

Comparative Analysis of Malaysia Legal Framework and ADB Safeguard Policy Statement

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
Policy Principle 1: Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of environmental assessment so that appropriate studies are undertaken commensurate with the significance of potential impacts and risks.			
<p>Key element (1)</p> <p>Use a screening process to determine the appropriate extent and type of environmental assessment</p>	<p>Environmental Quality Act of 1974 and subsequent amendments</p> <p>Section 34A (1) states that "The Minister, after consultation with the Council, may by order prescribe any activity which may have significant environmental impact as prescribed activity." EQ Act, sec. 34A(1); see also Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order, 1987. These prescribed activities are subject to EIA and include the following broad categorizations:</p> <p>Project activities specified are defined by quantum Project activities defined by size Project activities that are not defined by an unit of measure. Not all of these activities are applicable to Sabah and Sarawak</p> <p>The passing of the Conservation of Environment Enactment 1996 was an important step taken by the State Government of Sabah to provide a legal framework for the protection and enhancement of the environment. In 1999, the Conservation of Environment (Prescribed Activities) Order 1999, was gazetted, making an Environmental Impact Assessment (EIA) a mandatory State requirement for Prescribed Activities.</p> <p>The Natural Resources and Environment (Prescribed Activities) 1997 establishes under Section 11A (1) under the Natural Resources and Environment Ordinance of Sarawak lists a range of activities, both in size and quantum that requires the conduct of an EIA</p> <p>As a consequence of these prescribed lists, project proponents can decide</p>	Full equivalence	None required

¹ There are relevant provisions of the laws and regulations of Malaysia. These include the Environmental Quality Act 1974 (EQA) (as amended) and the 1987 order of "prescribed Activities" and subsequent amendments, EIA Procedures and Requirements (1990 and subsequent revisions up to 2007). All provisions are directly written at beginning shall be provisions of the draft of the Law on EIA, provisions of the other relevant laws shall be written with the names of the laws.

² "Full Equivalence" denotes that the Malaysian legal requirement(s) are in complete harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element thereof. "Partial Equivalence" denotes that the Malaysian legal requirement is in partial harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element; and "No Equivalence" denotes that no Malaysian legal requirement can be found that corresponds to the particular ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element.

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	whether a project requires an EIA or not. Reference to this list which is fairly detailed, generally enables the proponent to decide.		
Policy Principle 2: Conduct an environmental assessment for each proposed project to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socioeconomic (including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issues), and physical cultural resources in the context of the project's area of influence. Assess potential trans-boundary and global impacts, including climate change. Use Environmental strategic environmental assessment where appropriate.			
General Provisions	<p>Section 34A (1) of the Environmental Quality Act of 1974 and subsequent amendments requires</p> <p>(2) Any person intending to carry out any of the prescribed activities shall, submit a report in accordance with the guidelines issued by the Director General and shall contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.</p> <p>EIA guidelines for specific activities are very comprehensive and have been issued by the Department of Environment for a number of activity types as listed below:</p> <p>List of EIA Guidelines in Malaysia</p> <p>Section 34A specifies that EIA reports shall be in accordance with the guidelines prescribed by the Director General. The key Guideline material is a 'handbook of EIA Guidelines and Procedures published by Department of Environment (DOE). In addition EIA guidelines for specific sectors have been produced and the following are currently available at DOE. EIA's typically takes 2 to 6 months to prepare, depending on the size and complexity of the Project. EIA Guidelines are available for</p> <p>EIA Guidelines for Toxic and Hazardous Treatment and disposal Projects EIA Guidelines for Development of Hill Resort & Hotel Facilities in Hill stations EIA Guidelines for Municipal Solid waste & sewerage Treatment & disposal Projects EIA Guidelines for Drainage and Irrigation Projects EIA Guidelines for Mines and Quarries EIA Guidelines for Dams and / or Reservoir Projects EIA Guidelines for Coastal Resort Projects EIA Guidelines for Thermal Power Generation and Transmission Project EIA Guidelines for Fishing Harbors or Land Based aquaculture Projects EIA Guidelines for Groundwater and/ or Surface Water Supply Projects EIA Guidelines for Petrochemical Industries EIA Guidelines for Industrial Estate Development</p>		

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	<p>EIA Guidelines for Development of Tourist & Recreational Facilities In National Parks EIA Guidelines for Development of Tourist & Recreational Facilities on Islands In Marine Parks EIA Guidelines for Industrial Projects EIA Guidelines for Siting and Zoning of Industries EIA Guidelines for the Management & Disposal of Waste in Upstream Petroleum Industries Soil Erosion and Control Guidelines EIA Guidelines for Forestry Projects</p>		
<p>Key element (1) Identify indirect as well as direct impacts</p>	<p>There is no explicit reference to “indirect impacts” in the legal framework. All potential references to indirect impacts are implicit.</p> <p>The power to regulation for environmental impact assessment is given in Section 34A of the Environment Quality Act that requires the assessment of the likely impact of an activity on the environment.</p> <p>The EIA procedures for Malaysia require a detailed identification of project impacts, baseline surveys and data gathering, prediction and evaluation of impacts, including, if necessary risk assessment, mitigation and abatement of impacts, and environmental monitoring and auditing requirements.</p>	<p>Partial equivalence</p> <p>There is no requirement for assessing “indirect impacts”</p>	<p>The legislation should include directions on the need to identify indirect impacts.</p>
<p>Key element (2) Identify cumulative impacts</p>	<p>There is no explicit reference to identify “cumulative impacts” in the legal framework.</p>	<p>No equivalence</p>	<p>To attain equivalence the EQA or associated guidelines/regulations should require identification of ‘cumulative impacts’ of development activities</p>
<p>Key element (3) Identify induced impacts</p>	<p>There is no explicit reference to “induced impacts” in the legal framework. All potential references to indirect impacts are implicit.</p> <p>The power to regulation for environmental impact assessment is given in Section 34 A of the EQA requires the assessment of the impact of the proposed activity on the environment and the identification of measures to be undertaken to prevent, reduce or control the adverse impact on the environment. The EIA study is required to cover the detailed identification of potential impacts (which implicitly might mean both direct and induced impacts), baseline surveys, data</p>	<p>No equivalence</p>	<p>The EQA or EIA procedures should specifically identify the need to also look at induced impacts</p>

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	gathering, prediction and evaluation of impacts, including risks and mitigation and abatement measures		
Key element (4) Identify physical impacts	The General Guidelines for Preparation of TORs for an EIA report requires a description of the existing environmental conditions of physio-chemical, biological and human environment prior to the implementation of a project and subsequent assessment of the impacts on these environmental conditions	Full equivalence	None required
Key element (5) Identify biological impacts	<p>There is some reference to “identification of biological impacts” in the general guidelines for preparation of the EIA report (see Key element 4 above).</p> <p>The Procedures and Requirements for EIA issued by the Department of Environment (DOE) requires that projects avoid unique habitats or locations near ecologically and environmentally sensitive habitats (mangroves, estuaries, wetlands, coral reefs etc.) that can cause irreversible damage to these habitats</p> <p>Individual guidelines for different projects/activities have explicit requirements for identification of biological impacts: e.g. EIA Guidelines for Oil Palm Plantation Development requires assessment of (i) Ecological impacts due to destruction of habitats for flora and fauna as a result of land development; (ii) impact on river floodplain leading to loss of riparian habitat and function; (iii) impacts on habitat fragmentation, etc.</p> <p>Further, the Malaysia National Biodiversity Policy 1998 Strategy 6 (INTEGRATE BIOLOGICAL DIVERSITY CONSIDERATIONS INTO SECTORAL PLANNING STRATEGIES) calls for action to: (1) Ensure biological diversity conservation is a factor in planning and impact assessment of sectoral and cross-sectoral development programmes; (2).Study the impact of national and state policies and priorities on conservation and sustainable use of biological diversity; (3)Develop tools to analyse and evaluate development plans and strategies which may have impact upon biological diversity (4) Review current sectoral policies, plans and programmes to determine the extent to which use of biological resources reflect conservation needs and recommend appropriate measures therein; (5) Ensure that biological diversity issues are incorporated in long-term and medium-term development plans (e.g. Five Year Development Plans, Outline Perspective Plans, National Development Plans); (6) Ensure efficient dissemination of relevant information and extension services to promote cross-sectoral integration in the sustainable use of biological diversity; and (7) Ensure that biological diversity conservation is a major factor in the management of our biological resources.</p>	Full Equivalence	None required

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<p>Key element (6)</p> <p>Identify socioeconomic impacts (including on livelihood through environmental health and safety, vulnerable groups, and gender issues media.)</p>	<p>There is no explicit reference to “identification of socio-economic impacts” in the legal framework. All potential references to socio-economic impacts are implicit.</p> <p>Procedures and Requirements for EIA issued by the Department of Environment (DOE) Table 1 identifies local communities as one set of stakeholders in the EIA process and requires the identification of impacts of the project and how they affect the quality of life.</p> <p>In addition, EIA guidelines require surveys to be carried to gather the perception and identify the community’s attitude towards the proposed project. The EIA guidelines for specific prescribed activities made reference to the assessment of impacts on human settlements, including on potential impacts on drinking water quality, landscape degradation and loss of existing and potential eco-tourism opportunities and pollution, landownership issues, for example land ownership conflicts and disagreements, increased landlessness, loss or degradation of sacred areas i.e. areas that have cultural or religious value for the local residents, dust and noise problems related to road construction, operation and haulage, water resource issues i.e. reduced availability of water if it water if it is intended to abstract water for the purpose of irrigation or to meet the domestic needs of the workforce. etc.</p> <p>Assessment method for impacts on human settlements: The objective of the assessment is to identify areas that may need special attention, and appropriate assessment methodologies need to be identified depending upon the scale and significance of the project. The following steps are suggested:</p> <ul style="list-style-type: none"> • Step 1. Initial assessment of potential adverse impacts. An initial assessment based on available data, information, interviews and maps should be undertaken • Step 2. Survey of potential affected settlements. Based on the initial assessment, a semi-structured questionnaire should be developed. The questionnaire should include; (i) a number of close-ended questions, for example; ‘Where do your house get water from?’ ‘Do you use the forest for income-generation purposes?’ and, (ii) a number of open-ended questions, including for example; ‘What do you think are the main problems associated with the project?’ and, ‘What are the important mitigation measures that you would like to have imposed’. An example questionnaire is shown <p>The results of the questions have to be quantified and/or documented. Two maps of the settlements/houses shall be provided. The first map should be at the same 1:50,000 base scale as the other data layers and the second shall be at a larger</p>	<p>Partial Equivalence</p> <p>There is no explicit reference in the overall legislation to assessment of impacts on livelihood, vulnerable groups and gender issue concerns</p>	<p>For full compliance it is necessary to specifically include in the legislation and/or regulations the need to ensure a wider measure on social impacts of livelihoods, ethnic and vulnerable groups, gender related issues, as well as guidance on the direction on terms of reference and guidelines for social assessment</p>

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	<p>scale and include the name and/house location of the respondents. If logistically feasible, all directly impacted settlements should be included in the survey. Photographs may also be used to supplement survey data</p> <p>• Step 3. Detailed study and assessment of the key adverse impacts. Based on the results of step 1 and 2, a detailed study and assessment of specific impacts should be undertaken. For example: <i>Deterioration of potable water supply</i>, for example mapping existing catchments used for potable water, documenting number of on-site and downstream users, investments costs to install alternative water supply, with reference to the physical impacts state the probable length of time the impact will last e.g. during the period of active clearance only, short term or permanent</p> <p><i>Landownership issues</i>, for example the reason and seriousness of land ownership conflicts, or number of settlers to be relocated. Land alienated for the proposed oil palm plantation development may be subject to claims as native customary rights, which are stipulated in Part IV of the Land Ordinance (Sabah Cap. 68). The definition of native customary rights is specified in Section 15 of the Land Ordinance as follows:</p> <p><i>Native customary rights shall be held to be - (a) land possessed by customary tenure; (b) land planted with fruit trees, when the number of fruit trees amounts to fifty and upwards to each hectare; (c) isolated fruit trees, and sago, rotan, or other plants of economic value, that the claimant can prove to the satisfaction of the Collector were</i></p> <p><i>planted or upkeep and regularly enjoyed by him as his personal property; (d) grazing land that the claimant agrees to keep stocked with a sufficient number of cattle or horses to keep down the undergrowth; (e) land that has been cultivated or built on within three years; (f) burial grounds or shrines; (g) usual rights of way for men or</i></p> <p><i>animals from rivers, roads, or houses to any or all the above.</i></p> <p>Status of land may be determined by obtaining the cadastral map for the relevant area. If the land is not yet alienated, ground truthing should be carried out to verify whether there are any claimants. Any land under dispute or claims by the locals should be clearly demarcated until decisions are made as to whether it will be acquired or excluded. Under Section 16 of the Land Ordinance, the procedure to follow is as follows: 'Native customary rights established under section 15 shall be dealt with either by money compensation or by a grant of the land to the claimant and in the latter case a title shall be issued.</p> <p><i>Landscape degradation and loss of existing and potential eco-tourism opportunities</i>, for example the severity and extent of landscape degradation (e.g. compared to other similarly plantation sites, the extent of damage to water ways, mapping and photographing existing valuable landscapes as for example waterfalls, rocky streams, flat riverbanks for picnics, hills with views, plateaus</p>		

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	<p>with hills, scenic lookouts, wildlife, rare plants, scenic forest stands, geological formations, archaeological sites, culture heritage sites</p> <p><i>Dust and noise problems</i> related to road construction and transportation to be assessed by predicting the increase in traffic, the timing and scheduling of the transport activities, comparisons with transport activities in similar areas in Sabah, the number and location of settlements affected. The existing or intended route should be clearly marked alongside settlements that potentially may be impacted.</p> <p><i>Water resource issues.</i> If it is intended to abstract water for the purpose of irrigation or to meet the domestic needs of the workforce, the following shall be described: (i) intended pumping schedule (ii) volume of water to be abstracted, (iii) pumping and storage device and, (iv) intended source of water i.e. the river system. If there are other users on the same river system then existing usage and demand should be described. The volumetric assessment shall include details on the water resource of the intended source river, i.e. actual discharge if the river is gauged or an estimate if the river is ungauged. For the latter, the estimate should be based on extrapolation of data from a short term gauging exercise or by estimating the discharge using a water balance equation.</p>		
<p>Key element (7)</p> <p>Identify impacts on physical cultural resources</p>	<p>There is no explicit reference to “identification of impacts on physical/cultural resources” in the legal framework. All potential references to physical and cultural resource impacts are implicit. However Procedures and Requirements for EIA issued by the Department of Environment (DOE) requires the assessment of impact on cultural resources</p> <p>In addition, the National Heritage Act of 2005, calls for the “safeguarding” which means the identification, protection, conservation, restoration, renovation, maintenance, documentation and revitalization of historic or traditional matter, artefact, area and their environment; and “conservation” that includes preservation, restoration, reconstruction, rehabilitation and adaptation or any combination. In terms of the national heritage act, it refers to “cultural heritage significance” means cultural heritage having aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, linguistic or technological value; as well as “natural heritage” includes natural features of any area in Malaysia which may consist of earthly physical or biological formations or group of such formations, geological or physiographical features, mountains, rivers, streams, rock formation, sea shore or any natural sites of outstanding value from the point of view of nature, science, history conservation or natural beauty including flora and fauna of Malaysia;</p>	Full Equivalence.	None required
Key element (8)	The reference to the area of influence of an activity is more clearly spelled out in	Full	None required.

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Identify impacts in the context of the project's area of influence	<p>the EIA guidelines for specific activities/projects as illustrated by the following Environmental Impact Assessment (EIA) Guidelines Oil Palm Plantation Development. Section 3.2 below specifies:</p> <p>3.2 Initial project description and assessment In order to be able to propose realistic mitigation measures, the following initial information should be obtained prior to embarking on any field surveys or assessments. This information has to be included in the scoping note and the draft Terms of Reference submitted to the ECD and will provide the basic framework for the assessments made in the EIA report.</p> <p>Initial data I: Clearly identify the geographical location and area of the project. Depending on the size of the project area, the EIA study may extend well beyond the project boundary and should include an assessment of downstream, adjacent and coastal impacts</p> <p>Initial data II: Description of the project site, including maps. It is imperative that the all maps include an indication of scale and a clearly marked coordinate system (e.g. longitude and latitude). One of the location maps should also clearly identify and describe neighbouring land-use which should include the nearest protected area, other sensitive habitats including position in relation to river system. All text presented on the map should be readable. It should be borne in mind that duplicate copies of reports will be required and provision should be made so that all maps remain legible</p> <p>Initial data III: Description of river systems. River systems and catchment areas as represented on the National 1:50,000 maps should be digitally presented. This information should be taken as indicative and not absolute. All 4th order rivers and higher must be clearly identified and marked. In part this matches the requirements of the Water Resource Enactment (1998), i.e. to provide a 20 m river reserve for rivers wider than 3 metres, as most 4th order rivers are at least this size</p> <p>Using the river drainage system data, the project area should then be classified into individual catchment areas. Photographic information can provide useful supplementary information. Water quality samples/measurement can be taken in order to indicate the general condition of rivers in the project area.</p>	Equivalence.	
Key element (9) Assess potential	There is no explicit reference to “assessment of trans-boundary impacts” in the legal framework or Procedures and Requirements for EIA issued by the Department of Environment (DOE). All potential references to trans-boundary impacts are implicit.	Partial Equivalence.	For full equivalence the EQA or Procedures and Requirements for EIA issued by the Department of Environment (DOE) should include Requirement for

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trans-boundary impacts	<p>However, Malaysia is signatory to many international conventions that recognize the need for international cooperation to protect the environment and common shared resources. These include the Vienna Convention for the protection of the ozone layer, Montreal Protocol, Langkawi Declaration among Commonwealth countries, 1989 and ASEAN Transboundary Haze Agreement (10 June 2002)</p> <p>The EQA deals explicitly with prevention and control of pollution, most of which has a trans-boundary dimension, such as:</p> <p>Section 21: Specific conditions of emission discharge Section 22: Restrictions of pollution of atmosphere Section 23: Restrictions on noise pollution Section 24: Restriction on pollution of the soil Section 25: Restriction on the pollution of inland waters Section 27: Prohibition of discharge of oil into Malaysian waters Section 29: Prohibition of discharge of wastes into Malaysian waters Section 30: Restriction on open burning</p>	<p>There is no explicit reference in Section 34A of the EQA or Procedures and Requirements for EIA issued by the Department of Environment (DOE), to assess trans-boundary impacts</p>	<p>the assessment of trans-boundary impacts.</p>
<p>Key element (10)</p> <p>Assess potential global impacts, including climate change</p>	<p>Assessment of potential global impacts such as might be associated with climate change are touched on in the following articles:</p> <p>The objectives of the National Policy on Climate Change for Malaysia recognize the need to:</p> <ul style="list-style-type: none"> • Mainstreaming climate change through wise management of resources and enhanced environmental conservation resulting in strengthened economic competitiveness and improved quality of life; • Integration of responses into national policies, plans and programs to strengthen the resilience of development from arising and potential impacts of climate change; and • Strengthening of institutional and implementation capacity to better harness opportunities to reduce negative impacts of climate change. 	<p>Partial Equivalence.</p> <p>While the national policy on Climate change requires addressing of impacts of climate change, there is no explicit requirement for project-specific assessment of global impacts</p>	<p>To attain full equivalence, the EQA and/or Procedures and Requirements for EIA issued by the Department of Environment (DOE) should explicitly require the assessment of potential global impacts, including climate change</p>

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Key element (11) Use strategic environmental assessment	<p>Article 3.1 of the National Policy on the Environment (2002) seeks to integrate environmental considerations into development activities and decision-making processes. It stipulates that ‘environmental inputs shall be incorporated into economic development planning activities, including regional plans, master plans, and structure and local plans’. The Policy suggests various means to this end, such as natural resource accounting and economic valuation of environmental and social costs and benefits. It implicitly refers to SEA in stating that: ‘environmental considerations will be integrated in policies, programs, plans and project formulation as well as implementation, through a comprehensive assessment process, taking into account social, ecological and health effects’.</p> <p>An explicit reference to SEA is contained in the Ninth Malaysia Plan for 2006-2010 (2006). The environmental chapter declares that: ‘environmental planning tools such as environmental impact assessments (EIA), strategic environmental assessments (SEA), cost-benefit analysis, market-based instruments and environmental auditing will be increasingly applied in evaluating and mitigating environmental impacts on development activities.’</p> <p>The Town and Country Planning Act (1976) was revised in 2001 and now includes stronger environmental management objectives and stipulates that EIA be integrated into plan formulation processes. In 2003, the Town and Country Planning Department published a manual on “SEA in Development Plans: A Step By Step Guide”. This is aimed at personnel undertaking SEA for state structure plans and district local plans.</p> <p>A new EIA Law that includes SEA requirements was approved in 2002 and became effective in September 2003. It applied environmental assessment (EA) to various spatial and sector-specific plans at the national and local levels. Spatial plans cover land use plans, plans for the development and utilization of river basins and sea waters and ‘guidance’ plans among the sector plans. Sector plans cover plans for industry, agriculture, animal husbandry, forestry, energy, water conservancy, transportation, urban construction, tourism and natural resources development.</p>	Full Equivalence.	None required
Policy Principle 3: Examine alternatives to the project’s location, design, technology, and components and their potential environmental and social impacts and document the rationale for selecting the particular alternative proposed. Also consider the no-project alternative.			
Key element (1) Examine	The issue of alternatives is not dealt with in the EQA Act, but Section II of the Procedures and Requirements for EIA issued by the Department of Environment	Full equivalence	None required

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alternatives to the project's location, design, technology.	(DOE) have the following requirements for examining alternative options: Screening of project options in respect of alternative sites and process/design variants with the aim of selecting the optimum size and design concept based on economic, engineering, social and environmental criteria. This screening is done in parallel with the pre-feasibility study for the project		
Key element (2) Consider the no-project alternative	Neither the legislation or procedures for EIA require consideration of the no-project alternative	No equivalence	The procedures and requirements for EIA Issued by DOE should require consideration of the No-project option
Policy Principle 4: Avoid, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management. Prepare an environmental management plan (EMP) that includes the proposed mitigation measures, environmental monitoring and reporting requirements, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates, and performance indicators. Key considerations for EMP preparation include mitigation of potential adverse impacts to the level of no significant harm to third parties, and the polluter pays principle.			
Key element (1) Avoid, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management	Section 34A of the EQA requires the following: (2) Any person intending to carry out any of the prescribed activities shall, before any approval for the carrying out of such activity is granted by the relevant approving authority, submit a report to the Director General. The report shall be in accordance with the guidelines prescribed by the Director General and shall contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment. (3) The Director General on examining the report and after making such enquiries as he considers necessary, is of the opinion that the report satisfies requirements of subsection (2) and that the measures to be undertaken to prevent, reduce, avoid and control the adverse impacts on the environment adequate, he shall approve the project, with or without conditions attached thereto, and shall inform the person intending to carry out the prescribed activity and the relevant approving authorities accordingly. (4) If the Director General on examining the report and after making such enquiries as he considers necessary, is of the opinion that the report does not satisfy requirements of subsection (2) or the measures to be undertaken to prevent, reduce, avoid and control the adverse impacts on the environment are inadequate, he shall not approve the report and shall give his reasons therefor, and shall inform the person intending to carry out the prescribed activity and the relevant approving authorities accordingly	Full equivalence	None required.

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	<p>(7) If the Director General approves the report, the person carrying out the prescribed activity, in the course of carrying out the activity, shall provide sufficient proof that the conditions attached to the report are being complied with and the proposed measures to be taken to prevent, reduce and control the adverse impacts on the environment are being incorporated to the design, construction and operation of the prescribed activity.</p> <p>Section II of the Procedures and Requirements for EIA issued by the Department of Environment (DOE) calls for EIA study report to cover detailed identification of project impacts, baseline surveys and data gathering, prediction and evaluation of impacts, including if appropriate, risk assessment, mitigation and abatement of impacts, and environmental monitoring and auditing requirements.</p> <p>It further specifies that the EIA report have detailed design of mitigation measures and preparation of an EMP which refines the recommendations on mitigation and environmental monitoring and auditing in the EIA report into an effective environmental protection strategy that demonstrates compliance to the terms of the EIA approval.</p>		
Key element (2) Prepare an environmental management plan (EMP)	<p>Section 34A of the EQA requires the following: Submission of a report to the Director General in accordance with the guidelines prescribed by the Director General that will contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.</p> <p>Section II of the Procedures and Requirements for EIA issued by the Department of Environment (DOE) calls for EIA study report to cover detailed identification of project impacts, baseline surveys and data gathering, prediction and evaluation of impacts, including if appropriate, risk assessment, mitigation and abatement of impacts, and environmental monitoring and auditing requirements.</p>	Full equivalence	None required
Key Element (3) Prepare an environmental management plan (EMP) that includes the proposed... environmental monitoring and	<p>Section II of the Procedures and Requirements for EIA</p> <p>2. The EIA study covering detailed identification of potential impacts, baseline surveys and data gathering, prediction and evaluation of impacts, including, if appropriate, risk assessment, mitigation and abatement of impacts and <u>Environmental Monitoring and Auditing requirements</u></p> <p>4. Detailed design of mitigation measures and preparation of EMP which refines the recommendations on mitigation and <u>Environmental Monitoring and Audit in the EIA into an effective environmental protection strategy that demonstrates compliance to the terms of the EIA's approval.</u></p> <p>6. <u>During project operation, the environmental monitoring and auditing is</u></p>	Full Equivalence	None required

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reporting requirements	<p><u>carried out</u> to ensure effectiveness of the mitigation measures</p> <p>Figure 2 Sequence of Activities Required for Planning Approval and Compliance with Environmental Approved Conditions and Indicates Who is Responsible for Various Activities identifies the requirement for <u>Environmental Monitoring and Auditing and Reporting</u></p> <p>In addition, EIA guidelines (developed under the requirements of the EQA) that are available for over 20 Project Categories, include specific guidance on monitoring of EMP e.g. EIA Guidelines for Oil Palm Development requires (i) Compliance Monitoring and (ii) Impact Monitoring (i) Compliance Monitoring: The objective of Compliance Monitoring is to check the compliance with agreed mitigation measures in EMP. The EMP is required to detail a compliance monitoring program for all key proposed mitigation measures, and should also include the first date set (baseline) for monitoring compliance as part of the EIA report, and later specified in the Agreement on Environmental Conditions (AEC) between the Project Proponent and the Environment Conservation Division (ECD). Scheduling and Responsibilities: Covers the entire period and requires the following: (a) <u>allocation of institutional and administrative responsibilities for planning, management, implementation and monitoring of environmental requirements</u> (b) allocation of responsibilities to execute mitigation measures (ii) Impact Monitoring: Impact Monitoring is aimed at serving as a <i>red flag</i> when monitoring components exceed stipulated limits of their respective parameters which can be taken as an indication that particular mitigation measures are either ineffective, defective or not in place, and enable the adjustment of mitigation actions.</p>		
Key Element (4) Prepare an environmental management plan (EMP) that includes... related institutional or organizational arrangements	<p>The EMP is a mandatory requirement in Malaysia and should include: 1. the final design that incorporates all mitigation measures and EIA approval process; 2. a detailed environmental monitoring program; and 3. budget and <u>personnel (organizational chart, responsibilities and implementation)</u> to implement the EMP</p> <p>Also refer to response in Policy Principle (4) Key Element (4) above that indicates that EIA guidelines for specific activities (e.g. EIA Guidelines for Oil Palm Development) Scheduling and Responsibilities: Covers the entire period and requires the following:</p>	Full Equivalence	None required

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
	(a) <u>allocation of institutional and administrative responsibilities for planning, management, implementation and monitoring of environmental requirements</u> (b) allocation of responsibilities to execute mitigation measures		
Key Element (5) Prepare an environmental management plan (EMP) that includes the proposed... capacity development and training measures	The requirement for capacity development and training in the EMP is at least implicit, and only relevant if it is recognized as a mitigation measure	No Equivalence	To attain full equivalence, the legislation and/or guidelines should include specific requirement for EMP to include capacity building and training requirements
Key Element (6) Prepare an environmental management plan (EMP) that includes the proposed ...implementation schedule	The EMP is a mandatory requirement in Malaysia and should include: 1. the final design that incorporates all mitigation measures and EIA approval process; 2. a detailed environmental monitoring program; and 3. <u>budget and personnel (organizational chart, responsibilities and implementation schedule)</u> to implement the EMP	Full Equivalence	None required
Key Element (7) Prepare an environmental management plan (EMP) that includes the proposed... cost estimates	The EMP is a mandatory requirement in Malaysia and should include: 1. the final design that incorporates all mitigation measures and EIA approval process; 2. a detailed environmental monitoring program; and 3. <u>budget</u> and personnel (organizational chart, responsibilities and implementation) to implement the EMP	Full Equivalence	None required
Policy Principle 5: Carry out meaningful consultation with affected people and facilitate their informed participation. Ensure women's participation in consultation. Involve stakeholders, including affected people and concerned nongovernment organizations, early in the project preparation process and ensure that their views and concerns are made known to and understood by decision makers and taken into account. Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment. Establish a grievance redress mechanism to receive and facilitate resolution of the affected people's concerns and grievances regarding the project's environmental performance.			
Key element (1)	Procedures and Requirements for EIA issued by the Department of Environment	Partial	For full compliance the Procedures and

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
Carry out meaningful consultation with affected people and facilitate their informed participation	(DOE) calls for the detailed EIA Reports are also displayed at all Department of Environment Offices, as well as public and university libraries for public comments. The public are widely notified through the mass media when and where the Detailed EIA Reports are available for review and comment.	equivalence There is only vague reference to ensuring meaningful consultation with affected persons in the EIA process as well as the requirement for notes of consultation with local communities affected by the proposed project to be included in the EIA report	Requirements for EIA issued by the Department of Environment (DOE) should provide guidance on how consultation should be carried out with affected people, how the EIA to respond to concerns of affected people and the documentation of the consultative process and how the project design responds to the concerns of the affected persons
Key element (2) Ensure women's participation in consultation	There is no explicit reference to "women's participation" in the EIA process either in the legislation or procedures for EIA. All potential references to indirect impacts are implicit.	No equivalence	Specific direction should be provided in Procedures and Requirements for EIA issued by DOE on ensuring participation of women in the EIA process.
Key element (3) Involve stakeholders, including affected people and concerned nongovernment organizations, early in the project preparation process.	In the Procedures and Requirements for EIA issued by the Department of Environment (DOE), there is requirement to ensure public access to the draft EIA report.	Partial equivalence There is no specific mention of the scheduling of involvement of affected people at different points of the EIA process	The Procedures and requirements for EIA issued by DOE should outline specific consultation points during the EIA process.
Key element (4) Establish a grievance redress	No mention is made of the need for project-level grievance mechanisms either in the legislation of Procedures and Requirements for EIA	No equivalence	Articles relating to project-level grievance mechanisms should be included in the Procedures

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
mechanism			and requirements for EIA
Policy Principle 6: Disclose a draft environmental assessment (including the EMP) in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders.			
Key element (1) Disclose a draft environmental assessment (including the EMP) in a timely manner, before project appraisal, in an accessible place.	There is no specific mention in the Procedures and Requirements for EIA issued by the DOE of the need to disclose the draft environmental impact assessment	No equivalence	The Procedures and Requirements for EIA issued by the DOE should require that the draft EIA be disclosed before appraisal of the project
Key element (2) Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders	Procedures and Requirements for EIA issued by the Department of Environment (DOE) calls for the detailed EIA Reports are also displayed at all Department of Environment Offices, as well as public and university libraries for public comments. The public are widely notified through the mass media when and where the Detailed EIA Reports are available for review and comment.	Partial equivalence General reference to public without explicit need for making it available to affected persons at an easily accessible location and language	The Procedures and Requirements for EIA issued by the DOE should require that the final EIA be disclosed to project affected communities and updates if any, as well
Policy Principle 7: Implement the EMP and monitor its effectiveness. Document monitoring results, including the development and implementation of corrective actions, and disclose monitoring reports.			
Key element (1) Implement the EMP and monitor its effectiveness.	Section 34A of the EQA requires the following: (7) If the Director General approves the report, the person carrying out the prescribed activity, in the course of carrying out the activity, shall provide sufficient proof that the conditions attached to the report are being complied	Full equivalence	None required.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
	<p>with and the proposed measures to be taken to prevent, reduce and control the adverse impacts on the environment are being incorporated to the design, construction and operation of the prescribed activity.</p> <p>Further Section II of the Procedures and Requirements for EIA issued by the DOE requires that during project construction, the mitigating measures and EMP for construction should be implemented</p>		
<p>Key element (2) Document monitoring results, including the development and implementation of corrective actions, and disclose monitoring reports.</p>	<p>Section 34A of the EQA requires the following:</p> <p>(7) If the Director General approves the report, the person carrying out the prescribed activity, in the course of carrying out the activity, shall provide sufficient proof that the conditions attached to the report are being complied with and the proposed measures to be taken to prevent, reduce and control the adverse impacts on the environment are being incorporated to the design, construction and operation of the prescribed activity.</p> <p>Further Section II of the Procedures and Requirements for EIA issued by the DOE that during project operation, the environmental monitoring and auditing are carried out to ensure effectiveness of the mitigating measures</p>	<p>Partial equivalence While there is requirement for monitoring, there is no explicit mention of the need for disclosing monitoring reports, although it is implicit recognition of the need to document monitoring</p>	<p>For full equivalence, directions for documentation and disclosure of monitoring results/reports should be included in the EQA and/or Procedures and Requirements for EIA issued by the DOE</p>
<p>Policy Principle 8: Do not implement project activities in areas of critical habitats, unless (i) there are no measurable adverse impacts on the critical habitat that could impair its ability to function, (ii) there is no reduction in the population of any recognized endangered or critically endangered species, and (iii) any lesser impacts are mitigated. If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area. In an area of natural habitats, there must be no significant conversion or degradation, unless (i) alternatives are not available, (ii) the overall benefits from the project substantially outweigh the environmental costs, and (iii) any conversion or degradation is appropriately mitigated. Use a precautionary approach to the use, development, and management of renewable natural resources.</p>			
<p>Key Element (1) Do not implement project activities of critical habitats, unless (i) there are no measurable adverse impacts on the critical habitat that might impair its ability to</p>	<p>The Procedures and Requirements for EIA issued by the Department of Environment (DOE) have the following requirements for ensuring that project activities are not implemented in the following habitats:</p> <p>Project proponent is encouraged not to select site which is located in or adjacent to Environmentally Sensitive Areas (ESA), as defined in National Physical Plan (April 2005). ESA shall be integrated in the planning and management of land use and natural resources to ensure sustainable development. The management of ESA shall be guided by the following criteria:-</p>	<p>Full equivalence</p>	<p>None required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
<p>function; (ii) there is no reduction in the population of any recognized endangered and critically endangered species; and (iii) any lesser impacts are mitigated</p>	<ul style="list-style-type: none"> • ESA Rank 1 – No development, agriculture or logging shall be permitted except for low-impact nature tourism, research and education. • ESA Rank 2 – No development or agriculture. Sustainable logging and low-impact nature tourism may be permitted subject to local constraints. • ESA Rank 3 – Controlled development where the type and intensity of the development shall be strictly controlled depending on the nature of the constraints. <p>The areas defined as environmentally sensitive as demarcated in IP8 of the National Physical Plan are:-</p> <ul style="list-style-type: none"> • ESA Rank 1 <ul style="list-style-type: none"> o All Protected Areas (refer to National Physical Plan), potential Protected Areas, wetlands and turtle landing sites. o Catchment of existing and proposed dams. o All areas above 1000 m contour. • ESA Rank 2 <ul style="list-style-type: none"> o All other forests, corridors, corridors linking important Protected Areas, buffer zone around Rank 1 areas. o All areas between 300m- 1000 m contour. • ESA Rank 3 <ul style="list-style-type: none"> o All marine park islands, buffer zone around Rank 2 areas. o Catchment for water intakes and groundwater extraction (wellfields). o All areas between 150m-300m contour, all areas with erosion risk above 150 ton/ha/yr, all areas experiencing critical or significant coastal erosion. <p>Furthermore, under the NPP20 of the National Physical Plan, sensitive coastal ecosystems shall be protected and used in a sustainable manner. One of the measures to be undertaken is that coastal reclamation for future urban expansion shall not be carried out except for the development of ports, marinas and jetties. The areas defined as sensitive coastal ecosystem as demarcated in IP10 of the National Physical Plan are mangrove forests, marine parks, critical coastal erosion areas (category 1) and turtle landing site.</p> <p>The EIA documents the site selection process. However, in certain instances, for large or sensitive projects, the Project Proponent may wish to confirm the site is acceptable to the authorities and public prior to commencing detailed feasibility and EIA studies. In this instance a formal documented <i>Site Search Report</i> detailing the environmental, engineering and economic initial assessment of the sites and their ranking can provide a useful decision tool.</p>		
Key Element (2)	There is no explicit reference in the legislation regarding specific conditions under which projects can be located within protected areas, as protected areas	Partial	For full equivalence, the legislation should clearly differentiate if protected areas are excluded from any

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If a project is located within a legally protected area, implement additional programs to promote and enhance conservation aims of the protected area	are general considered to be inviolate. The reference to excising, in part or full of permanent forests reserves is contained in Chapter 2 of the National Forest Act, that states that this excision is granted if the State Authorities determine that these areas are required for economic activities that have higher benefit than for which it was set-aside originally. Any such excision, should include special measures to enhance soil and water conservation and sustain its productivity, the latter relating to the use of the reserve for timber production.	Equivalence The legislation is not very clear, if the article relating to excision also refers to specially designed protected areas	development activities or not, and if the latter case applies, on what basis are such decisions made and under what authority, and what if, any enhance or mitigation measures are necessary to compensate for this
Key Element (3) In an area of natural habitats, there must be no conversion or degradation, unless (i) alternatives are not available; (ii) the overall benefits from the project substantially outweigh the environmental costs, and (iii) any conversion or degradation is appropriately mitigated	The National Forest Act of 1984 Chapter 2 states that Permanent Reserved Forests are constituted as permanent reserves that should not be converted, for sustained timber yields, soil conservation, flood control, wildlife conservation, water conservation, education and recreational purpose, research and for preservation of virgin forests. However, such permanent reserved forests, either in full, or in part, can be excised if the State Authorities are satisfied that: (i) this area is no longer required for the purpose it was classified as a permanent reserved forests, and/or (ii) is required for economic use higher than that for which it was set aside originally. However, where any land is excised, the State Authority shall, wherever possible in the national interest so do having regard to: (i) the need for soil and water conservation and other environmental considerations; (ii) the need to sustain timber production in the State in order to meet the requirements of forest industry: etc. constitute an approximately equal area of land a permanent forest reserve	Full Equivalence	None required
Key Element (4) Use a precautionary approach to the use, development, and management of renewable	The Forest Act of 1984 is confined to discussion of matters relating to permanent reserved forests (and not natural resources in general), seeks to take a precautionary approach to management and use of the natural resources in these forest lands based on its value for timber, soil and water conservation, flood protection, recreation, biodiversity conservation, etc. The Act lays out specific guidance on the rules and regulations that government	Partial Equivalence The legislations, lack a more comprehensive	For full equivalence, the legislation should define a broad approach to the protection, use and management of renewable natural resources in the country

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natural resources	the use of these forest lands for their classified purpose, and any change of use of these forest lands has to meet specific objective criteria	discussion on the rational use and management of the entirety of renewable natural resources in the country	
<p>Policy Principle 9: Apply pollution prevention and control technologies and practices consistent with international good practices as reflected in internationally recognized standards such as the World Bank Group’s Environmental, Health and Safety Guidelines. Adopt cleaner production processes and good energy efficiency practices. Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions, waste generation, and release of hazardous materials from their production, transportation, handling, and storage. Avoid the use of hazardous materials subject to international bans or phaseouts. Purchase, use, and manage pesticides based on integrated pest management approaches and reduce reliance on synthetic chemical pesticides.</p>			
<p>Key element (1) Apply pollution prevention and control technologies and practices consistent with international good practices.</p>	<p>Section 3 of the EQA: Director General and Other Offices: has the power, duties and functions to:</p> <p>(a) Administer the Act and nay regulations and orders made thereunder;</p> <p>(d) control by the issue of licences the volume, types, constituents and effects of waste discharges, emissions, deposits or other sources of emission and substances which are a danger or a potential to the quality of the environment or any segment of the environment;</p> <p>(e) to undertake surveys and investigations as to the cause, nature and extent of pollution and as to the methods of prevention of pollution and to assist and cooperate with other persons or bodies carrying out similar surveys or investigations;</p> <p>(f) to conduct, promote and coordinate research in relation to any aspect of pollution or the prevention thereof and develop criteria for the protection and enhancement of the environment</p> <p>Other sections of the EQA deal explicitly with prevention and control of pollution, such as:</p> <p>Section 21: Specific conditions of emission discharge</p> <p>Section 22: Restrictions of pollution of atmosphere</p> <p>Section 23: Restrictions on noise pollution</p> <p>Section 24: Restriction on pollution of the soil</p> <p>Section25: Restriction on the pollution of inland waters</p> <p>Section 27: Prohibition of discharge of oil into Malaysian waters</p>	Full equivalence	None required.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
	<p>Section 29: Prohibition of discharge of wastes into Malaysian waters</p> <p>Section 30: Restriction on open burning</p> <p>The Procedures and Requirements for EIA issued by the Department of Environment (DOE) that the following criteria in siting of projects to prevent and control pollution:</p> <p><i>Buffers:</i> Appropriate buffer zones should be included with respect to a specific category of development projects i.e. industrial projects, solid waste handling and disposal facilities (landfills, incinerators, composting plants, etc.), toxic and hazardous wastes treatment and disposal facilities, with potential to give rise to air including odour problems, water and noise pollution and solid and toxic waste problems. DOE's "<i>Guidelines for the Siting and Zoning of Industries</i>" (latest revision) can be used as a general guide, subject to the findings of the EIA.</p> <p>Extensive control problems will be expected in many cases and bushes, trees, banks etc can provide barriers to neighbors and improve aesthetics.</p> <p><i>Air Pollution:</i> in areas where air pollution from emissions will seriously affect local communities should be avoided. Locate to minimize air pollution and odour impact from point and fugitive sources. Where emissions of carcinogenic or mutagenic is possible due account should be made for health risks.</p> <p><i>Water Pollution:</i> Siting a facility along water courses can cause their eventual degradation, and affect critical beneficial uses downstream such a public water supply intake, fisheries or basic riverine livelihood. Water catchment areas should be avoided.</p> <p><i>Geology/hydrology:</i> Siting of facilities (e.g industries, scheduled wastes facilities, solid wastes landfills) should have due regard for their potential to contaminate groundwater reserves.</p> <p><i>Risks of Toxic Clouds, Fire and Explosion:</i> Locate so that the outer hazard distances coincide with the outer boundary of the buffer zone and human settlements</p> <p>Additional guidance on environmental quality is provided in the Environmental Quality (Clean Air) Regulations of 1978 that was exercised under the powers conferred by section 51 of the Environmental Quality Act, 1974.</p>		
Key Element (2) Adopt cleaner production processes and good energy efficiency practices	<p>Environmental Quality (Clean Air) Regulations of 1978 Article 32: Occupier to Use Best Practical Means:</p> <p>(1) requires the occupier of any industry or trade establishment to use the best practical means to prevent the emission of noxious or offensive substances and to render harmless and inoffensive those substances that are discharged.</p>	Full Equivalence	None required

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
	<p>“Best practical means” include the following:</p> <ul style="list-style-type: none"> (i) the size, design and inherent operation characteristics of the plant or process; (ii) the provision of suitable control instrumentation; (iii) the use of suitable raw material or fuels (iv) the alternative process within the capacity and design capability of the plant (v) the proper conduct and supervision of operations; and (vi) regular and efficient maintenance of plant and control equipment 		
<p>Key Element (3) Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions, waste generation, and release of hazardous materials from their production, transportation, handling, and storage.</p>	<p>The Handbook of EIA Guidelines; Guidelines for Siting and Zoning of Industries, EIA Guidelines for Toxic and Hazardous Waste Treatment and Disposal; EIA Guidelines for Chemical Industrial Project; EIA Guidelines for Risk management and other instruments established under the requirements of the Environmental Quality Act all require:</p> <ol style="list-style-type: none"> 1. That recovery of wastes should be undertaken by reducing the volumes of these scheduled wastes that needs to be finally disposed; 2. Use state of technology that can affect recovery for a large range of materials 3. Complying with air emission and effluent discharge standards 4. Commitment of project proponents to adopt significant pollution control equipment to reduce emissions and discharges <p>In addition, project proponents are expected to determine possible preventive, remedial or compensatory measures for each adverse impacts, such as:</p> <ol style="list-style-type: none"> 1. creation of buffer zones outside pollution facilities 2. having adequate pollution control and waste treatment systems 3. separate drainage systems for spillage 4. storage and handling of raw materials and products 5. alternate process technology and raw materials which are safer and environmentally friendly 6. minimization of wastes <p>Additionally, the Environmental Quality (Clean Air) Regulations of 1978 Sections 18 through 34 describes measures for the prohibition and control of</p>	<p>Full Equivalence</p>	<p>None required</p>

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	<p>pollution, including prescription for premises that are origin of pollutants, specific prohibitions, requirements for approval of plans for such premises, power to specify emissions and discharges into the atmosphere, soil, inland waters, and prohibitions on noise, open burning, and the power of the state to control use of substances that can cause pollution, licensing etc.</p> <p>Section 32, (in particular): Occupier to Use Best Practical Means:</p> <p>(1) requires the occupier of any industry or trade establishment to use the best practical means to prevent the emission of noxious or offensive substances and to render harmless and inoffensive those substances that are discharged.</p> <p>“Best practical means” include the following:</p> <ul style="list-style-type: none"> (i) the size, design and inherent operation characteristics of the plant or process; (ii) the provision of suitable control instrumentation; (iii) the use of suitable raw material or fuels (iv) the alternative process within the capacity and design capability of the plant (v) the proper conduct and supervision of operations; and <p>regular and efficient maintenance of plant and control equipment</p> <p>Under Section 36E Application to the Environment Fund it specifies that the Fund shall be administered for the purposes:</p> <ul style="list-style-type: none"> (a) conducting, promoting and coordinating research in relation to pollution management and control (b) recovery of waste, or removing, dispersing, destroying, cleaning or disposing of, or mitigation of pollution (c) preventing of combating (i) spillage or dumping of oil; (ii) a discharge, deposit or dumping of environmentally hazardous substances, and (ii) a discharge, deposit or dumping of waste (d) encouraging conservation measures against damage that maybe be caused by any of the occurrences spelt out in (c) (i), (ii) and (iii) above 		
Key Element (4) Avoid the use of hazardous materials subject to international bans	<p>The EQA Section 31A Prohibition order states that:</p> <p>(2) the Minister, in circumstances where he considers the environment, public health or safety is under or likely to be under serious threat, may direct the Director General to: (a) issue an order requiring a person to cease all acts that have resulted in the release of environmentally hazardous substances, pollutants</p>	Partial Equivalence No reference in the legislation or guidelines to	To attain full equivalence, the legislation should make explicit reference to include the avoidance of hazardous substances based on international bans and phase-outs

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
or phase-outs	<p>or wastes; and (b) effect and render any machinery, equipment, plant or process of the person inoperable</p> <p>Section 37: Owner or Occupier to Furnish Information:</p> <p>(1) the Director general may serve notice and require the owner to furnish the following information:</p> <p>(b) the use of raw materials, environmentally hazardous substances, or any process, equipment, control equipment or industrial plant found in the [remises</p> <p>(c) any environmentally hazardous substances, pollutants or wastes discharged or likely to be discharged therefrom, and</p> <p>(d) any environmental risk that is likely to result from the use of the raw materials, environmentally hazardous substances or process</p> <p>In addition, Section 38 deals with the Power to search: Section 38A with the power to examine the person under investigation, and Section 39 the Service of Notice</p>	avoid use of hazardous materials based on international acceptable norms and phase-outs	
Key Element (5) Purchase, use, and manage pesticides based on integrated pest management approaches and reduce reliance on synthetic chemical pesticides.	<p>The Pesticide Act of 1974; Part VI Control of Manufacture, Sale and Storage of pesticides</p> <p>Part X General Article 57 Rules and regulations requires the Minister to make rules and regulations for:</p> <p>(b) registration, licensing and issue of permits</p> <p>(e) prescribe measures to ensure the protection, safety, and well-being of workers engaged in the manufacture and handling of pesticides, that includes (i) protective clothing, equipment and facilities for workers; (ii) provision of medical examination, (iii) first aid treatment facilities; (iv) training and information on safe manufacture and handling of pesticides</p> <p>(f) requirements for safe transport of pesticides</p> <p>(g) prescriptions for safe storage of pesticides</p> <p>(h) prescriptions for labelling and packaging of pesticides</p> <p>(k) regulations for protecting persons from dangers associated with fumigation, spraying and treatment of pesticides and training requirements for persons using pesticides, regulations for disposal of residues</p>	<p>Partial Equivalence</p> <p>The Legislation lacks requirement for application of IPM as an approach</p>	<p>To attain full equivalence, the legislation should require that use of pesticides to be managed and controlled through the framework of an IPM approach</p>
Policy Principle 10: Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease. Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities.			

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
Key Element (1) Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease	<p>There is no explicit reference to “provision of safe and healthy working conditions and minimizing and avoidance of risks to health and safety’ in the EQA legislation and in the Procedures and Requirements for EIA issued by the Department of Environment (DOE). All potential references to safe and healthy working conditions are implicit.</p> <p>However, the Occupational and Health Safety Act of 1994 makes provisions for securing the safety, health and welfare of persons at work, for protecting others against risks to safety or health in connection with the activities of persons at work, to establish the National Council for Occupational Safety and Health, and for matters connected therewith.</p> <p>The objects of this Act are to:</p> <p>(a) to secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work;</p> <p>(b) to protect persons at a place of work other than persons at work against risks to safety or health arising out of the activities of persons at work;</p> <p>(c) to promote an occupational environment for persons at work which is adapted to their physiological and psychological needs;</p> <p>(d) to provide the means whereby the associated occupational safety and health legislations may be progressively replaced by a system of regulations and approved industry codes of practice operating in combination with the provisions of this Act designed to maintain or improve the standards of safety and health.</p>	Partial equivalence	For full equivalence Section 34A of the EQA or Procedures and Requirements for EIA issued by the Department of Environment (DOE) should make direct reference to require compliance with the Occupational and Health Safety Act of 1994.
Key Element (2) Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local	<p>The Guidelines for Health Impact Assessment in EIA issued by the Ministry of Natural Resources and Environment under the direction of the Environment Quality ACT makes specific reference for the preventive and emergency preparedness as follows:</p> <p>Section 2.5 Emergency Response Plan requires that even when mitigation measures are properly in place, the project proponent needs to develop an emergency response plan. The emergency response plan should have the following features:</p> <p>(a) a detailed information of potential health hazards, health effects and their control</p> <p>(b) a plan to engage emergency stakeholders like the departments of Environment, Health, District Offices, Local Village Development and</p>	Full Equivalence	None required

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
communities	Security Committee (c) a plan to engage security and emergency authorities like the private security firm, police, fire and rescue, district hospital, district health office and others (d) a plan for public awareness and information system through mass media; and (e) public evacuation plan		
<p>Policy Principle 11: Conserve physical cultural resources and avoid destroying or damaging them by using field-based surveys that employ qualified and experienced experts during environmental assessment. Provide for the use of “chance find” procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation.</p>			
<p>Key element (1) Conserve physical cultural resources and avoid destroying or damaging them by using field-based surveys that employ qualified and experienced experts during environmental assessment.</p>	<p>There is no explicit reference to “identification of impacts on physical/cultural resources” in the legal framework. All potential references to physical and cultural resource impacts are implicit. However Procedures and Requirements for EIA issued by the Department of Environment (DOE) requires the assessment of impact on cultural resources</p> <p>However, the National Heritage Act of 2005, calls for the “safeguarding” which means the identification, protection, conservation, restoration, renovation, maintenance, documentation and revitalization of historic or traditional matter, artefact, area and their environment; and “conservation” that includes preservation, restoration, reconstruction, rehabilitation and adaptation or any combination. In terms of the national heritage act, it refers to “cultural heritage significance” means cultural heritage having aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, linguistic or technological value; as well as “natural heritage” includes natural features of any area in Malaysia which may consist of earthly physical or biological formations or group of such formations, geological or physiographical features, mountains, rivers, streams, rock formation, sea shore or any natural sites of outstanding value from the point of view of nature, science, history conservation or natural beauty including flora and fauna of Malaysia;</p>	<p>Partial equivalence There is no guidance on the use of field based surveys and experienced experts for environmental assessments</p>	<p>For full compliance, the legislation should require the use of field-based surveys and experienced experts for environmental assessments</p>
<p>Key element (2) Provide for the use of “chance find” procedures that include a pre-approved management and</p>	None	No equivalence	<p>The legislation, should provide guidance on how to address ‘Chance Finds’ during project implementation</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions of the draft of the Law on EIA ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures
conservation approach for materials that may be discovered during project implementation			

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