

(1) Malaysia: Situation of the Development of Legal Systems for EIA

Malaysia began discussing measures to address environmental pollution in the 1970s and 1980s, when major agricultural waste issues (from oil palm and rubber farming) became a matter of increasing public concern. This resulted in the formulation of the Environmental Quality Act (EQA) in 1974. Also known as Act No. 127, it is the country's primary piece of environmental legislation. The core government agencies in charge of implementing regulations based on the EQA are the Ministry of Natural Resources and Environment (NRE) and the Department of Environment (DOE). In 1987, the Malaysian government formulated the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987, which was based on Article 34-A of the Environmental Quality Act. Enacted in 1988, these were the regulations that guide the preparation of Environmental Impact Assessments (EIAs). They were later revised in 1995, 2000, 2007, and 2009, with the latest revision issued in 2015 as the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015. The Environmental Impact Assessment (EIA) Guideline, issued in July 2016, was based on the 2015 revisions. The 2015 order also includes a list of projects that require an Environmental Impact Assessment.

The Environmental Impact Assessment order of 2015 classifies projects requiring EIAs into two categories. The first group, designated as First Schedule projects, has its EIA reports screened and approved by Department of Environment state offices (the local branches of the DOE). Those designated as Second Schedule projects must submit their EIA reports to DOE headquarters for review and approval. Projects like expressway projects, which involve more than one state, must submit their EIAs to DOE headquarters for review and approval even if they are classified as First Schedule projects. Note that in the states of Sabah and Sarawak, Malaysia's EIA Guideline only applies to First Schedule or Second Schedule projects involving airports, industry (chemical, cement, lime, petrochemical, shipbuilding, iron and steel, paper and pulp, recycled paper, etc.), petroleum, ports, power generation, waste disposal/treatment, transportation, radioactive waste, and so on. Projects involving the development of natural resources (such as land modifications, agriculture, forestry, and mining) are subject to measures based on the independent laws of Sabah and Sarawak states.

Malaysia is made up of the Malay Peninsula, Sabah State, and Sarawak State. The Environmental Quality Act (EQA) enacted in 1974 applies to the entire territory, but the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order of 1987, which was meant to strengthen environmental conservation practices, was not adopted by Sabah and Sarawak. Instead, these states formulated their own Environmental Impact Assessment regulations pertaining to the development of land and natural resources (water, soil, mining resources, forests, etc.) within their borders. The state of Sabah formulated its Environmental Protection Enactment in 2002 and its

Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order in 2005. Sarawak formulated its revised Natural Resources And Environment Ordinance in 1993 and issued the Natural Resources And Environment (Prescribed Activities) Order in 1994.

In 2002, Malaysia formulated its National Policy on the Environment for the purpose of environmental conservation and sustainable resource management. The aim of the policy is to improve standards of living for the Malay people by promoting economic, social and cultural progress through an environmentally sound and sustainable development. It is based on eight principles that are designed to integrate environmental and economic development goals: (1) stewardship of the environment, (2) conservation of nature's biodiversity, (3) continuous improvement of the quality of the environment, (4) sustainable use of natural resources, (5) integrated decision-making, (6) strengthening the role of the private sector, (7) commitment and accountability, (8) active participation of the international community. The National Policy on the Environment plays a critical role in making sure that all investors preserve the beauty of the country's natural environment and maintain productivity in a safe and healthy way so that people can enjoy a better quality of life in the midst of rapid economic development.

There are now reports of revisions being made to the Environmental Quality Act of 1974, and in 2016 both the Director General of the Department of Environment and the Minister of Natural Resources and Environment announced that they would be issuing a new law, the Environmental Protection Act (EPA). The draft has already been formulated, and is currently being reviewed by the Attorney General's Chambers (AGC). Reports say that the EPA will replace the EQA, with preparations scheduled for completion sometime during 2018. That say, the exact content of the new law is mostly unknown. Once the Attorney General's Chambers has completed their review, they plan to have a period for public commentary, ultimately followed by its official passage into law. It is expected to include the following points.

- ✓ A disinterested third party will be given the right to make approval decisions projects likely to have a major impact on the environment. If experts voice an objection to a project that they deem likely to harm the local environment, for example, the project will not be allowed to go forward—even if it is sponsored by the local government.
- ✓ The new law will make it easier to press charges against things or companies that inflict environmental harm, with stricter and heavier penalties. In short, the Department of Environment will have greater authority to prosecute wrongdoers.
- ✓ Federal government officials will be given discretion to act beyond their jurisdictions, meaning that they can get more involved when environmental harm occurs in an individual state.
- ✓ The systems required to implement Environmental Impact Assessments will be more

comprehensive (JETRO 2018c: 15–16).