



# ICLG

The International Comparative Legal Guide to:

## **Environment & Climate Change Law 2013**

**10th Edition**

A practical cross-border insight into environment and climate change law

Published by Global Legal Group, in association with Freshfields Bruckhaus Deringer LLP, with contributions from:

Ada Alegre Consultores SAC

AKINCI Law Firm

Allen & Overy LLP

Bloomfield Advocates & Solicitors

Bowman Gilfillan

CMS Cameron McKenna

Debarliev, Dameski & Kelesoska Attorneys at Law

Drinker Biddle & Reath LLP

Fillmore Riley LLP

Gonzalez Calvillo, S.C.

Guevara & Gutiérrez S.C. Servicios Legales

Harris Kyriakides LLC

Horten

Hunsucker Goodstein PC

Julia Rabinovici Consultoria Ambiental

LEX

Macías Gómez & Asociados Abogados

Maddocks

McCann FitzGerald

Murtha Cullina LLP

Nishimura & Asahi

Quiros Abogados, Central Law

Rattagan Macchiavello Arocena & Peña Robirosa

Romulo Mabanta Buenaventura Sayoc & de los Angeles

Schellenberg Wittmer

University College London

Uría Menéndez - Proença de Carvalho

Urrutia & Cía. Abogados

Ziv Lev & Co. Law Office

# GLG

Global Legal Group

## Contributing Editors

Daniel Lawrence and John Blain, Freshfields Bruckhaus Deringer LLP

## Account Managers

Beth Bassett, Brigitte Descaq, Dror Levy, Maria Lopez, Florjan Osmani, Oliver Smith, Rory Smith

## Sales Support Manager

Toni Wyatt

## Sub Editors

Beatriz Arroyo  
Fiona Canning

## Editor

Suzie Kidd

## Senior Editor

Penny Smale

## Group Consulting Editor

Alan Falach

## Group Publisher

Richard Firth

## Published by

Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

## GLG Cover Design

F&F Studio Design

## GLG Cover Image Source

iStockphoto

## Printed by

Information Press Ltd  
March 2013

Copyright © 2013

Global Legal Group Ltd.  
All rights reserved  
No photocopying

ISBN 978-1-908070-54-8  
ISSN 2045-9661

## Strategic Partners



## General Chapters:

1	<b>Parents Beware</b> - Paul Bowden, Freshfields Bruckhaus Deringer LLP	1
2	<b>Green Energy Policy in the Northeastern United States</b> - Mark R. Sussman & Paul R. Michaud, Murtha Cullina LLP	5
3	<b>Environmental Enforcement and Sanctions – The New Agendas</b> - Richard Macrory, University College London	10
4	<b>Funding Remediation of Environmentally Impaired Properties: Strategies That Maximise Resources</b> - Michael D. Goodstein & Stacey H. Myers, Hunsucker Goodstein PC	15

## Country Question and Answer Chapters:

5	<b>Argentina</b>	Rattagan Macchiavello Arocena & Peña Robirosa: Gabriel R. Macchiavello & Lucía Sesto	26
6	<b>Australia</b>	Maddocks: Patrick Ibbotson & Michael Winram	36
7	<b>Austria</b>	Freshfields Bruckhaus Deringer LLP: Stephan Denk	44
8	<b>Belgium</b>	Allen & Overy LLP: Gauthier van Thuyne & Fee Goossens	53
9	<b>Bolivia</b>	Guevara & Gutiérrez S.C. Servicios Legales: Jaime Lora & Jorge Inchauste	61
10	<b>Brazil</b>	Julia Rabinovici Consultoria Ambiental: Julia Behera Rabinovici Santos	67
11	<b>Bulgaria</b>	CMS Cameron McKenna: Kostadin Sirlishtov & Raya Maneva	76
12	<b>Canada</b>	Fillmore Riley LLP: Sven Thorsten Hombach	85
13	<b>Chile</b>	Urrutia & Cía. Abogados: José Antonio Urrutia Riesco & Enrique Oyarzun Iglesias	93
14	<b>China</b>	Freshfields Bruckhaus Deringer LLP: Christian Zeppezauer & Zhe Liu	102
15	<b>Colombia</b>	Macías Gómez & Asociados Abogados: Luis Fernando Macías Gómez & Lina María Puerto Chaves	109
16	<b>Costa Rica</b>	Quiros Abogados, Central Law: Jose Pablo Sánchez	116
17	<b>Cyprus</b>	Harris Kyriakides LLC: Michalis Kyriakides & Penelope-Alexia Giosa	121
18	<b>Denmark</b>	Horten: Henriette Soja	128
19	<b>England</b>	Freshfields Bruckhaus Deringer LLP: Daniel Lawrence & John Blain	136
20	<b>France</b>	Freshfields Bruckhaus Deringer LLP: Pascal Cuhe & Juliette Deslandres	152
21	<b>Germany</b>	Freshfields Bruckhaus Deringer LLP: Dr. Wolf Friedrich Spieth & Dr. Michael Ramb	163
22	<b>Iceland</b>	LEX: Ásgerður Ragnarsdóttir	175
23	<b>Ireland</b>	McCann FitzGerald: Kevin Kelly & Rachel Walls	182
24	<b>Israel</b>	Ziv Lev & Co. Law Office: Moshe Merdler & Ziv Lev	189
25	<b>Italy</b>	Freshfields Bruckhaus Deringer LLP: Fabrizio Arossa & Giovanna Vigliotti	198
26	<b>Japan</b>	Nishimura & Asahi: Hideaki Ozawa & Ryoji Moroi	209
27	<b>Macedonia</b>	Debarliev, Dameski & Kelesoska Attorneys at Law: Elena Miceva & Dragan Dameski	218
28	<b>Mexico</b>	Gonzalez Calvillo, S.C.: Leopoldo Burguete-Stanek	223
29	<b>Nigeria</b>	Bloomfield Advocates & Solicitors: Moji Agunbiade	229
30	<b>Peru</b>	Ada Alegre Consultores SAC: Ada Alegre & Rasul Camborda	236
31	<b>Philippines</b>	Romulo Mabanta Buenaventura Sayoc & de los Angeles: Benjamin Z. Lerma & Timothy John R. Batan	243
32	<b>Portugal</b>	Uría Menéndez - Proença de Carvalho: João Louro e Costa & João Diogo Stoffel	250
33	<b>Romania</b>	CMS Cameron McKenna: Roxana Fratila & Diana Herinean	257
34	<b>South Africa</b>	Bowman Gilfillan: Claire Tucker & Athi Jara	268
35	<b>Spain</b>	Freshfields Bruckhaus Deringer LLP: Vicente Sierra & Mónica Nieberding	275
36	<b>Switzerland</b>	Schellenberg Wittmer: Yves Jeanrenaud & Josef Caleff	285
37	<b>Turkey</b>	AKINCI Law Firm: Dr. Hakan Hanlı & Prof. Ziya Akıncı	292
38	<b>USA</b>	Drinker Biddle & Reath LLP: Bonnie Barnett & Christopher W. Boyle	301

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

## Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

# Cyprus

Harris Kyriakides LLC

Michalis Kyriakides



Penelope-Alexia Giosa



## 1 Environmental Policy and its Enforcement

### 1.1 What is the basis of environmental policy in Cyprus and which agencies/bodies administer and enforce environmental law?

Following the accession of Cyprus within the European Union in 2004, the environmental policy has been subjected to a fundamental review, in order to be brought into line with over 300 legislative instruments (Regulations and Directives) and other action programmes which form part of the manifold, a complicated and detailed environmental chapter of the *acquis communautaire*. Although the new legislative framework is systematically comprehensive and clear in interpretation without leaving room for relaxations or illegalities, its implementation has not reached maximum levels of efficiency and progress is yet to be made for visible enhancements in the environment and quality of life.

The Ministry of Agriculture, Natural Resources and Environment is the competent authority for the endorsement and implementation of the governmental policy on environmental issues. Its tasks include the processing and execution of individual plans and programmes aiming to develop the environmental sector and deal with particular problems identified in relation to the environment. The Environment Service of the Ministry, a personnel team of the Ministry Directorate, is the key unit to which the environmental sector has been assigned. The main competences of the Environment Service include the provision of advice on issues of environmental policy, co-ordination of environmental action plans and supervision on the performance and implementation of environmental policy and legislation. It also performs impact assessments from contemplated actions on the environment, advice on harmonisation of Cyprus Law with the European policy, as well as legislation on the environment, acting as the national authority for a wide range of international agreements, conventions and inter-governmental organisations such as CSD, MCSD, SMAP, MAP, INFOTERRA koi UNEP and the promotion of environmental conscience and awareness.

The Environment Service comprises four departments that enjoy respective competences in the fields of Waste Management and Climate Change, Pollution Regulation, Horizontal Matters/Goods, as well as Nature Protection and Land Use. The Department of Waste Management and Climate Change deals with waste management permits, solid waste, batteries, used oils, electronic and electrical waste, hazardous waste, waste shipments, packaging waste, climate change, emissions trading and relevant environment impact assessments (EIA). The Department of Pollution Regulation deals with IMPEL-IPPC waste discharge permits,

processing industries, slaughterhouses, olive oil mills, mining and quarrying, urban liquid waste, animal and poultry wastes and relevant EIA. The Department of Horizontal Matters/Goods deals with noise, fluoride gases, ozone, UWWT plants, PCBs/PCTs, environmental technology, green public procurement, Lisbon Strategy, Cardiff Process, sustainable development, MAP, MCSD, Horizon 2020, RAC/CP, EU issues, access to information, environmental liability, GMO's, and EMAS/ECOLABEL. The Department of Nature Protection and Land Use deals with Natura 2000 network, protected areas, fauna, invasive species, species trade, desertification, focal Point EIA, focal Point SEA, coastal zone management, international conventions, INSPIRE, CORINE, land planning and environment, health and environment, sustainable constructions and relevant EIA. In addition to the Environment Service, various other Ministerial departments enjoy competences that involve satellite environmental issues. Such examples are the Department of Town Planning and Housing of the Ministry of the Interior, the Department of Labour Inspection of the Ministry of Labour and Social Security, the Public Health Service and the State General Laboratory of the Ministry of Health. Lastly, other semi-governmental authorities and local authorities are entrusted with a variety of competences that are environmentally-related, such as water supply, sewerage and wastewater treatment, street cleaning, waste collection, disposal and other.

### 1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

Following the integration of Cyprus as a full Member State of the European Union, there has been an enhancement in regulation, awareness and enforcement of environmental Law on the island. The Environment Service has taken a strict and pro-active approach, utilising both protective and preventative measures that are apt for the enforcement of the regulatory framework. Despite this approach, there are still problems in enforcement, as a result of the diminished number of personnel, judicial delays and lack of public awareness.

### 1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

Cyprus Law has incorporated the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("the Aarhus Convention") by passing Law No. 33(III)/2003. Further, the Law on Public Access to Information Related to the Environment of 2004 - No.

119(I)/2004 was enacted for the purposes of harmonising Cyprus legislation with Directive 2003/4/EC on public access to environmental information. The above provisions require public authorities to make available any environmental information held by such authorities to any natural or legal person requesting such environmental information. The person requesting this information has no duty to state or prove any legitimate interest. If the addressed public authority knows that another public authority holds the requested information, it must send the application to the latter authority and inform the applicant accordingly. Public authorities may refuse a request for disclosure of environmental information in restricted circumstances defined by the Law, such as general or manifestly unreasonable requests, incomplete material or internal communications, or in case that the disclosure of this information would adversely affect confidentiality protected by Law, international relations, public security, national defence, the administration of justice, the conduct of an enquiry of a criminal or disciplinary nature and the right of any person to receive a fair trial, tax secrecy, intellectual property rights, personal data of natural persons not consenting to the disclosure of the information to the public, the protection of the environment to which such information relates (e.g. location of rare species) and other.

Any person who is not content with the response or lack of response to a request for disclosure of environmental information is entitled to apply for a hierarchical review and/or lodge an administrative recourse for the matter to be brought before the Supreme Court of Cyprus.

## 2 Environmental Permits

### 2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Various legislative instruments provide for activities, projects, businesses, plants and installations which are subject to environmental permits, prior to their commencement and while their operation is pending. The Environment Service is responsible for granting permissions and monitoring matters of environment, waste management, discharges and emissions. Permissions relating to air matters fall within the competence of the Ministry of Labour, Department of Labour Inspection. Licensing may be subject to conditions that the competent authority deems fit for the protection of other public interests, such as public health. Environmental permits issued in the name of a corporate entity are not affected by any change of share ownership of the corporate entity.

Reversely, in case of sale of an asset which enjoys an environmental permit, this permit is not directly transferable or assignable. After being notified of any intention to transfer such asset which has been subject to a licence, the relevant authority ordinarily grants a new licence to the new owner, provided that no changes or amendments have been effected. If the new owner effects amendments to the plans or operation of the project, installation or plant, a new approval process is normally commenced.

### 2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

Article 146 of the Cyprus Constitution secures the right of any person affected by any decision of an administrative body to file an administrative recourse to the Supreme Court of Cyprus. This right

may be exercised within 75 days from the date the decision is noticed to the interested person. Some Laws provide for the right to a hierarchical review of a decision, which may be taken as an intermediary step prior to the filing of recourse to the Supreme Court.

### 2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Regulation of specially polluting industries and large-scale installations is implemented through the Law on Assessment of Impact on the Environment by Certain Projects (No. 140(I)/2005, as amended), as well as through the relevant Regulation K.D.P 420/2008. The Law which was established gave competence to the Committee on the Assessment of Impact on the Environment, to assess preliminary reports and formulate opinions as to whether a comprehensive report on EIA must be prepared on the basis of specific criteria, such as the size of the project, proximity to other installations, use of natural resources and energy, waste production, pollution and nuisance, and risk of accidents, particularly during the use of substances and technologies. The Committee is also vested with general advisory competences, both in regard to the consequences that the execution or operation of a specific project may have on the environment, the assessment of EIA and whatever other topic is requested.

### 2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Criminal liability and sanctions are contemplated for any person operating any installation or performing activities contrary to a legislative requirement to obtain an environmental permit or authorisation. Violations may take the form of failure to obtain a permit or breach of the conditions of an acquired permit. Sanctions comprise fines up to €34,000 and imprisonment that does not exceed three years or both of these sanctions. In addition, the Law provides the power to the competent authorities to vary the terms and conditions of any permits or authorisations granted or to cancel them.

## 3 Waste

### 3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

Waste is defined as every substance or object which the possessor disposes of, intends to dispose of, or is obliged to dispose of. It includes residue of production or consumption that cannot be processed further, products not in compliance with the original, expired products, contaminated or polluted material, non-usable elements of products, as well as any materials, substances or products. Certain categories of waste involve additional duties or controls, as stipulated in detailed legislative instruments. A major instance of such increased protection is hazardous waste, i.e. waste characterised by explosiveness, oxidisation, inflammability, combustiveness, harmfulness, toxicity, carcinogenicity and other potentially dangerous attributes. In addition, supplementary duties are provided for producers of electrical substances (in regard to establishment and maintenance of a collection/recycle system, as well as prohibition of use of any equipment that contains lead and other substances), as well as owners of aged motor vehicles.

### 3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

Any management of waste, including storing and disposal, can only be made by duly licensed persons. Persons who are not respectively licensed have a legislative duty, for any amount of waste in their possession, to take provisional measures for the elimination of risks to the public health or environment or nuisance and, thereafter, a duty to deliver the waste without delay to a licensed person.

### 3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

Liability vests on the person who possesses waste. Producers of waste may be liable for damage that occurs as a result of breach of their aforementioned duties, i.e. to take precautionary measures that would ensure the elimination of risks to the public health or environment or nuisance, to deliver the waste without delay to a licensed person or in the event of unlawful or dangerous transfer of waste or irrational management or handling of used oils.

### 3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

The Packaging and Packaging Waste Law (No. 32(I)/2002, as amended) defines the responsibilities of companies that are considered to be responsible for their packaging and the ways and means for the recovery and recycling of their packaging waste. According to the Law, waste producers may either organise and manage an individual Collection and Recovery System or join a Collective System. Following the practice in other countries of the European Union, a major number of companies in Cyprus have created and joined collective organisations. Additional joined collective organisations have been established for the management of household dry cell batteries, as well as Electrical and Electronic Equipment.

## 4 Liabilities

### 4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Breach of environmental Laws may result in criminal, administrative or civil liability.

Criminal liability is founded on several offences which involve breaches of environmental legislation, such as failure to obtain environmental permits, breach of conditions of permits, water pollution, soil pollution, waste disposal and other. Sentencing involves fines up to €85,000 or imprisonment for not more than three years or both of these sanctions. Criminal liability may be avoided in cases of *force majeure*, provided that the accused proves that due care and attention were demonstrated to prevent the committing of the offence and that all possible measures for remediation were taken without undue delay. Civil liability may arise under the Law of torts and, in particular, the well-known case Law developed in relation to the torts of nuisance.

### 4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

A polluting activity which is permissible under the terms and conditions of a valid licence, provided that this was obtained prior to the commission of the polluting activity, cannot provide a legitimate ground for criminal liability. In that respect, legislative provisions specifically state that the obtaining of a valid permit constitutes a defence to any criminal offence. However, this does not automatically absolve any person from civil liability, provided that damage to a third party can be proved and the polluting activity falls within the ambit of the Law of torts.

### 4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Under general criminal Law provisions dealing with offences committed by corporate entities, as well as under specific provisions that can be found in environmental Laws, criminal liability is imposed on directors and officers of corporate entities who commit a breach of environmental Law. Liability depends on the premise that such persons have expressly or impliedly authorised the commission of this act. If several directors or officers are prosecuted for the same offence, a defence may be raised by some of them on the ground that the polluting activity was effected under the orders of other Directors or Officers and that they had no personal knowledge of such action. Directors or Officers may rely on indemnity provisions, provided that these provisions form part of an agreement between themselves and the corporate entity or if this indemnity is provided for in the Articles of Association of the corporate entity. Insurance is also available, although not customarily utilised.

### 4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

In the event of a merger or acquisition of capital in a company, environmental liability is not affected, in the sense that liability remains with the company. In the event of an asset sale, liability remains with the seller, although it is customary to include indemnity clauses for the protection of the buyer, especially where pollution or its extent may not be easily verifiable.

### 4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

There is no precedent under Cypriot Law for founding liability on lenders for environmental wrongdoing and/or remediation costs and the prospects for such a claim are relatively remote.

## 5 Contaminated Land

### 5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Contamination of soil or underwater constitutes a criminal offence under the Law of Control of Water Pollution (106/2002, as amended). This offence embraces: (a) disposal, depositing or distribution into a stream, dry river bed of any stream, coastal

waters, lake or dam, of any object, substance or matter that pollutes or tends to pollute their waters; (b) disposal, depositing or distribution on the soil or subsoil of any object, substance or matter, in such way that it pollutes or tends to pollute coastal waters, groundwater, stream water, or the water of a lake or dam; (c) depositing of any object, substance or matter in a place from where it is likely to fall or be transferred into a stream, the dry river bed of a stream, a lake or a dam, in a way that would pollute or tend to pollute their waters; (d) disposal of any liquid waste, mud or other semi-liquid or dry waste from any installation on or in the soil or sub-soil; (e) disposal or depositing from any installation into any surface waters or coastal waters, of any liquid or dry waste, or any other liquid containing floating matter; and (f) disposal or depositing into the sea mud of any substance or matter that comes from the treatment of waste. The relevant offence provides for a maximum sentence of three years' imprisonment, an €85,000 fine or both. Valid defences include the acquisition of a permit prior to the commission of the offence and, under certain conditions, if the accused proves that the disposal, deposit or distribution was done in compliance with agricultural practice or that the disposal, deposit or distribution was due to a cause out of his control and that due care and attention was demonstrated in preventing the committing of the offence and that all possible measures for remediation were taken without undue delay. Civil liability may arise under the general Laws of torts.

#### 5.2 How is liability allocated where more than one person is responsible for the contamination?

In regard to criminal liability, any person that has contributed to contamination shall be liable for the relevant offence, regardless of whether more persons may have equally contributed. With regard to civil liability, apportionment is a duty of the Court and the general principles are that (a) allocation is effected on the basis of the magnitude of fault of each party involved, and (b) in cases where differentiation on this criterion cannot be made, liability is split equally. In any event, the liability of tortfeasors is joint and several, while tortfeasors may seek to transfer liability to other parties, usually through third party proceedings.

#### 5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

If this arrangement falls within the ambit of private Law, general principles of contract shall apply and such agreement may only be considered non-binding if it specifically states this to be the case or under other general principles of void contractual obligations, such as a mistake. On the other hand, if the arrangement is ruled to fall within the ambit of public Law, any effort to demand additional works may be barred under the general principle of *estoppel* or *venire contra factum proprium*, which are mirrored in general principles of Cypriot Administrative Law and jurisprudence. Generally, the environmental regulator is not willing to commit to any particular works and the remediation may only be assessed after it has been implemented. Third parties may not challenge agreements that fall within private Law. In the event that the agreement falls within public Law, they can challenge this agreement before the Cypriot Supreme Court through an administrative recourse, provided that they allege and prove a legitimate interest in doing so.

#### 5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

The rights of subsequent land owners against previous owners who may have caused land contamination shall be dealt with under the contract of sale of the land. In that respect, the relevant contractual provisions must provide for a base line contamination survey, an allocation of risk and proper indemnity clauses. If this matter was not expressly agreed, the rights of the subsequent owner are rather limited to rescission and damages on grounds of mistake or failure to disclose information.

Transfer of risk of contaminated liability to a purchaser may also form part of a contractual agreement.

#### 5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?

Under general principles of tort, the government must prove the ownership of public assets, the breach of statutory duty by the defendant and the damage occurred, which may either be quantifiable (special damages) or non-quantifiable (general damages).

## 6 Powers of Regulators

#### 6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

Regulators enjoy wide powers under several provisions in environmental Laws, including powers to enter premises without notice, carry out investigations, sampling, making inspections and checks on equipment, requiring production of documents or information and other.

## 7 Reporting / Disclosure Obligations

#### 7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

Cyprus environmental Laws do not provide for obligations of immediate disclosure of pollution or contamination events.

#### 7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

Cyprus environmental Laws do not provide for affirmative obligations of investigations for land contamination.

#### 7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

Under the general principles of contract Law, there is no obligation

to disclose any environmental problem; however, a reason to avoid contractually binding obligations may be founded on false disclosure or representation.

## 8 General

### 8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

Under general principles of contract Law, parties may formulate the contact of their contractual arrangement in such a way so that it mirrors their intentions. Accordingly, a contract may provide for an environmental indemnity to limit exposure for actual or potential environment-related liabilities. General indemnity rules apply in such agreements.

### 8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

The correct practice for financial reporting is to note in the balance sheet any environmental liability which has been crystallised (e.g. in the sense of a formal demand) and make provision for any potential liability which has not yet been crystallised, but it is reasonably suspected to arise in the future. When a company is dissolved, it escapes not only environmental, but also any other liability under the well-established principles of corporate autonomy and limited liability.

### 8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

The well-established principles of autonomy and limited liability do not permit the transfer of liability from a corporate entity to its shareholders or any other company, regardless of whether this is a subsidiary or a mother company. The general exception of "lifting the veil" applies in regard to sham companies; however, as an exception it is treated with strictness.

### 8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

Cyprus environmental Laws do not provide for such protection.

### 8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

Cyprus Law only accommodates representative actions and not class actions; the difference being that each claimant can only be bound from a judicial proceeding if he is separately added as a claimant or if he expressly authorises his representation.

### 8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

Cyprus, as a Member State of the United Nations Commission for Europe (UNECE) ratified in 19 September 2001 the Convention on Access to Information, Public Participation in Decision and Access to Justice in Environmental Matters (Aarhus Convention) and started implementing it by passing the Law 3422/2005. According to article 9 of Aarhus Convention, every contracting party to the Convention should ensure that any person who considers that his/her request for information has been ignored, wrongfully refused, inadequately answered or otherwise not dealt with, has access to an expeditious review procedure established by law which is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Apart from the Aarhus Convention, Cyprus has implemented the requirements of the relevant European Directive (2003/4/EC) on Public Access to Environmental Information by passing a new Law (No. 119 (1)/2004), which includes provisions on access to justice, but it doesn't deal with the matter of costs in case of environmental litigation. Thus, until the European Commission's proposal for the adoption of a European Directive on Access to Justice (COM (2003)624) is approved and transferred in the legal system of Cyprus, there is no specific law to provide for this matter directly.

## 9 Emissions Trading and Climate Change

### 9.1 What emissions trading schemes are in operation in Cyprus and how is the emissions trading market developing there?

The licensing of industrial plants and the granting of the relevant Air Emission Permits are materialised through the provisions of the Air Pollution Control Law (Law 187(I)/2002). The Permits granted include operating conditions such as the obligation to install air pollution abatement techniques and not to exceed the set air emission standards.

### 9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

According to the aforementioned Law (Law 187(I)/2002), before the grant of an Air Emission Permit, there are technical requirements to be satisfied for any machine or equipment used by the industrial plants. Furthermore, any material (including fuels) used by such machines or equipment should meet standard requirements of quality. The owner of the industrial plant is obliged to install measurement instruments or other kinds of equipment at his own expense and in places approved by the Minister of Labour and Social Insurance in order to measure the quality of atmosphere air, as well as the total amount of any substance that is emitted in the atmosphere within a particular period of time. After this, the measurements and any other data regarding the greenhouse gas emissions must be documented in a report and be sent to the Ministry of Labour and Social Insurance.

### 9.3 What is the overall policy approach to climate change regulation in Cyprus?

The cornerstone of the international Law society regarding the

combating of climate change is the United Nations Framework Convention on Climate Change (UNFCCC), which Cyprus signed in 1997, and it was ratified by the Cypriot Parliament under the ratification Law 12(III)/2003. In addition, Cyprus signed the Kyoto Protocol in 1990, which it subsequently ratified and incorporated to national Law through Law 29(III)/2003. Cyprus is not included in Annex B to the Kyoto Protocol. As far as the Kyoto Convention is concerned, Cyprus has also ratified it, but without having the status of an Annex I party to the convention. Since Cyprus' accession to the EU, there is obligation to reduce greenhouse gas (GHG). Hence, as a Member State, Cyprus has to limit emissions of GHG under the Effort Sharing Decision, which is the Decision No. 443/2009/EC of the European Parliament and of the Council and it was entered into force on the 25 June 2009. Aiming at this direction, Cyprus has already taken measures in various levels, including legal, administrative and political actions. The target is for the GHG emissions in 2013 to remain lower than the average of the annual GHG emissions during 2008-2010. Furthermore, Cyprus aims to reduce the GHG emissions in the non-trading sectors by 5% by the year 2020, to raise the use of renewable sources to 13% of total use of energy and raise the use of fuel from renewable sources to 10% of total consumption.

## 10 Asbestos

### 10.1 Is Cyprus likely to follow the experience of the US in terms of asbestos litigation?

There has been no reported asbestos litigation in Cyprus courts to date, even though Cyprus had asbestos mines for many years and asbestos products were widely used in roofs or water pipes.

### 10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

According to the Security and Health Protection in Employment (Protection from Asbestos) Regulations of 2006, any employer who intends to expose his employees to asbestos, must apply and obtain a relevant licence from the Chief Inspector of the Department of Labour. In addition, every employer has an overarching duty to ensure, to the extent that is reasonably possible, the safety and health of all his employees during the use of asbestos.

## 11 Environmental Insurance Liabilities

### 11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in Cyprus?

Insurance companies in Cyprus may provide insurance cover for low scale environmental risks. This insurance cover has a particular character and cannot be expected to be provided under standard insurance policies.

### 11.2 What is the environmental insurance claims experience in Cyprus?

There is no extensive environmental insurance claims experience in Cyprus.

## 12 Updates

### 12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in Cyprus.

In regard to legislation, Cyprus has recently ratified the Kiev Protocol after having signed it on 21 May 2003. This ratification resulted to the issuance of the new Law about the Aarhus Convention on Access to Information, Public Participation in Decision and Access to Justice in Environmental Matters and Relevant Protocols (Ratifying) (Amending) Law of 2012 (Law 21(III)/2012).

As far as the jurisprudence is concerned, it is worth mentioning that this year, in a series of cases, the Supreme Court set some standards regarding the legitimate interest of natural and legal persons that apply for the nullification of an administrative decision causing environmental damages.

Specifically, in the cases *Mihail Papaconstantinou v. Republic of Cyprus* (No. 1326/2010) and *Thomas Loizou Iosif v. Republic of Cyprus* (No. 35/2009), the Supreme Court decided that natural persons have legitimate interest to require the nullification of a Planning Permit for the construction of a biological station or for the installation of wind generators in the place where their estates are, only if it is proven that they are residents/neighbours with the installations under permission and because of this spatial relation, the natural persons suffer specific detrimental consequences. So, the applicant in order to ground his legitimate interest, must always define the distance of his estate from the installations under consideration and he must also specify the adverse effect on his property, since it is not the Court's mission to ascertain these factors.

Regarding the legal persons, in the case *Organization of Emigrants and Friends of Archimandrita v. Republic of Cyprus* (No. 470/2009), the Supreme Court concluded that even in the cases of environmental organisations, the same criteria should apply for their legitimate interest to be grounded. This means that an environmental organisation is legitimated to apply for the nullification of an administrative decision which damages the environment, under the same conditions as the in the case of natural persons, because under the law of Cyprus, there cannot be any *actio popularis*.



### Michalis Kyriakides

Harris Kyriakides LLC  
115 Faneromenis Avenue  
Antouanettas Building  
6031 Larnaca P.O. Box 40089  
Cyprus

Tel: +357 24 828 244  
Fax: +357 24 818 877  
Email: [m.kyriakides@kyrlaw.com.cy](mailto:m.kyriakides@kyrlaw.com.cy)  
URL: [www.kyrlaw.com.cy](http://www.kyrlaw.com.cy)

Michalis Kyriakides holds an LL.M. from University College London and an M.Stud. from Oxford University. He is also a graduate of National and Kapodistrian University of Athens. He has received merit prizes and scholarships from various Institutions, including the National Scholarships Foundation, Greece and the Bentham Prize for excellence. In 2003, he was the leader of the EU Commission legal research project in "Documentary disclosure in cross border litigation", conducted in association with Oxford University, Vienna University and Ludwig Maximilians University Munich. He was called to the Cyprus Bar in 2004. He is the author of the book "Summary adjudication under the Civil Procedure Rules" and regularly signs articles in legal journals and periodicals. His main area of expertise is corporate law, with specialisation in mergers/acquisitions, competition and company law. He is currently a partner at Harris Kyriakides LLC and can be contacted at [m.kyriakides@kyrlaw.com.cy](mailto:m.kyriakides@kyrlaw.com.cy).



### Penelope-Alexia Giosa

Harris Kyriakides LLC  
115 Faneromenis Avenue  
Antouanettas Building  
6031 Larnaca P.O. Box 40089  
Cyprus

Tel: +357 24 828 244  
Fax: +357 24 818 877  
Email: [p.giosa@kyrlaw.com.cy](mailto:p.giosa@kyrlaw.com.cy)  
URL: [www.kyrlaw.com.cy](http://www.kyrlaw.com.cy)

Penelope-Alexia Giosa joined Harris Kyriakides LLC in 2012 and she is a qualified lawyer in Greece. She graduated with merits from the Law School of Aristotle University in Thessaloniki and she pursued her LL.M. studies at University College London (UCL), as a scholar of Propondis Foundation. She also holds a Diploma in Comparative Law from the International Faculty of Comparative Law - University of Strasbourg. In the context of her cooperation with the Ecumenical Federation of Constantinopolitans, she has written several articles regarding the property rights of Constantinopolitans in Istanbul. She speaks Greek, English, French, Turkish and Albanian.



HARRIS KYRIAKIDES LLC  
ADVOCATES - LEGAL CONSULTANTS

Harris Kyriakides LLC, Advocates & Legal Consultants, is a leading law firm in Cyprus, established since 1976. Currently located at the Antouanettas Building in Faneromenis Avenue, Larnaca, the firm is widely accredited and nationally recognised as being in the top tier of law firms in Cyprus. Operating on a departmental basis and covering nearly all aspects of law, the firm maintains specialised lawyers in their own expertise and provides comprehensive advice on legal, financial and taxation issues. The firm's international capability is enhanced by its alliance with acknowledged law firms and lawyer networks across Europe. Harris Kyriakides LLC has consistently advised national and multinational corporations, financial institutions and governmental organisations and maintains leading clients from several industries and business sectors, including banking, insurance, real estate, telecommunications, shipping, oil, construction, vehicle distribution, tourism and leisure, advertising and other. The firm has also been profoundly involved in litigation practice and dispute resolution.

## Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining
- Oil & Gas Regulation
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Private Client
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping
- Telecoms, Media and Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)