodation provider shall, on conviction, be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding one year, or to both.

Additional obligation - minimum standards of Accommodation and amenities

The Amendment Act requires the employer or centralised accommodation provider to provide Accommodation that complies with the requirements relating to fire safety measures, the separation of Accommodation based on gender, and the containment of the spread of infectious diseases⁵. Based on the explanatory statement to the Amendment Act, the necessary certifications pertaining to building and construction will have to be secured from the relevant authorities before an application for a Certificate of Accommodation can be made⁶.

Generally, an employer or centralised accommodation provider must provide decent and adequate amenities in accordance with the Act and the Workers' Minimum Standards of Housing and Amenities

² Section 24B of the Act

³ Section 3 of the Act

⁴ Section 24D of the Act

⁵ Section 24J of the Act

⁶ Section 24H of the Act. The explanatory statement of the Amendment Act:

[https://www.parlimen.gov.my/files/en/billindex/pdf//D.R%2020_2019%20-%20eng.pdf#page=20&zoom=100&search=Workers%E2%80%99%20Minimum%20Standards%20of%20Housing%20and%20Amenities%20\(Amendment\)](https://www.parlimen.gov.my/files/en/billindex/pdf//D.R%2020_2019%20-%20eng.pdf#page=20&zoom=100&search=Workers%E2%80%99%20Minimum%20Standards%20of%20Housing%20and%20Amenities%20(Amendment))

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Regulations 1990. These include minimum requirements relating to, among other things, the size and specifications of bedrooms, kitchens, bathrooms, ceilings and ventilation of the Accommodation.

Deductions of salary in respect of rent are now allowed

Where the Act was previously silent on deductions of rent, employers are now allowed to collect from an employee any sum for rent or charge in respect of any Accommodation provided by the employer or a centralised accommodation provider in accordance with the Act⁷. Such deductions were previously only allowed under the Employment Act 1955 if it was requested in writing by the employee and prior written permission of the Director General of Labour was obtained.

Other requirements

The Amendment Act also introduced the following additional requirements:

- an employer shall inform the DOL within 30 days of the occupation of an Accommodation by his employee⁸; and
- an employer or centralised accommodation provider must appoint a person in charge of accommodation who will, amongst others⁹:
 - visit and inspect the Accommodation twice a month;
 - keep a record of inspection of the Accommodation; and
 - ensure that an employee is taken to a clinic or hospital if the employee complains of his health / appears to be unwell.

Wider scope of liability of officers

The Amendment Act introduces a new Section 29A which allows a company and its officers (e.g. director and compliance officer) to be charged severally or jointly in any proceedings brought under the Act¹⁰. Such officers will have a defence if they can prove that (i) the offence was committed without their knowledge or (ii) that it was committed without their consent and they had taken all reasonable precautions and exercised due diligence to prevent the commission of such offence.

As such, it is imperative that officers of companies play an active role in ensuring that the Act is strictly adhered to and companies have robust compliance frameworks in monitoring the same.

⁷ Section 24G of the Act

⁸ Section 24E of the Act

⁹ Section 24L of the Act

¹⁰ Section 29A of the Act

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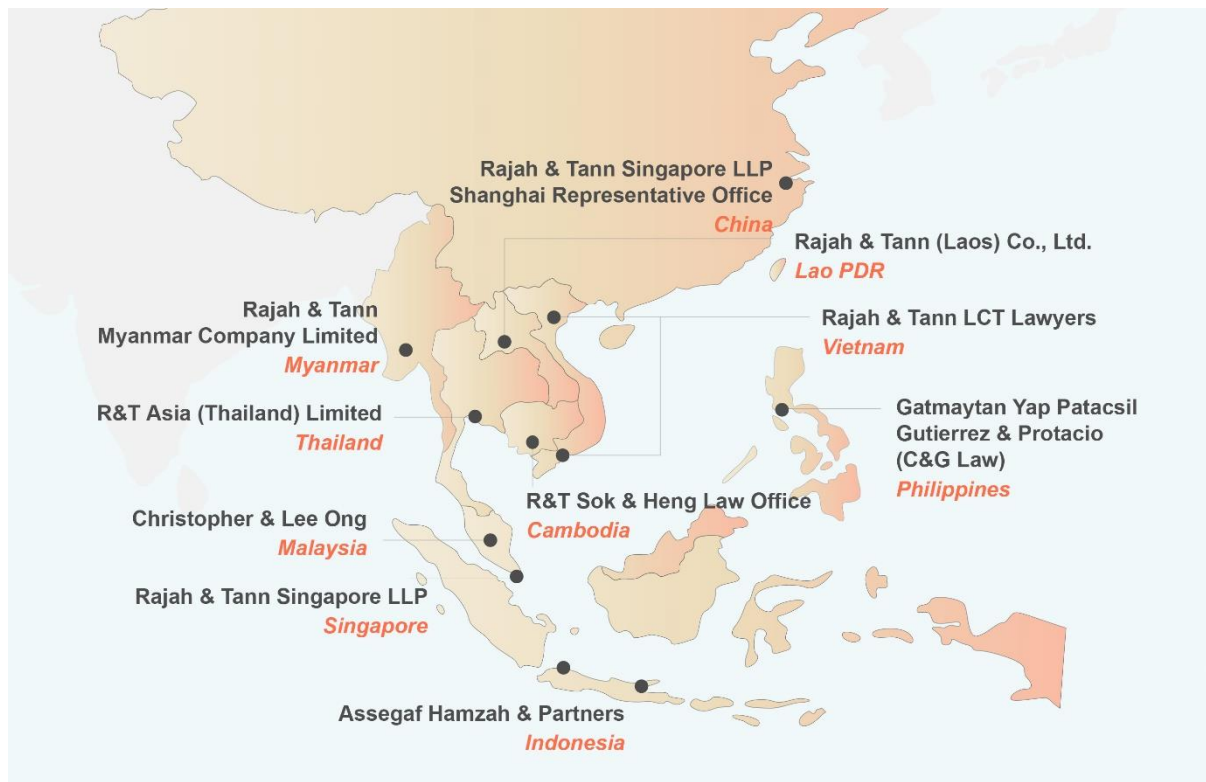
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