



Ang Hean Leng
Partner
T: +603 6208 5809
E: ahl@lh-ag.com

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Major Changes in Proposed Amendments to Environmental Quality Act

A draft proposal on amendments to the Environmental Quality Act 1974 has been published by the Ministry of Energy, Science, Technology, Environment and Climate Change (MESTECC) through the Department of Environment (DOE)'s website^[1] on 15.5.2019 containing twice as many legal provisions.

A. Enhanced Enforcement

The amendments include the establishment of an Environmental Protection Council* comprising representatives from various ministries, industries, professional fields, NGOs, states and academicians to advise the Minister on the proposed Act as well as matters referred to the council by the Minister.

The amendments also provide the DOE as the relevant authority with the following new powers:

- Ability to carry and use firearms
- Ability to perform arrests without warrant
- Authority to access computer data where required passwords, codes, software and hardware must be provided to the authorities.

Meanwhile, informers will be given a reward for any service, information and assistance in tracing any offence as well as witness protection in legal proceedings.

With respect to penalties, a broad-brush penalty regime encompassing both acts of commission (pollution) and acts of omission (non-compliance) is imposed where the maximum fine of RM500,000 has been increased tenfold to RM5 million.

Additionally, penalties now come with a minimum fine to be imposed by the courts when found guilty where the highest minimum fine is RM50,000.

B. Personal and Corporate Liability

Liability for offences committed by companies, employees or agents

have also been revised, where the existing liability is now subsumed under the term Principal* giving statutory effect to a host of cases. “Principal” has been defined by the proposed Act as the board of directors, chief executive officer, company secretary or director.

C. Compliance Regime

Companies will now have to administer yet another compliance regime aside from those imposed by laws in the areas of competition, personal data protection and anti-money laundering.

Companies are required to set up an internal *Environmental Monitoring Committee for Legal Compliance* as well as employ an Environmental Manager* and endorsed by the authorities having a scope of responsibility that is spelled out in the proposed Act. Failure to comply with any of the new requirements will constitute an offence bearing a fine of up to RM50,000 or imprisonment of up to two years, or both.

D. Impact

On top of the beefed-up enforcement and accompanying penalties, companies can expect a heavier burden with requirements to implement a multitude of internal measures such as environmental reports, policies and budgets.

** Terms used in this update have been translated from the official document worded in Bahasa Malaysia and may differ from other translations found in news articles.*

Marco Isidor Tan Kee Keat (tkk@lh-ag.com)

For queries or clarification, please contact the author or his team partner [Ang Hean Leng](mailto:ahl@lh-ag.com) (ahl@lh-ag.com).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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