

White Paper

A New Health and Safety at Work Act



Introduction

- In Malta, occupational health and safety is currently covered by the Occupational Health & Safety Authority Act of 2000 which was brought fully into force in January 2002.
- The current Occupational Health and Safety Authority Act will be repealed and replaced with a New Act enacted in terms of Maltese Law and entitled the 'Health and Safety at Work Act'.
- As was the case with the Old Act, the New Act shall be applicable to multiple industry sectors.



Why Change?

- To shift focus from OHSA to primary objective of legislation;
- Restructuring the OHSA with each constituent part having clearly defined roles and responsibilities;
- To bolster compliance culture by having adequate deterrants and speedier recourse to justice;
- Provide a stronger voice to the social partners to encourage more active participation;
- Allow OHSA to react quickly to the everchanging world of work;



The Main Objectives

The main focus of the New Act will be the Promotion and Safeguard of the Health and Safety of Workers at Work.

The main objectives of the New Act are to:

- Restructure the OHSA to delineate the roles and responsibilities of the various parts which make the OHSA, while giving a stronger voice to the social partners in the development of national policies for OHS by proposing policies on OHS matters.
- Ensure optimal levels of governance at all levels of OHSA operations;
- Clarify anything in the existing law which could give rise to misinterpretation;
- Re-define the roles of a number of named duty-holders, who are being given additional responsibilities in the interests of safeguarding occupational health and safety at all places of work.
- Reform the system of penalties to increase their deterrent effect, whilst ensuring fast and effective compliance;



New Structure and Concepts

- Governing Board
- Health and Safety Executive
- Health and Safety Council
- Health and Safety Tribunal
- Administrative Penalties
- Health and Safety Responsible Officer
- Administrative Instruments

The new structure of OHSA under the New Act

- **OHSA having a distinct legal personality:** The current provisions of the law cater for such personality, and **said personality shall be amplified on in the New Law:-** The Authority shall be a body corporate having a distinct legal personality and shall, subject to the provisions of the New Act, enter into contracts, acquire, hold and dispose of any kind of property for the purposes of its functions, and shall be empowered to do all such things and enter into all such transactions as are incidental or conducive to the exercise or performance of its functions under the New Act.
- **Changes to prior regime:** The Authority shall consist of a **Governing Board, a Health and Safety Executive and a Health and Safety Council.**

Governing Board

- **The Main Objectives of the Governing Board:**

- The Governing Board shall be responsible for ensuring that the Executive carries out its corporate business to a high level of governance.
- The Governing Board shall also review the Authority's management accounts, the human resource plans and the financial audits; shall also approve and adopt the Authority's estimates of its income and expenditure for the next following year.
- The Governing Board shall oversee that policies relating to health and safety at work are being implemented.

Governing Board shall refrain from being involved in executive decisions or actions taken by the Executive in fulfilment of the scope and objectives of the New Act



Governing Board

- The Governing Board shall consist of a Chairperson and members appointed by the Minister responsible for Occupational Health and Safety.
- There shall also be adequate safeguards against conflict of interest.



Health and Safety Executive

- The Executive shall be headed by the CEO, who shall be appointed by the Minister responsible for Occupational Health and Safety in consultation with the Governing Board of the OHSA under such terms as established in the letter of appointment.
- The Executive, headed by the CEO, shall have the authority and responsibility for the implementation of the provisions of this Act.
- The CEO shall be responsible for the affairs and business of the OHSA and for the implementation of the OHSA's objectives.



Health and Safety Council

- **The Main Objective of the Health and Safety Council:**
 - To give a stronger voice to the social partners;
 - To promote Health and Safety at work;
- The Council shall be made up of key figures of employment regulatory bodies and members representing those constituted bodies which in the opinion of the Minister are relevant to the objectives of the Council.



Health and Safety Council

The Council will be responsible for the following:

- foster harmonious relations on matters of occupational health and safety between the various stakeholders and duty holders;
- solicit participation by the social partners and promote initiatives in favour of high levels of occupational health and safety;
- in general, encourage constructive dialogue between constituted bodies about the benefits of ensuring occupational health and safety.

The Council shall continue to be involved in the development of national OHS policies.

Health and Safety Tribunal

- Reform of the **Administrative Penalty System** to reduce dependence on the Criminal Courts.
- **A Health and Safety Tribunal** will be set up to hear claims in connection with infringements which are of an administrative nature and as a result of which **Administrative Penalties** can be imposed.
- The Health and Safety Tribunal will also **determine appeals from Decisions or Orders imposed by the OHSA** i.e. orders imposed by the Officers of the Authority.

Health and Safety Tribunal

- This shall be without prejudice to proceedings in the Criminal Courts dealing with offences committed in relation to the presence of an immediate and serious risk to occupational health and safety or where there has resulted at a place of work a fatality or serious injury or disease to any persons.
- Uncontested administrative penalties will become executive titles following the lapse of a pre-established time period. Within such time period, any aggrieved person may petition the Tribunal to contest such administrative penalty.

Administrative Penalties

Administrative Penalties will be capped as follows:

- **Administrative Penalties [up to Euro 1,500]** to be decided by the Tribunal composed of one person (a lawyer with at least 5 years practice) (by written petitions);
- **Administrative Penalties [Euro 1,501 - Euro 20,000]:** Tribunal will be composed of 3 persons (One retired judge or Magistrate acting as chairman, with one lawyer having at least 5 years experience and an Architect having at least 5 years practice);
- Appeal from the decisions given by the Health and Safety Tribunal shall lie to the Court of Appeal (Inferior jurisdiction) only on points of law.

Health and Safety Responsible Officer

The appointment of a Health and Safety Responsible Officer ('HSRO'):

- It is being proposed that a new concept is discussed for the employer to appoint one or more of its Directors as the HSRO who will be tasked to supervise and oversee that OHS policies and procedures are being followed in accordance with OHS legislation.
- The HSRO concept is being seen as an effective measure to increase compliance culture in connection with health and safety at work.
- The Employer has the duty to ensure that the HSRO has all the necessary resources at his disposal to perform this role. The HSRO together with the Employer are responsible for ongoing monitoring in accordance with the Employer's Health and Safety Policy.
- The HSRO shall not be liable in damages for anything done or omitted to be done in the performance of his function if it is proven that the Employer failed to provide the HSRO with all the adequate resources to perform his role and provided that the HSRO reports such failure to the OHSA.
- Where an Employer appoints an HSRO this shall not discharge him from his responsibilities in this area.
- The concept of an HSRO will be regulated through subsidiary legislation.

Administrative Instruments

- The Health and Safety Executive with the consent of the Minister responsible for Occupational Health and Safety, will be empowered to issue Administrative Instruments to regulate various matters falling within its remit in terms of the New Act.
- For example:
 - To determine qualifications and other requirements necessary to perform any task relating to the safeguard of OHS.
 - The prohibition of any work activity or use of any item at work which may place workers at a high level of risk to health and safety.
- An Administrative Instrument may also create and impose administrative fines for the breach by any person of any provision of the New Act or of an administrative decision made under it.
- Administrative Instruments shall have the force of law and be binding with immediate effect, and any person who fails to comply with an Administrative Instrument shall be in breach of the New Act.



Conclusion

- As part of the OHSA's ongoing efforts of developing and improving occupational health and safety legislation, the entire OHS legislative framework is being reviewed and bolstered to better address today's ongoing challenges and new health and safety related realities and the ever-changing realities of modern working environments and the technological advances of various industries.
- Whitepaper can be accessed through publicconsultation.gov.mt and submissions will be received till Friday 9th June 2023.