

The International Comparative Legal Guide to:

# Environment Law 2009

A practical insight to cross-border Environment Law



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# Cyprus

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## 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, complicated and detailed environmental chapter of the *acquis communautaire*. Although the new legislative framework is systematically comprehensive, clear in interpretation and leaves no 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 environmental 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 advise on issues of environmental policy, co-ordination of environmental action plans, supervision on the performance and implementation of environmental policy and legislation, performing impact assessments from contemplated actions on the environment, advice on harmonisation of Cyprus law with the European policy and legislation on 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 <sup>ko</sup> UNEP and promotion of environmental conscience and awareness.

The Environment Service comprises of four departments that enjoy respective competences in the fields of Waste Management and Climate Change, Pollution Regulation, Horizontal Matters/Goods and 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, 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 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 and 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 enforcement of the regulatory framework. Despite this approach, there are still problems in enforcement, as a result of 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, 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 limited circumstances defined by the law, such as general or manifestly unreasonable requests, incomplete material or internal communications or if disclosure of the 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 being subject to environmental permits prior to their commencement and pending their operation. 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 license, the relevant authority ordinarily grants a new license to the new owner, provided that no changes or amendments have been effected. If the new owner effects amendments to the plans or the 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 of notice of the decision 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 with 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). The law established and 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, risk of accidents, particularly during the use of substances and technologies. The Committee is also vested 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 requested.

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

Criminal liability and sanctions are provided 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 of 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 cancel permits.

## 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 provisionally ensure elimination of risks to public health or to the 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 duties mentioned above, i.e. to provisionally ensure elimination of risks to public health or to the 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 (N.32(I)/2002, as amended) defines the responsibilities of companies considered to be responsible for their packaging and the ways and means for the recovery and recycling of their packaging waste. According to 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 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 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 that is a permissible activity under the terms and conditions of a valid license, 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 is depended 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 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 Cyprus 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 or €5,000 fine or both.

Valid defences including 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. In 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 and 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 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 Cyprus administrative law and jurisprudence. Generally, the environmental regulator is not willing to commit to any particular works and 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 Cyprus Supreme Court through an administrative recourse, provided that they allege and prove a legitimate interest in so doing.

#### 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 owners of land 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, 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 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 content of their contractual arrangement in such way as it mirrors their intentions. Accordingly, a contract may provide for an environmental indemnity to limit exposure for actual or potential environment related liabilities and 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 practise for financial reporting is to note in the balance sheet any environmental liability which has crystallised (e.g. in the sense of a formal demand) and make provision for any potential liability which has not yet 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 claimant or if he expressly authorises his representation.

## 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.

## 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 license 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, it is worth mentioning that the Environmental Service has issued a comprehensive guide of directions addressed to all persons who contribute in any way to any AEI for the better and more efficient operation of the relevant scheme (420/2008). No other particular additions or amendments have been identified.

In regard to jurisprudence, it is worth citing a decision of the Supreme Court of Cyprus issued in 2008 (Civil Appeal 298/2006) on a claim involving an autistic child who had suffered irreparable deterioration of his health as a result of deafening noise produced by low height training flights of war aircrafts of the United Kingdom, known as "Red Arrows", above the skies of Limassol where he

resided with his family. The Supreme Court reversed the first instance judgment claim and ruled that the Republic of Cyprus could not be held liable for several reasons, including that (a) it had a duty under the Establishment Treaty to permit these flights, (b) the relevant permit was provided only for flights over the coastal zone

of the island and it was not proved that this permit was breached, (c) public nuisance could not be proved, since it was not common ground that any other citizen was affected by this action and also that this action was not illegal for the reasons already mentioned and (d) no negligence could be imposed upon the Republic of Cyprus.



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Michalis Kyriakides was born in Larnaca, Cyprus. He attended Athens University Law School and was granted the merit prize from the National Scholarships Foundation, Greece. He subsequently obtained an LL.M. from University College London and was awarded the Bentham Prize for excellence. In 2002, he obtained the M.Stud. at the University of Oxford. In 2003, he worked on behalf of the EU Commission at the legal research project "Documentary disclosure in cross border litigation", conducted in association with Universities of Oxford, Vienna and Ludwig Maximilians, 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).



**HARRIS KYRIAKIDES LLC**  
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