

Frequently Asked Questions: Code of Practice on Chief Executives’ and Board of Directors’ Workplace Safety and Health Duties (to be gazetted as an Approved Code of Practice by Oct 2022)

S/N	Question	Answer
1	Which section of the Workplace Safety and Health (WSH) Act does it state that Chief Executives (CEs) / Board of Directors (BODs) are liable for WSH offences?	Under section 48(1) of the WSH Act, an officer of the company (including CE/BOD members) can be held accountable for the WSH Act offence committed by his/her company, unless he/she proves that: (a) the offence was committed without the officer’s consent or connivance; and (b) the officer had exercised all due diligence to prevent the commission of the offence.
2	What is the legal bearing of an Approved Code of Practice (ACOP)?	ACOPs provide guidance for companies to attain the outcome stated in a regulation. Not following the recommendations in an ACOP in itself is not breaking the law, because this may not be the only means of achieving the intent of the regulations. However, in the event of a WSH Act contravention, abiding with the recommendations in an ACOP can help in a defence when standing in court.
3	Why not legislate the prescribed duties of CE and BOD members?	The intent of the ACOP is to shape company leadership’s mindset and drive the right behaviours to improve the company’s WSH standards, which is a more effective and sustainable way of uplifting WSH standards. The four principles in the ACOP were developed to guide CE and BOD members on the company leadership’s WSH responsibilities instead of dictating what every CE and BOD member should do in relation to their company’s WSH matters. There is no one-size-fits-all solution that meets the different needs of every organisation and the measures within the ACOP are not intended to be exhaustive.

4	Who does the ACOP apply to?	<p>The ACOP applies to any individual who is in a position to make executive decisions. The individual must be involved in activities on policy and decision-making related to the business affairs of the company which can affect the company as a whole or a substantial part of it. It is not defined solely based on the title one holds in a company but rather by examining the nature, power, and functions of an individual in a company.</p> <p>The individuals the ACOP applies to includes the CE or equivalent officer, regardless of title and regardless of whether the individual is a member of the Board of Directors.</p>
5	<p>The ACOP refers to both CEs and BODs. Does it mean to say that CEs and BOD members bear the same responsibility?</p>	<p>No, a CE would have direct influence and authority over operations in the company, and thus bear responsibility proportional to his or her authority. A member of the BOD although not directly involved in operations, steers the corporate direction, and has influence in terms of prioritising WSH.</p> <p>In the event of a WSH Act contravention, the Courts will assess the degree of diligence that each individual has exercised, having regard to the nature of their functions and to all the circumstances related to the commission of the offence.</p>
6	How does section 48 of the WSH Act apply to MNCs where the CEs / BOD members are located overseas?	Section 48 of the WSH Act applies to the CEs and BOD members who oversee and are responsible for the operations of local workplaces, whether they are based in Singapore or not.
7	Does the ACOP set out what is “due diligence” in WSH Act?	<p>No, in relation to section 48 of the WSH Act, fulfilment of the measures in the ACOP does not automatically mean that the CEs and BOD members have exercised their due diligence to prevent the offence.</p> <p>“Due diligence” has to be taken in the context of the company leadership’s circumstances, including variables such as their roles, which has to be established on a case-by-case basis.</p>

8	Have there been cases of CE / BOD being prosecuted for not fulfilling their WSH obligations?	<p>As of Sep 2022 when the CP was published, there was one CE convicted under section 48(1) of the WSH Act. This was the case of the Chief Executive Officer (CEO) of Leeden National Oxygen Ltd who was prosecuted under section 48(1) of the WSH Act for a fatal explosion in 2015. He was fined \$45,000.</p> <p>The CEO was responsible for the overall operations, including safety, human resources, and finances. For failing to take necessary measures to ensure the health and safety of the company's employees, the CEO could have been jailed up to two years, fined up to S\$200,000, or both.</p>
9	Is the implementation of all 17 measures required to adequately discharge one's duty as a CE/ BOD member?	<p>It is more important for CEs / BODs to adopt the four principles in the ACOP. The measures are neither mandatory nor exhaustive. There may be other ways (aside from the measures listed in the ACOP) for a CE / BOD member to achieve a similar outcome.</p> <p>In relation to section 48 of the WSH Act, fulfilment of the measures in the ACOP does not automatically mean that the CE and BOD member have exercised his due diligence to prevent the offence.</p>
10a	My company is involved in knowledge-based work with no manual work at all. The risk of physical injury is negligible. Do I still need to adhere to section 48 of the WSH Act and the ACOP?	The scope of section 48 of the WSH Act and this ACOP covers risks to health, which includes both physical and mental well-being. This would apply to all companies, regardless of industry and nature of work.
10b	If so, are the principles still relevant?	Yes, the principles can apply to both safety and health aspects of the work carried out in your organisation.
11	Are there programmes to help SMEs better align themselves with the ACOP principles?	SMEs can reach out to the WSH Council and get on board either bizSAFE (for all companies) or StartSAFE programmes (for SMEs without bizSAFE) to further improve the WSH standards.

12	Can CEs / BODs delegate their responsibilities to their executive team?	<p>CEs/BODs cannot delegate the responsibility to the executive team. While CEs / BODs may delegate the operationalisation and implementation of the measures listed within the ACOP, they are still accountable and responsible in ensuring that the principles and reasonably practicable measures are in place and have been followed through.</p> <p>For example, proposed measure 16 states that CEs / BODs should commit resources and protected time for workers to undergo WSH training and refresher course. The CEs / BODs should make this commitment and give guidance to the executive team on how much company funds should be allocated to support this measure, but the actual implementation can be done by the executive team (e.g. allocation and disbursement of funds, follow-up on training plans).</p>
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