

PANORAMIC **ENVIRONMENT**

Malaysia



LEXOLOGY

Environment

Contributing Editors

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Generated on: June 4, 2025

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LEGISLATION

Main environmental regulations

What are the main statutes and regulations relating to the environment?

The main statute relating to the environment in Malaysia is the Environmental Quality Act 1974 (EQA) and the numerous regulations made thereunder.

Law stated - 28 February 2025

Integrated pollution prevention and control

Is there a system of integrated control of pollution?

There is none.

Law stated - 28 February 2025

Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

Section 24 of the EQA restricts pollution to any soil, or surface of any land in contravention of the acceptable conditions, unless licensed. Soil is defined as including earth, sand, rock, shale, minerals and vegetation in the soil. Pursuant to section 47 of the EQA, anyone contravening this provision may be held liable for the clean-up costs and expenses incurred in connection therewith.

Law stated - 28 February 2025

Regulation of waste

What types of waste are regulated and how?

Waste is regulated under the Environmental Quality (Scheduled Wastes) Regulations 2005. 'Scheduled wastes' is defined to mean any waste falling within the categories of waste listed in the First Schedule.

Every waste generator is obliged to notify the Department of Environment (DOE) of any new categories and quantities of scheduled wastes generated. Scheduled wastes shall be disposed at prescribed premises only and treated at prescribed premises or on-site treatment facilities only.

Every waste generator is also responsible for ensuring that scheduled waste generated by them is properly stored, treated on site, recovered on site for material or product from scheduled wastes and ensures that every scheduled waste subjected to movement is packaged, labelled and transported in accordance with the guidelines prescribed by DOE.

Law stated - 28 February 2025

Regulation of air emissions

What are the main features of the rules governing air emissions?

Section 25 of the EQA restricts pollution to the atmosphere in contravention of the accepted standards, unless licensed.

Specifically, the Environmental Quality (Clean Air) Regulations 2014 (Clean Air Regulations) regulates air emissions in Malaysia. The Clean Air Regulations are applicable to any premises used for any industrial or trade purposes, or on which matter is burnt in connection with any industrial or trade purposes; any other premises or processes that discharge or are capable of discharging air pollutants into open air; any industrial plant; and any fuel burning equipment.

An owner or occupier of a premises involved in any activity or industry listed in the First Schedule such as, among others, fuel burning, iron and steel mills, oil and gas, glass and ceramic manufacturing, shall incorporate measures to reduce the emission of air pollutants to the atmosphere in accordance with the Best Available Techniques Economically Achievable determined by the Director General. The limit values and technical standards that the owner or occupier of a premises involved in the listed activity or industry or set out based on the activity or industry.

Apart from the Clean Air Regulations, there are also other regulations to control motor vehicle smoke emissions as well as ozone-depleting substances.

Law stated - 28 February 2025

Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

They are protected by the EQA. Section 25 of the EQA prohibits the emission, discharge or deposit of any environmentally hazardous substances, pollutants or waste into any inland waters (ie, reservoir, pond, lake, river, stream, canal, drain), unless licensed. Section 27 of the EQA prohibits the discharge of oil or spill of any mixture containing oil into Malaysian waters in contravention of the acceptable conditions, unless licensed. Section 29 of the EQA prohibits the discharge of any environmentally hazardous substances, pollutants or waste into Malaysian water in contravention of the acceptable conditions, unless licensed.

Further, the Environmental Quality (Industrial Effluent) Regulations 2009 sets out the standards of the discharge or release of industrial effluent or mixed effluent into, among others, any inland waters or Malaysian waters.

Law stated - 28 February 2025

Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

There are different forms and classes of protection for natural spaces and landscapes in Malaysia, which are governed by multiple statutes such as the National Forestry Act 1984 (NFA), the National Parks Act 1980, the Sarawak Forest Ordinance (1954) and the Sabah Forestry Enactment (1968), the Town and Country Planning Act 1976 and the Marine Parks Act 1994.

Under the NFA, a state authority may declare parts of land as a permanent reserved forest (PRF). A licence is then needed to take forest produce from a PRF. Additionally, a permit is required to carry out activities such as

- research;
- education;
- recreation; use of water resources;
- cultivation of vegetables and fodder crops;
- establishment of conversion plants;
- establishment of logging infrastructure; and
- driving of motor vehicles.

Law stated - 28 February 2025

Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

There are different forms and classes of flora and fauna protection in Malaysia. The primary legislation aimed at protecting flora and fauna is the Wildlife Conservation Act 2010 (WCA). Other legislation includes the Sabah Wildlife Conservation Enactment 1997, the Wildlife Protection Ordinance 1998 (Cap 26) Sarawak and the Fisheries Act 1985.

Under the WCA, a licence is needed should any person wish to hunt, take or keep, or collect bird's nests, carry out the business of dealing, and import, export or re-export protected and controlled wildlife. As for totally protected wildlife, a special permit is required to carry out the same activities.

Law stated - 28 February 2025

Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

Section 23 of the EQA provides that no person shall emit noise greater in volume, intensity or quality in contravention of any acceptable conditions, unless licensed. The Environmental Quality (Motor Vehicle Noise) Regulations 1987 deal specifically with the sound level permitted for motor vehicles. Additionally, the Occupational Safety and Health (Noise Exposure) Regulations 2019 set out the acceptable standard or limit of noise exposure at workplaces.

With regard to for vibrations, the DOE has issued several Guidelines on noise and vibration limits and control.

As for odours, section 22(2)(b) of the EQA is a particular provision governing obnoxious or offensive odours.

Law stated - 28 February 2025

Liability for damage to the environment

Is there a general regime on liability for environmental damage?

There is no such general regime on liability for environmental damage. It is likely that any person seeking to attribute liability for environmental damage will have to bring a claim in the civil courts for the usual causes of action such as negligence, nuisance, trespass on land, etc. That said, section 46E of the EQA provides that after a person has been convicted for an offence under the EQA or any regulations made thereunder, the court, in addition to imposing a penalty for the offence, may, where it appears to the court that any other person has, by reason of the commission of, or the omission resulting in the offence, suffered loss or damage to any property, order the person so convicted to pay the other person the costs and expenses incurred or compensation for loss or damage to the property and any other costs, in the amount as the court considers fit.

Law stated - 28 February 2025

Environmental taxes

Is there any type of environmental tax?

Malaysia has not yet introduced a formal carbon tax, but discussions are ongoing regarding the potential for a tax on carbon emissions. The government has shown interest in aligning with global trends to reduce greenhouse gas emissions and may introduce this tax to meet its climate commitments.

Law stated - 28 February 2025

Environmental reporting

Are there any notable environmental reporting requirements (eg, regarding emissions, energy consumption or related environmental, social and governance (ESG) reporting obligations)?

The Energy Efficiency and Conservation Act requires energy consumers to whom the Energy Efficiency and Conservation Act applies to prepare an energy efficiency and conservation report detailing the energy management system, energy consumption and measures for energy efficiency and conservation.

Listed companies are also required under Bursa Malaysia's Sustainability Reporting Framework to report on ESG indicators including disclosure on issues like waste

management and emissions. These reports are to be published annually and must align with the International Financial Reporting Standards Sustainability Disclosure Standards.

Law stated - 28 February 2025

Government policy

How would you describe the general government policy for environmental issues? How are environmental policy objectives influencing the legislative agenda?

The general government policy towards environmental issues is relatively robust and proactive. The government recently launched the National Climate Change Policy 2.0, which outlined a framework for Malaysia's transition to a low-carbon economy. The policy aims to reduce carbon intensity by 45 per cent by 2030 and achieve net-zero greenhouse gas emissions by 2050.

Malaysia also plans to, among other things, introduce carbon pricing instruments such as a carbon tax and a domestic emissions trading scheme and premium for energy data centres.

Environmental protection goals have led to stringent legislation such as the EQA, which requires industries to comply with pollution control measures and conduct environmental assessments. Green technology financing schemes and investment incentives have also been introduced to encourage the adoption of clean technologies and reduce the carbon footprint of businesses.

Law stated - 28 February 2025

HAZARDOUS ACTIVITIES AND SUBSTANCES

Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Hazardous activities are generally governed by the Occupational Safety and Health Act 1994 (OSHA) and the regulations made thereunder. Such activities do not require a licence. The OSHA requires all employers, self-employed persons, principals, occupiers, etc, to ensure the safety and health of employees and persons at their workplaces.

Law stated - 28 February 2025

Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

The Occupational Safety and Health (Use and Standards of Exposure of Chemical Hazardous to Health) Regulations 2000 (USECHH) is the main regulation on hazardous products and substances.

USECHH, among other regulations, imposes obligations for employer to keep a register of chemicals hazardous to health (Regulation 5), permissible exposure limit, assessment of risk to health, action to control exposure, labelling and relabelling, information, instruction and training, monitoring of exposure at the place of work, health surveillance, warning signs and record-keeping.

Law stated - 28 February 2025

Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

Prevention of industrial accidents are subject to the safety and health measures set out in the OSHA. OSHA also specifies all the various duties and responsibilities that aim to prevent and militate against industrial accidents.

Law stated - 28 February 2025

ENVIRONMENTAL ASPECTS IN TRANSACTIONS AND PUBLIC PROCUREMENT

Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

Depending on the target's industry, environmental due diligence may be conducted to assess the target's compliance with environmental laws and to identify their existing environmental liabilities or past violations. Long-term liabilities are also assessed including environmental issues affecting employees, such as exposure to hazardous materials.

For acquisition of assets in particular, if such assets are subject to any environmental permits or licences, the buyer may need to apply for transfer of those permits before operating.

Law stated - 28 February 2025

Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

Banks and financial institutions in Malaysia are increasingly adopting ESG frameworks to assess the environmental impact of projects and businesses. These assessments may involve examining the environmental risks associated with a company's operations, supply chain and compliance with local environmental regulations.

Law stated - 28 February 2025

Environmental aspects in public procurement

Is environmental protection taken into consideration by public procurement regulations?

Environmental protection is considered in public procurement requirements in Malaysia but it may not always be the central criterion. In sectors with significant environmental impacts such as energy, construction, manufacturing and transportation, public procurement requirements are more likely to impose stringent environmental requirements and adoption of green building standards or sustainable solutions.

Law stated - 28 February 2025

ENVIRONMENTAL ASSESSMENT

Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

The types of activities that are subjected to an environmental impact assessment (EIA) report in Peninsular Malaysia are listed in the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015. They include, among others:

- agriculture;
- aerodrome;
- drainage and irrigation;
- fisheries;
- forestry;
- industry;
- and reclamation;
- mining;
- petroleum;
- ports;
- power generation and transmission;
- development in coastal and hill areas;
- development in slope area;
- waste treatment and disposal;
- dredging;
- housing;
- industrial estate development;
- new townships;
- quarries;
- roads;
- water supply; development in coastal areas, national park and state parks;

- development in sloping areas;
- construction of dams;
- transportation; and
- radioactive materials and radioactive waste.

With regard to the state of Sabah, the types of activities are listed in the Environment Protection (Prescribed Activities) Order 2005, requiring a proposal for mitigation measures and/or an EIA report, and they are:

- agriculture;
- forestry;
- housing, commercial and industrial estate;
- fisheries and aquaculture;
- quarries;
- resorts and recreational development;
- drainage and irrigation;
- land reclamation;
- mining;
- power generation;
- water supply; and
- any other activities that may damage or have an adverse impact on the quality of the environment.

As for the state of Sarawak, the Natural Resources and Environment (Prescribed Activities) Order 1994 (Sarawak) stipulates that the types of activities that require an EIA Report are

- agricultural development;
- logging;
- development of commercial industrial and housing estates;
- activities that may pollute inland water or affect sources of water supply;
- fisheries and activities that may endanger marine or aquatic life, plants in inland waters or erosion of river banks;
- extraction and removal of rock materials and mining;
- facilities for disposal and treatment waste; and
- any other activities that may damage or have an adverse impact on quality of environment or natural resources of the state.

Law stated - 28 February 2025

Environmental assessment process

What are the main steps of the environmental assessment process?

An EIA report has to be prepared in accordance with the Environmental Impact Assessment Guideline 2016 issued by the Department of Environment (DOE) (EIA Guideline). The EIA Guideline is not applicable to Sabah and Sarawak. The environmental assessment process is divided into three stages: (1) the pre-submission stage; (2) the submission stage; and (3) the post-submission stage.

During the pre-submission stage, a screening and scoping first has to be carried out. The screening process determines whether a proposed project falls under a prescribed activity. The scoping process is the process of identifying key environmental issues. For prescribed activities, an Environmental Scoping Information (ESI) that determines the terms of reference (TOR) would first have to be submitted to the DOE. The adequacy of the ESI and TOR formulated would then be decided in a Terms of Reference Adequacy Check meeting. At the meeting, the TOR may be accepted or agreed upon or may require revision within stipulated timeline.

On top of the TOR, the project proponent also has to conduct a site suitability assessment, baseline studies, impact assessment and evaluation of significance, identification of mitigation measures and an EIA Report preparation.

During the submission stage, the EIA report will be submitted to the State DOE, whereas an EIA report involving certain prescribed activities and multiple states would have to be submitted to DOE HQ.

The review of an EIA report by the State DOE will be checked for Report Adequacy (RAC) by the EIA Technical Review Committee (TRC). An EIA report that does not pass would be rejected. EIA Report that passes would be reviewed by the TRC. The EIA report would also be distributed to the relevant government agencies for written comments. The final outcome of the EIA report would be decided by the DOE State Director after taking into consideration of the views of the TRC.

For reviews by DOE HQ, the EIA report would be checked for RAC by the TRC. An EIA report that passes would have to be publicly displayed for public comments. For projects in Sabah and Sarawak, a notification must be placed in at least one regional newspaper. The EIA report shall be displayed for 30 days from the date of announcement and the public will have 45 days to submit their comments to DOE.

The TRC would then review the EIA report. Once the review process is completed, the State Director of DOE or the Director General of DOE (DG) may either approve the EIA report with or without conditions or not approve the EIA report, in which the State Director of the DOE or the DG must give reasons for the non-approval.

Although the State Director of DOE or DG will make the final decision, certain government agencies are also sometimes tasked with deciding, such as the National Development Planning Committee for Federal Government Sponsored projects; the State Executive Council for State Government sponsored projects; the various local authorities or the regional development authorities with respect to planning approval within their respective areas; and/or the Ministry of International Trade and Industry for industrial projects.

Any person aggrieved by any decision may file an appeal with the Appeal Board within 30 days of the date of the decision being communicated.

For the post-submission stage, monitoring activities are divided into three categories: (1) impact monitoring; (2) compliance monitoring; and (3) performance monitoring.

Law stated - 28 February 2025

REGULATORY AUTHORITIES

Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

The primary authority at the national level responsible for regulating and enforcing the environmental laws of Malaysia, specifically the Environmental Quality Act 1974 (EQA) and the regulations made thereunder, is the Department of Environment (DOE), which is headed by its Director General (DG). There are the various state DOEs headed by the respective State DG.

In addition, specific to water, there are other agencies that also have regulatory powers, such as the National Water Services Commission and the Water Management Authority of the State of Selangor, for instance.

In recent times, the police have also been investigating environment-related offences found in the Penal Code, such as section 430 (ie, mischief by injury to works of irrigation or by wrongfully diverting water).

Law stated - 28 February 2025

Investigation

What are the typical steps in an investigation?

Regulatory authorities especially the DOE has wide powers of investigations as provided under the EQA. The DOE is also conferred with all necessary powers in relation to police investigation in seizable cases given by the Criminal Procedure Code, such as the powers of arrest, stop, board, inspect, search, seize, forfeit, examine persons acquainted with the case, require attendance of persons acquainted with the case, etc.

In an investigation, the DOE would typically present themselves at an alleged offender's premises for inspection to take samples, photographs, documents and records. This would then be followed by taking and recording of formal statements of persons involved in the case.

Law stated - 28 February 2025

Administrative decisions

What is the procedure for making administrative decisions?

The procedure for making administrative decisions is guided by principles of natural justice and procedural fairness.

Law stated - 28 February 2025

Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

The sanctions and remedies that the DOE may impose for violations include issuing a written notice requiring certain actions to be done (eg, installing or repairing any equipment; adopting any measure to reduce or mitigate pollution), a prohibition order (ie, to prohibit the operation of an industrial plant or process until requirements to make remedy as directed have been complied with), and compounds and fines.

Law stated - 28 February 2025

Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

Decisions of the DG are appealable to the Appeal Board and may be filed within 30 days the decision is communicated.

Law stated - 28 February 2025

JUDICIAL PROCEEDINGS

Judicial proceedings

Are environmental law proceedings in court civil, criminal or both?

Environmental law proceedings may be before the criminal, civil or administrative courts. If coming before the criminal courts, it will be in the form of a prosecution for an alleged offence by the public prosecutor against an alleged offence. If before the civil courts, it could be a claim by any person for loss and damage suffered arising from an alleged offence. If before the administrative courts, it can be commenced by any person aggrieved by an administrative decision made by the Director General.

Law stated - 28 February 2025

Powers of courts

What are the powers of courts in relation to infringements of environmental law?

In the event of any infringement of environmental law (ie, the Environmental Quality Act 1974 (EQA)), the courts (the criminal courts to be exact) have the power to mete out the appropriate punishment.

Law stated - 28 February 2025

Civil claims

Are civil claims allowed regarding infringements of environmental law?

There is no prohibition as to civil claims, be it contractual or non-contractual arising from infringements of environmental law.

Law stated - 28 February 2025

Defences and indemnities

What defences or indemnities are available?

Strict liability

Offences under the EQA are on strict liability basis. This means that the prosecution does not need to prove intent to establish liability for the offence. Instead, it is sufficient to prove that the prohibited act or omission occurred. Certain defences are usually applicable and can be relied upon, circumstances permitting, such as demonstrating that all reasonable measures were taken to prevent the offence, establishing that the act occurred beyond the control of the accused (for instance, sabotage) or showing that the act was conducted within the terms of a valid licence issued under the EQA.

Joint or several liability

Companies can be held liable for environmental offences and directors or officers may share liability if they authorised or failed to prevent the offence.

Limitation

The statutes of limitation do not apply to environmental offences under the EQA.

Law stated - 28 February 2025

Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

Directors or officers are afforded a specific and explicit defence under the EQA where if they could prove to the satisfaction of the court that the offence was committed without their knowledge or consent or that they had exercised all due diligence to prevent the same and to ensure observance of the relevant provisions, they will not be held equally liable as the company.

Law stated - 28 February 2025

Appeal process

What is the appeal process from trials?

Generally, there are three level of appeal. For criminal matters, the proceedings of the first instance is usually conducted at the subordinate courts (ie, the Magistrates' or Sessions Court). If the parties are dissatisfied with the decision in of the subordinate courts, they may appeal to the High Court, and subsequently the Court of Appeal. However, leave is required for an appeal against the decision of High Court on any criminal matters that originated from the Magistrates' Court. The Federal Court, which is the apex court in Malaysia, shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court in its original jurisdiction.

Law stated - 28 February 2025

INTERNATIONAL TREATIES AND INSTITUTIONS

International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

Malaysia is a contracting state to multiple environmental treaties. Among others, it acceded to the Convention on International Trade in Endangered Species of Wild Flora and Fauna on 20 October 1997, ratified the Convention on Biological Diversity on 24 June 1994, ratified the Cartagena Protocol on 3 September 2023 and acceded to the Nagoya Protocol on 5 November 2018.

Malaysia has also ratified the International Tropical Timber Agreement on 28 September 2007, and is a member of the International Tropical Timber Organization, International Towing Tank Conference as well as the United Nations Forum on Forests. Malaysia joined the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation Program in 2012.

Law stated - 28 February 2025

International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

Malaysia has aligned several of its national environmental laws with international standards set by these treaties. For example, under the Convention on Biological Diversity, Malaysia has enhanced its wildlife protection laws to include stricter enforcement against poaching and illegal trade as observed in Malaysia's Wildlife Conservation Act 2010.

Law stated - 28 February 2025

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in environment law in your jurisdiction?

Early this year, the Ministry of Investment Trade and Industry introduced the National Industry Environmental, Social and Governance Framework (i-ESG) to support industries to Integrate standards. The i-ESG framework is planned to be a legal requirement by 2030.

In addition, amendments were made to the Environmental Quality Act this year to impose heavier penalties for environmental violations. These amendments reinforces the country's commitment to protecting its environment and businesses are now investing in robust environmental management systems to mitigate the risk of non-compliance.

Law stated - 28 February 2025