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# **RECOMMENDATIONS FOR AN EFFECTIVE EXTENDED PRODUCER RESPONSIBILITY IMPLEMENTATION AND POLICY IN MALAYSIA**



# Table of Contents

01	INTRODUCTION .....	01
02	THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) DEFINITION OF AN EPR SYSTEM .....	02
03	MALAYSIAN WASTE MANAGEMENT AND RECYCLING LANDSCAPE .....	02
04	CRITICAL ELEMENTS OF AN EFFECTIVE EPR POLICY .....	03
05	ENFORCEMENT OF EPR .....	04
06	VALUE OF MAREA AS PRO .....	04
07	CRITICAL SUCCESS FACTORS FOR EFFECTIVE EPR LEGISLATION IN MALAYSIA .....	05
08	FINANCIAL CONSIDERATIONS OF AN EPR PROGRAMME .....	08
09	DEVELOPMENT OF END-MARKETS .....	10
10	CONCLUSION .....	10

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## Introduction

As leaders in the consumer, packaged goods industry and as packaging manufacturers, the Malaysian Recycling Alliance (MAREA) understands that we have a significant responsibility to act, and seek collective and individual actions, to address the challenge of packaging waste, in particular plastic packaging waste.

Our packages, which include beverage cartons, flexible plastics, HDPE and PET plastic, are some of the most recycled materials in both formal and informal recycling systems. In Malaysia, contributors to MAREA have made significant commitments to the sustainability of our packaging. These include designing our packaging to be recyclable, using more recycled or renewable content, and supporting recycling systems through multi-stakeholder and industry-wide platforms that work to advance sustainable packaging and the circular economy.

Although post-consumer packaging forms only a fraction of total household waste in Malaysia, the industry has had a strong and abiding commitment to contribute to Malaysia's sustainability and circular economy aspirations. Initially started as a group of 10 leading packaging producers and brand owners, we formed MAREA as an industry-led multi-material collection and recycling alliance that aims, through collective action, to improve packaging waste management in Malaysia. Starting as a voluntary platform, MAREA welcomes players from the obliged industry to join as contributors.

Our goal is to continue to increase recycling and enable our packaging to be transformed into a resource in a circular economy.

As an industry, we support the Malaysian Government's drive to develop a sustainable environment through the Roadmap Towards Zero Single Use Plastics (2018-2030), Malaysia Plastics Sustainability Roadmap (2021-2030) and the proposed establishment of the National Circular Economy Council. We are aware these national ambitions can only be achieved through collaboration across industry, consumers and with governments and based on the principles of a circular economy that ensures all packaging is renewable, reusable and recyclable and that collection and recycling systems are able to handle these materials responsibly.

This document sets out our ideas and recommendations on developing and implementing an effective Extended Producer Responsibility "(EPR)" policy in the country.



## The Organisation for Economic Co-operation and Development (OECD) definition of an EPR system

EPR is most commonly defined as ‘an environmental policy approach in which a producer’s responsibility for a product is extended to the post-consumer stage of a product’s life cycle. An EPR policy is characterised by:

1. The shifting of responsibility (physically or economically; fully or partially) upstream toward the producer and away from the municipalities; and
2. The provision of incentives to producers to take into account environmental considerations when designing their products.’<sup>1</sup>

However, experience in European countries and in accordance with the OECD Report, there is no single “most successful” setup. Each EPR system needs to be tailored to the specific requirements of the country and its success is determined through an effective and efficient organisation, financing, administration and control of the system.

## Malaysian waste management and recycling landscape

EPR policy only works when general waste management legislation that incentivises recycling over disposal is

firmly established and enforced. The “Solid Waste and Public Cleansing Management Act” (Act 672) provides a good basis for this. However, we note that Act 672 only applies to Peninsular Malaysia and the Federal Territories of Malaysia (Kuala Lumpur, Putrajaya and Labuan) but not to Sabah and Sarawak. In addition, Act 672 has only come into operation in the States of Perlis, Kedah, Pahang, Negeri Sembilan, Malacca and Johore, and the Federal Territories of Kuala Lumpur and Putrajaya. In these States regional concessionaires (Alam Flora, e-Idaman and SWM) carry out the solid waste management collection based on long-term agreements overseen by SWCorp.

As of September 2015, SWCorp has also implemented mandatory separation at source of recyclable waste in the Act 672 States, based on a subsidiary regulation under Act 672 requiring the waste management concessionaires to introduce a separate collection cycle for recyclable waste (2+1).<sup>2</sup>

However, as of 2022, Act 672 has not come into operation in the States of Kelantan, Penang, Perak, Selangor and Terengganu. For these non-Act States, the responsibility for solid waste management remains with the local and/or state level government who decides whether and how to implement a separate recycling collection system. In the case of Penang, the two city councils have implemented identical by-laws<sup>3</sup> that introduce a separate collection process for recyclable waste. Local and/or State level governments in other non-Act states have also implemented different versions of recycling collection.

<sup>1</sup> Reference: OECD – Environmental Policies and Instruments – Extended Producer Responsibility – [http://www.oecd.org/document/19/0,3343,en\\_2649\\_34281\\_35158227\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/19/0,3343,en_2649_34281_35158227_1_1_1_1,00.html)

<sup>2</sup> SW Corp; Scheme for household solid waste and solid waste similar to household solid waste; Regulation 2011. Currently, the definition of +1 according to JPSPN <https://jpspn.kpkt.gov.my/index.php/pages/view/127> is not limited to recyclable materials

<sup>3</sup> Majlis Bandaraya Pulau Pinang & Majlis Bandaraya Seberang Perai; Undang-undang Kecil Pengasingan Sampah dan Pelesenan Perkhidmatan Pemungutan Sampah Yang Boleh Dikitar Semula

We respectfully submit that a successful EPR scheme needs to be developed in this context and for the Malaysia specific situation. In the short-term this might require different approaches in States that have adopted Act 672 and in non-Act States. In the long-term we believe that a successful EPR scheme will require a common legal and policy framework that can be applied homogenously across Malaysia.

Lastly, it is important to note that most of the post-consumer recyclable waste is currently collected or aggregated by the informal sector<sup>4</sup>. Including the different types of informal sector participants will be important for the success of an EPR scheme.



## Critical elements of an effective EPR policy

While the current regulation both under Act 672 and in States like Penang provide a good basis, we believe that this can be enhanced and recommend that expansions should include:

- **Material Scope:**

To take an inclusive approach to include all post-consumer packaging categories (plastics, metal, paper-based packaging, glass) which will increase recovery and recycling rate of overall packaging waste and support to optimize cost efficiency in collection and recycling value chain

- **Obligated Industry:**

All producers/brand owners with products inputs to the market. An EPR model needs to cover the total packaging waste scope which majority of the material also comes from other/local Fast Moving Consumer Goods (FMCGs), e-commerce and service packaging, including and not limited to takeaway food. It is also important to ensure that an EPR framework to progress into mandatory requirement to ensure level playing field for all producers and to avoid free riders.

- **Roles and responsibilities:**

Clear assignment of roles and responsibilities of national and municipal governments, industry, waste operators and consumers; and industry to ensure recycling solutions for their products and packaging are in place.

- **Data and monitoring:**

There should be comprehensive data collection on waste streams along the value chain to enable fact-based decisions; and effective monitoring and controlling systems with sufficient data documentation.

<sup>4</sup> World Bank 2021, Market Study for Malaysia - Plastic Circularity Opportunities & Barriers

- **Effective implementation:**

Leveraging on an effective waste segregation at source foundation, and focusing on optimizing current infrastructure, addressing gap in eco system. This includes agreed upon key performance indicators of the scheme; separate collection of recyclable and non-recyclable waste at the source; requirements for local authorities and their waste operators to separately collect recyclable and non-recyclable waste from households; providing resources and administrative capabilities to effectively monitor and enforce; and integrating existing informal waste collection into formal collection systems in a manner that combines environmental objectives with social needs.



## Enforcement of EPR

We further recommend that as mandatory EPR policy is developed, attention is paid to its enforcement so federal, state and local authorities will be in a position to plan and finance integrated waste management solutions. Without this overarching policy framework, industry cannot reasonably achieve EPR and meet legal packaging recycling targets, because:

- The roles and responsibilities for the management of all consumer wastes (including food waste, packaging waste and general waste) are not standardized. They are also defined differently across the whole of Malaysia;
- Producers would have little to no access to collected packaging wastes because there would be no rules to mandate separation of waste at source;
- Investors in recycling technologies would not be adequately incentivised to invest in Malaysia without a clear regulatory framework;
- There would be high risk of fraud and ineffective use of public money on unrelated activities.

Therefore, any EPR regulatory framework must start with establishing general waste legislation, of which the setting of waste collection, treatment, disposal and recycling targets are key.

## Value of MAREA as PRO

MAREA, in its position as the producer responsibility organisation (PRO), is the most important element in a functioning EPR scheme. Thus, it is important to outline the general set-up in the legal basis. This organisation is responsible for setting up and developing the system. Thereby, the PRO is fulfilling the collective responsibility of the obliged companies and becomes responsible for the fulfilment of all take-back obligations as the representative entity. Fulfilling these tasks can be achieved through different PRO models.



MAREA has been developed as a PRO organisation, based on international experience, that ensures the highest level of transparency possible. As a single PRO that covers packaging for different materials, it operates as an industry-owned enterprise with a Board of Directors made up of a balanced representation of the different member groups. Together, we provide the necessary funding and set the strategic direction for the organization, which is to embark on collection and recycling activities in an agreed municipality or concession areas in Malaysia as well as undertake some consumer education and government collaboration.

## Critical success factors for effective EPR legislation in Malaysia

Through the experience of MAREA's contributors in supporting the implementation of effective recycling programmes in developed markets across Europe as well as in countries at their starting points such as Brazil, South Korea, and South Africa, we have identified several elements which are common to successful implementation of EPR policies, across different geographical and market conditions:

- EPR approaches are more successfully implemented when they are backed by *mandatory reporting* on the amount and nature of packaging introduced by a producer or importer into the market to enable tracking of progress on an annual basis;

- Local, State or Federal governments are in charge of securing municipal waste management in an environmentally sound manner. They are entitled to charge citizens, commercial outlets and businesses for waste management services (e.g. through direct charges to households, local/municipal taxes ring-fenced within local authority budgets);
- EPR is *applied to all producers, importers and retailers (including online retailers & e-commerce companies)* of packaged goods<sup>5</sup> and to *all the packaging materials and types they use* in order to ensure a level playing field for all companies. At the outset, an EPR system may need to start small based on what the local collection, sorting and recycling system can manage, but the system should expand over time to include all major consumer goods packaging types. Different materials have different costs to recycle and different market values, and each material should “pay its own way”, meaning the cost of including a given material in the system needs to be assigned to that material and the producers who use it;

<sup>5</sup> The Organisation for Economic Cooperation and Development (OECD) guidance on Extended producer Responsibility: Updated guidance for effective waste management, 2016, page 39 recommends defining the producer as “...the brand owner or first importer or filler of the packaging rather than the firm that produces the container...” because they are the ones with the greatest control over the selection of the materials and design of the product.

- Given the extended responsibilities applied to the obliged industry, *EPR implementation can be more effective and efficient when it is executed through an Industry-led PRO* which in Malaysia, MAREA may take on the role as the packaging PRO where obliged industry become contributing members. This can start as a voluntary basis and transition to mandatory to ensure economy of scale and level playing field for all obliged industry players.
- For a well-functioning EPR, with the basis of an Industry-led PRO, is for *MAREA to also take the role of the fund management body where obliged industry takes the direct management responsibility and ownership of the fund management* under such scheme.
- Any EPR tool should also be accompanied by related *consumer education and awareness programmes* on waste separation and anti-littering behaviour. Once the system is established, consistency in the covered materials should be maintained, including clear on-pack labelling to help consumers understand which materials to recycle. The system should only cover consumer packaging and not include mixed waste. The most successful EPR schemes, are built on some degree of separate residential collection of waste to improve the quantity and quality of collected recyclable materials.
- *Governments play an essential role in ensuring its successful enforcement* by:
  - Setting appropriate recycling performance requirements and targets (e.g. diversion targets in Brazil, recycling targets in Europe and Japan, access to separate collection in the US);
  - Enforcing the requirements set out in the legislation, especially with regard to ensuring fair competition among operators involved and securing that all actors meet their obligations (companies and provincial entities).



As a general trend, areas with very little formal municipal waste management and recycling infrastructure tend to delegate less responsibility to producers and focus much more on fostering cooperation between producers and local governments to create effective recycling programmes (e.g. Brazil).

It is challenging and unrealistic to try and “copy-and-paste” one EPR approach from one country to another. Each country faces unique challenges and must develop its own approach to meet its specific environmental, social and economic conditions. There are, indeed, some key elements that we believe are relevant to support the EPR policy developments in Malaysia.



- Malaysia, as with most other countries considering EPR, should adopt broader national policies and are further developing waste legislation to promote a circular economy in order to reduce waste for final disposal and minimise the consumption of primary resources. They have moved beyond a focus on packaging waste management in isolation of broader resource efficiency policies.
- Having comprehensive and rigorously enforced waste management policies and infrastructure in place provides the critical foundation for the implementation of effective, efficient and sustainable packaging waste recycling programmes.<sup>6</sup> Without these, it becomes extremely difficult to increase packaging recycling rates sustainably.
- All packaging waste types must be included in the legislation.
- All producers must legally participate, and free riders should be identified via a peer review process. The playing field for EPR should be level.
- Countries like Malaysia, with an informal sector that collects recyclables, take into consideration the role played by informal waste collectors and promote their inclusion in local recycling programmes.<sup>7</sup> To this end, we offer the following for consideration:
  - The organisation of these informal sector workers (e.g. cooperatives) to transition into formal collection or sorting services (legal entities);
  - Recognition of waste picking activities as dignified work, with laws supporting their social and economic inclusion;
  - Provision of financial and technical assistance to waste picker organisations to ensure their commercial viability.
- Supporting national policies like landfill bans and 'user pay' fees have helped incentivise recycling and unlock investment from the private sector for collection and recycling infrastructure.<sup>8</sup>
- No matter which collection schemes will be implemented, it is critical that there is a level-playing field for producers that does not distort fair competition. This can be achieved by specifying minimum requirements<sup>9</sup> that all schemes must meet:
  - Clearly defined roles and responsibilities of all actors including those for producers, EPR schemes, waste operators, provincial and city authorities and the informal waste sector;

<sup>6</sup> European countries that have high achieved high recycling rates for packaging waste (i.e. Belgium, Spain, Germany) have all implemented effective national waste and recycling legislation. See overview from the European Commission's Assessment of Separate Collection Schemes in the 28 Capitals of the EU, 2015, page 48

<sup>7</sup> The Organisation for Economic Cooperation and Development (OECD) guidance on Extended producer Responsibility: Updated guidance for effective waste management, 2016, page 15

<sup>8</sup> Canadian Council of Ministers of Environment (CCME) State of Waste Management in Canada, 2014, page E-4, E-5

<sup>9</sup> The European Union revised their Waste Framework Directive to include an entire section on general minimum requirements for EPR, EU Waste Framework Directive Consolidated Text, 23 February 2018, Article 8a

- Clearly defined geographic, product and material coverage without limiting service to areas to where collection and recycling are most profitable;
- Establish quantitative and measurable recycling targets and ensure transparent and verifiable reporting systems are in place;
- Ensure equal treatment of producers, regardless of their origin or size and without placing a disproportionate regulatory burden on producers;
- Provide an appropriate availability of collection systems;
- Ensure the scheme has the necessary financial and organisational means to fulfil the objectives

## Financial considerations of an EPR programme

- **Definition of included costs:**

The list of included costs should be closed and not open for interpretation. Activities for which producers are financially responsible should be clearly identified and limited to an appropriate share of post-consumer collection and sorting costs for the residential sector, including multi-family housing. Collection and sorting of materials from industrial, commercial and institutional locations should be addressed separately from the EPR system due to added complexity and inefficiencies.

- **Consumer education and awareness:**

Included. Investments in consumer education and awareness result in improved quantity and quality of recovered materials, thereby improving the overall environmental benefit and cost effectiveness of an EPR programme.

- **Treatment of residual waste:**

Not included. EPR costs may increase significantly if the scheme requires that residual wastes resulting from collection and sorting require additional handling to extract further material for recycling. Most packaging that remains in residual waste will be technically, environmentally and economically unviable for recycling.

- **Litter clean up:**

Not included. A producer's responsibility should not extend beyond the actions required to meet recycling targets. Producers should not bear the sole responsibility of paying for litter clean-up because this is a larger societal problem. Public waste collection and general waste management are outside of industry control.





- **Distribution of cost:**

Broad distribution, or shared financial responsibility, including municipal, State or Federal government and consumers. The cost of collection and sorting should be shared among producers and municipalities and potentially other value chain actors (packaging producers, retailers, recyclers) where appropriate so that the costs to any single company are minimized because all critical stakeholders pay a share. A clear definition of the roles and responsibilities of all actors will help to share the costs among parties.

- **Material revenue:**

“Net cost” principle. Revenue from the sale of collected materials should always be credited to the system to offset the collection obligation. EPR fees to obligated industries should reflect the actual cost of collection and sorting as well as material revenue differentiated by material type, meaning costs and revenues are allocated back to specific materials and cross-subsidization of materials is avoided. In addition, eco modulation principles should be considered, to take into consideration the overall life cycle impact of the material (from raw material to end of life solutions). Obligated industry (MAREA's contributors) owns the transaction and not the physical bales and should have the right to the benefits of the materials, including volume ownership for accountability as well as value for net cost reconciliation; They have preferred access to the purchase of recycled materials in support of closed loop recycling.

- **Incentives for sustainability:**

Variable on a case-by-case basis. Through the Consumer Goods

Forum (CGF) approach known as “eco-modulation”, a bonus (fee reduction) may be awarded based on the recyclability of a package. Incentives could also be structured for recycled content or bio-based packaging that is compatible with recycling systems. However, some fee proposals may be punitive in practice, and divergence of incentives may inhibit economies of scale in the design and production of sustainable packaging. Eco-modulation may add complexity and needs to be properly accounted for in the system budget. Consequently, care should be taken when considering eco-modulation in the approach.

- **Maintain a healthy recycling value chain for all materials:**

To ensure the successful recycling of all collected material, recyclers should be monitored and contracted to recycle local material collected by the EPR scheme. Recycler economics must be considered to maintain the viable economic functioning of recycling of all packaging materials to prevent landfilling of low value materials.

We further note that it will be critical to regularly measure and audit the EPR measures put into place to ensure they are effectively generating the desired outcome. For us, that means ensuring that EPR is applied to all producers and importers of packaged goods, and to all the packaging materials and types they use to ensure a level playing field for all companies. Such an approach, when diligently applied, would represent the most effective and efficient path now possible to increasing recycling rates in Malaysia.

## Development of end-markets

Finally, the commercial viability of recycled products remains an important factor ensuring the long-term feasibility of any EPR system as well as the establishment of a viable circular economy. The recycled products have to be commercially viable and the contributors of MAREA have considerable experience in developing end-markets for these goods, based on their experience in international markets as well as those closer to home, in Asia. However, for Muslim-majority markets such as Malaysia, a major factor will be the establishment of halal standards and certification of these recycled products for food contact material. We respectfully urge the Malaysian Government to establish these guidelines similar to those for packaging materials recently approved at the Senior Officials Meeting of the ASEAN Ministers on Agriculture and Forestry (SOM-AMAF).

## Conclusion

We hope the ideas contained in this document will be helpful to Malaysia and welcome the opportunity to continue this mutually constructive dialogue with the government to shape Malaysia's EPR policy and legislation.

It is critical that the EPR framework is well scoped and enforced to ensure its success in overcoming Malaysia's packaging waste challenge and meeting the ambitions set forth in the Roadmap Towards Zero Single Use Plastics (2018-2030) and Malaysia Plastics Sustainability Roadmap (2021-2030). Sound policymaking must be complimented with appropriate implementation measures that have robust monitoring mechanisms to ensure Malaysia's EPR scheme attains its objectives.

We believe that MAREA is well positioned to support the government in this journey.





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For enquiries about the document and more information about MAREA, please refer to the website below :

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