



## SUMMARY OF CASE LAW ON WASTE PRODUCER LIABILITY

### MALAYSIA

We were not able to locate specific court cases in Malaysia on waste producer liability. The national provisions that affect waste producer liability are set out below.

#### Summary of the National Law

The [Solid Waste and Public Cleansing Management Act of 2007, Act 672](#), provides several important provisions that affect waste producers:

*“Any person who has in his possession of any controlled solid waste shall take all reasonable measures to prevent the escape of any controlled solid waste from his possession.” Chapter VIII, Sec. 72(1). (emphasis added).*

*“If any controlled solid waste is deposited or disposed of in contravention of this Act, the Director General may, by notice in writing served on— (a) the owner or occupier of the premises; (b) the person who deposited or disposed the controlled solid waste; or (c) the solid waste generator, direct him to remove the controlled solid waste from the premises within a period of not more than three days from the date of the service of the notice.” Chapter VIII, Sec. 76(1) (emphasis added).*

*“If the Director General exercises the power conferred on him under subsection (2), the cost incurred in removing the controlled solid waste shall be a debt due to the Government and shall be recoverable accordingly from— (a) the owner or occupier of the land or premises unless he proves that he neither made nor caused or permitted the deposit of the controlled solid waste and that he took all reasonable measures to avoid the deposit on the premises; (b) the person who deposited or disposed of or caused or permitted the deposit or the disposal of the controlled solid waste; or (c) the solid waste generator.” Chapter VIII, Sec. 76(3).*

The Act also provides for personally liability of corporate officers and managers:

*If a body corporate commits an offence under this Act or any regulations made under this Act, any person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate, or was assisting in such.*

*management ... may be charged severally or jointly in the same proceedings with the body corporate.*” Chapter VIII, Section 96(a). (emphasis added).

Clean-up liability is addressed in other legislation. [Environmental Quality Act 1974](#) (“EQA”) is the primary legislation that addresses the prevention, abatement and control of pollution, as well as the protection of the environment in Malaysia. Section 24(1) of the EQA stipulates that a “person will be liable if he or she pollutes, or causes, or permits the pollution of any soil or surface of any land in contravention of the acceptable conditions” specified under the EQA. See [Contaminated Land Management and Control Guidelines](#) (2015). Those guidelines specifically refer to polluting activities from “the handling of waste.”

[New legislation is in the works](#) to dramatically increase the fines and penalties for violations of waste laws, including up to 1.6 million RMS fines. The link discusses a recent case of dumping that has triggered a political response and tougher legislative proposals.

#### **CONTACT INFORMATION:**

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