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# The International Comparative Legal Guide to: Environment Law 2010

A practical cross-border insight  
into environment law

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# Hungary



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## 1 Environmental Policy and its Enforcement

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

In Hungary environmental protection matters have been managed by the Ministry of Environmental Protection and Water (**Ministry**) since 1988. The Ministry is the central administrative body for environmental protection. The Ministry provides for the professional management and regulation of the fields of environmental protection, and water management and meteorology; furthermore, the Ministry is responsible for the development of environmental policies and for international co-operation. The effective day-to-day management of environment-related matters is mostly carried out by the regional organisations (agencies) of the Ministry, the regional environmental protection and water inspectorates and the national park directorates, which are the first instance authorities in matters relating to environmental protection. The authority of second instance is the National Main Inspectorate of Environment and Water.

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

The main, general environmental protection rules are laid down in Act LIII of 1995 on the General Rules of Environmental Protection (**Environment Act**). This piece of legislation lays down – among other things - the fundamental principles of environmental protection, deals with the responsibilities for environmental damage, defines the main tasks of the parliament, the national government and the local governments in respect of environmental protection, etc. In accordance with the regulations of the Environment Act, the special rules in the individual fields of environmental protection (water management, waste management, hazardous materials, arable land protection, etc.) are set forth in separate pieces of legislation. The enforcement of environmental law is carried out by the government’s environmental bodies, which must act in accordance with the regulations of the Environment Act and other specialised legislation regulating the respective field of environmental protection. The procedural framework for their actions is laid down in Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (**Administrative Proceedings Act**).

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

According to section 12 of the Environment Act, everyone has the right to have access to environmental information considered data of public interest. Governmental agencies, local governments and other agencies dealing with environment-related obligations must monitor the status of the environment and its impact on human health, and provide access to and make available the environmental information that is available. Environmental information may be withheld only on the grounds that the information is personal data, a business secret, a tax secret, or that it pertains to the natural habitat of wild fauna and flora under special protection, the location of depleted natural resources, or the location of geological resources; however, these reasons cannot be applied in respect of information on emissions.

Another example of public involvement in environment-related procedures is that, according to the Environment Act, civil associations formed to represent environmental interests that are active in an impact area are entitled in their areas of operation to the legal status of being named as a party in the administrative procedure.

Moreover, according to the Environment Act any non-appealable and enforceable resolution, or any resolution declared enforceable irrespective of any appeal, falling within the scope of the Administrative Proceedings Act, as well as any environmental administrative agreement whose implementation is likely to have significant environmental effects, must be published.

According to section 49 of the Environment Act, the Ministry must establish and operate a monitoring network, the National Environmental Information System, for monitoring the state and use of the environment and for measuring, collecting, processing and registering data on the utilisation and loading thereof.

## 2 Environmental Permits

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

According to section 66 of the Environment Act, any use of the environment may commence or be carried out only after the following permit or resolution became non-appealable and enforceable:

- a) an environmental permit issued by the environmental protection inspectorate for operations that require an environmental impact assessment (with the exception laid down in paragraph b);

- b) consolidated environmental use permit issued by the environmental protection inspectorate for operations subject to a consolidated environmental use permit;
- c) environmental operating permit issued by the environmental protection authority for operations that require an environmental audit; or
- d) in cases not falling within the scope of paragraphs a)-c) above, a resolution passed by the environmental protection inspectorate or a resolution issued by another authority by taking into consideration the opinion of the environmental protection inspectorate, both in cases defined in other legislation.

Government Decree 314/2005 (XII.25.) on the environment impact assessment and consolidated environmental use permit (**Decree on Impact Assessment and Consolidated Environmental Use Permit**) provides a detailed list on the activities which require environment impact assessment (e.g. oil exploitation, mining of ores) or a consolidated environmental use permit (e.g. energy industry, processing of metals, waste management).

In general, environmental permits are not transferable, except where a particular act or decree so provides (e.g. section 6(2) of Act XLVIII of 1993 on Mining permits the transfer of a mining licence, subject to the consent of the competent authority upon the transferee's request). However, the quotas (shares) of a company can be transferred from one entity or person to another, and, as the permit pertains to the company which is an entity separate from its members (shareholders), the permit will remain in place after the transaction.

## 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?

According to section 98 of the Administrative Proceedings Act, the client (i.e. the beneficiary of the permit) may appeal against any resolution made in the first instance. The right to appeal is not limited to specific legal grounds, an appeal may be lodged for any reason that the person affected deems unjust. The second instance authority may approve the first instance decision, or it may modify or annul the decision. If the authority of second instance annuls the decision, it may order the authority of the first instance to reopen the case if the available data and information are insufficient to make a decision in the second instance, or if it became aware of new facts, or if further evidence is required to ascertain the relevant facts of the case.

If an appeal was lodged, the judicial review of a decision of second instance may be initiated in court by referring to a violation of law. The court may (i) reject the statement of claim if it is unjustified; or (ii) annul the decree and oblige the authority to make a new decision by taking into consideration the guidelines prescribed by the court. It is also possible for the court to modify the decree in the cases defined by Act III of 1952 on Civil Procedure (Civil Procedure Act).

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

According to section 68 of the Environment Act, prior to the commencement of activities that have or may have a significant impact on the environment, an environmental impact assessment must be carried out. The Decree on Impact Assessment and Consolidated Environmental Use Permit provides a list of the activities which mandatorily require an environmental impact

assessment (e.g. mining of ores, chemical industries, power stations, and many more) and those which require an environmental impact assessment depending on the discretionary decision of the environmental protection inspectorates (e.g. meat processing, manufacturing of car batteries, and many more). In this latter case the inspectorates decide whether or not the planned activity will have a significant impact on the environment, and if so, an environmental impact assessment will be required. The results of the assessment must be summarised in an environment impact study. The Decree on Impact Assessment and Consolidated Environmental Use Permit also defines the requirements of the environmental impact study.

According to section 73 of the Environment Act, environmental audits must be carried out in order to ascertain and study the environmental impact of certain activities as well as to determine whether the environmental protection requirements are being met. In order to explore the environmental impact caused by the activities of an operator, the environmental protection inspectorate may require the operator to carry out a full-scale or partial audit. The inspectorate obliges the operator to carry out an audit if it detects that the environment has been endangered or polluted. During the audit, the alternatives and conditions for the elimination of environmental pollution and - if this is not possible - the abatement of the utilisation and pollution of the environment must be specified.

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

According to section 72 of the Environment Act, the environmental protection inspectorates may withdraw the environmental permit or the consolidated environmental use permit if the activity or the preliminary construction work necessary therefor has not been started within five years of the date on which the permit became non-appealable, or if the beneficiary of the permit makes a statement to the effect that it does not wish to make use of the environmental permit or the consolidated environmental use permit, or if the conditions existing at the time of licensing have substantially changed.

According to section 106 of the Environment Act, any person who infringes the provisions of law, official decisions or directly applicable Community legislation that are aimed - directly or indirectly - at the protection of the environment or who fails to comply with the limits set forth therein, will be liable to pay an environmental fine consistent with the gravity, weight, duration and recurrence of the environmental pollution and environmental damage caused. The payment of the fine does not exempt the recipient from criminal liability, or liability for damages. Furthermore, according to Government Decree 33/1997 (II.20.) on the Rules of Levying a Nature Protection Fine, a nature protection fine may also be levied in case of a violation of the permit.

According to section 280 of the Criminal Code (**Criminal Code**), any person responsible for any pollution of the earth, the air, the water, the biota (flora and fauna) and their constituents, resulting in (i) their endangerment; (ii) damage to such an extent that its natural or previous state can only be restored by intervention; or (iii) damage to such an extent that its natural or previous state cannot be restored at all, is guilty of a felony punishable by imprisonment. Therefore, if a permit is violated to such an extent that it falls within the ambit of the above, the perpetrator may be exposed to criminal liability.

### 3 Waste

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

Waste is defined in Act XLIII of 2000 on Waste Management (**Waste Management Act**). According to the Act “waste” means any substance or object in the categories set out in Annex 1 of the Waste Management Act which the holder discards or intends or is required to discard. Annex 1 provides a list of the waste categories, e.g. unusable parts (e.g. discharged batteries, exhausted catalysts, etc.), machining and finishing residues (e.g. lathe turnings, etc.).

The Waste Management Act differentiates between three special types of waste, which may involve additional duties.

According to section 3 of the Waste Management Act:

- (i) “hazardous waste” means waste displaying one or more of the properties listed in Annex 2 of the Waste Management Act and/or containing such substances or components, hazardous to health and/or the environment because of its origin, composition or concentration. Annex 2 provides a list of the hazardous features (e.g. toxic, flammable, etc.);
- (ii) “municipal waste” means waste from households or other waste which, because of its nature or composition, is similar to waste from households and can be managed together with the latter; and
- (iii) “liquid waste” means liquids that became waste and are not drained and discharged into sewerage systems or sewage treatment plants.

The detailed rules of the activities related to hazardous waste are set out in Government Decree 98/2001 (VI.15.) on the Conditions of Activities Related to Hazardous Waste (**Decree on Hazardous Waste**). According to the Decree, the handling of hazardous waste is subject to an environmental permit (with a few exceptions); furthermore the operator has, *inter alia*, certain recording, reporting and disclosure obligations. Furthermore, according to section 47 of the Waste Management Act, certain operators handling a certain quantity of waste are obliged to provide security in exchange for their activities; furthermore they may be obliged to have special insurance as well.

The special rules for handling municipal waste (collecting, disposal, conditions of operation, etc.) are set forth in Government Decree 213/2001 (XI.14.) on the Conditions of Activities Related to Municipal Waste.

#### 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?

According to section 14 of the Waste Management Act, waste treatment activities - if not otherwise provided for in an act, governmental decree or ministerial decree - may be carried out exclusively with the permit of the environmental protection inspectorate. According to section 15 of the Waste Management Act, the producer or holder of the waste will be responsible for collecting waste separately, according to the further treatment. Collection of waste within a plant, if it is carried out in such a way that excludes environmental hazards, may be continued without a permit issued by environmental protection inspectorate.

Furthermore, according to section 8 of the Decree on Hazardous Waste, no permit of the environmental protection authority is required for the treatment of hazardous waste in the following cases:

- collection and movement of hazardous waste inside the plant of a producer;

- transportation of own hazardous waste of a producer that is entitled to transport hazardous goods with its own vehicle which corresponds to the relevant prescriptions between its own plants or to hand this waste over to a waste handler;
- transportation of hazardous waste produced in households to special collection places with own vehicle; and
- collection of certain hazardous waste from local residents at special waste collection places.

According to section 10 of the Decree on Hazardous Waste, a producer of waste may collect hazardous waste directly at the place of production in containers which exclude the possibility of polluting the environment, to an extent which does not hinder the activity of the producer, for a maximum period of one year.

#### 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)?

According to section 13(1) of the Waste Management Act, a producer or holder of waste must collect the waste produced in the course of his activity or which was obtained in any other way, and ensure the recovery or disposal of such waste. According to section 13(2) of the Waste Management Act, the producer or holder must perform its duties related to recovery or disposal either:

- a) itself, according to provisions laid down in legal rules, by means of appropriate recovery or disposal procedures, equipment, installations; or
- b) by transferring its duties to an operator authorised and licensed for such activities, and paying the costs of the waste treatment.

A producer or holder may retain residual liability if it transfers the waste to a person who was not authorised and licensed for the treatment activity or to an operator about which it is generally known that it is under liquidation or its liquidation is imminent.

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

According to Government Decree 94/2002 (V.5.) on the Detailed Rules of Packaging and Packaging Waste, manufacturers that produce a certain amount of packaging material are obliged to take back their packaging waste.

According to Government Decree 181/2008 (VII.8.) on Taking Back Battery and Vehicle Battery Waste, a manufacturer is obliged to take back batteries and car batteries which became waste. Retailers also have the obligation to take back without any compensation battery and car battery waste and must hand over this waste to the manufacturer.

According to Government Decree 264/2004 (IX.23.) on Taking Back the Waste of Electric and Electronic Devices, a manufacturer is obliged to take back the waste originating from the device that it produced. Retailers, when selling new devices, are obliged to take back the old device of the purchaser without any compensation. Retailers hand over these collected devices to the manufacturer.

Obligations are also stipulated in Government Decree 267/2004 on Waste Vehicles in respect of the obligation to take back car wrecks.

As to the recovery obligation, according to section 13(1) of the Waste Management Act, a producer or holder of waste must collect the waste produced in the course of its activity or which was obtained in any other way, and ensure the recovery or disposal of such waste. Recovery can be made even by the producer/holder itself or by an operator authorised and licensed for the recovery of waste.

## 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?

According to section 101 of the Environment Act, a polluter of the environment will bear liability for the impact of his activities on the environment according to the Environment Act, as well as according to criminal and civil law, and regulatory and administrative provisions. Beside the obligation to mitigate damage and the obligation to inform the authorities of the pollution, the polluter must, *inter alia*, refrain from engaging in any activity posing an imminent threat or causing damage to the environment, and must cease such activity where applicable and accept responsibility for the environmental damage he caused, and cover the costs of prevention and rehabilitation. If the polluter fails to comply with these obligations (i.e. to refrain from polluting and financing the rehabilitation of the polluted area), the environmental authority, or the authority that has granted the relevant authorisation at the request of the environmental authority, or the court may - depending on the degree of threat to the environment or the level of environmental damage - limit the activity posing an imminent threat to the environment or causing damage to the environment, or may suspend or prohibit the activity in question until the conditions established by the authority are met. Beside this, certain environment users are obliged to provide security in exchange for their activities (e.g. certain hazardous waste operators, see question 3.1 above).

According to section 102/A of the Environment Act, a polluter of the environment may be exempted from his administrative liability if he is able to verify that the threat to the environment or the environmental damage was caused by an act of armed conflict, war, civil war, armed hostilities, insurrection, or natural disaster; or is the direct result of the enforcement of a binding and enforceable resolution of an authority or court.

Criminal liability may also arise if the breach of environmental law/permit is such that the respective regulations of the Criminal Code are applicable (see question 2.4 above).

Beside the liabilities set out in the Environment Act, polluters have civil law liability as well and they may be obliged by the competent court on the basis of the lawsuit initiated by the victim of the pollution to pay for all damage caused by the pollution, in accordance with the relevant provisions of the Civil Code of Hungary (**Civil Code**). According to section 345 of the Civil Code, a person who carries on an activity involving considerable hazards will be liable for any damage caused by this activity. The defence possibilities are very limited: persons pursuing activities involving considerable hazard may be exempted from their liability only if these persons are able to prove that the damage occurred due to an unavoidable cause that falls beyond the scope of activities involving considerable hazards. According to section 103 of the Environment Act, the provisions on activities involving considerable hazard must be applied to the persons pursuing an activity which is using or loading the environment.

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

Such liability may arise, as having a permit/licence does not provide immunity to the licensee for any damage caused by the activity. According to section 100 of the Civil Code, the owner of a real property is obliged, while using his property, to refrain from any conduct which would needlessly disturb others, especially his

neighbours, or which would jeopardise the exercise of their rights.

If the pursued activity causes damage to third parties and these parties can prove in court that they have suffered damage and this damage has a causal connection with the activity of the licensee, the liability of the licensee may be assessed for the damage caused even if the activity is pursued within the limits set out by the permit/licence. Beside the damage and the causal connection the activity causing damage must be unlawful, but in Hungarian court practice any activity causing damage is unlawful, unless there is a circumstance which excludes the unlawfulness.

### 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?

The company must accept responsibility for environmental wrongdoings; however, according to section 30(2) of Act IV of 2006 on Business Entities (**Companies Act**), executive officers are liable towards the company in accordance with the general rules of civil law for damage caused by any infringement of the law or the management obligations.

According to the Environment Act, those executive officers who have passed a resolution or measure, in respect of which they knew, or should have known given reasonable care, that such resolution or measure, if carried out, will cause environmental damage, will bear unlimited and joint and several liability in the event of the termination (dissolution) of the business entity for the company's ensuing liability for remediation and compensation for any damage that the company did not satisfy.

It is worth mentioning that the criminal liability of the executive officers cannot be excluded.

### 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?

According to section 102(1) of the Environment Act, liability for environmental damage or for any risk to the environment falls jointly and severally - until the contrary is proven - upon the person who is registered as the owner or possessor (user) of the real property on which the environmental damage or threat to the environment has occurred. The owner may be exempted from joint and several liability only if he is able to name the actual user of the real property and if he is able to prove beyond a reasonable doubt that liability does not lie with him. In the case of purchasing a real property, if the new owner is not able to exempt himself as presented above, then he may be found liable for the environmental damage caused by the previous owner. However, under the Civil Code the seller is obliged to inform the purchaser of all relevant features and information regarding the asset; if he fails to do so, he may be liable for the damage caused by the omission (for details, please see question 7.3 below).

In the case of purchasing a business entity, the entity itself will remain the same, i.e. its status does not change as a result of the quota/share sale and purchase, and the company will be liable for any environmental damage caused in the regime of the previous owner. In practice, appropriate representations and warranties are often included in quota/share sale and purchase agreements, based on which the damage that the company suffers are recoverable from the previous shareholders.

In an asset sale and purchase, the transferability of the permits is also an important question, as in most cases the permit/licence pertains to the legal entity. If the purchaser purchases the asset to

which the permit/licence pertains (and not the shares of the licensee), then in most cases he will have to apply for a new licence.

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

According to the Environment Act, the owner and/or the operators are liable for environmental wrongdoings.

However, it may happen that a bank holding a mortgage over a real property acquires the ownership of the real property as a result of a foreclosure, and, as a result of that, being the owner of the real property it becomes jointly and severally liable for the damage with the user of the real property, as outlined in detail in question 4.4 above.

## 5 Contaminated Land

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

The general rules of the Environment Act apply to the contamination of soil and groundwater. As outlined in detail in section 4 above, the owner and/or the user will be held liable for the contamination, i.e. these persons are liable for remedying the contamination, unless they can prove that the contamination is the result of someone else's actions.

The detailed rules of soil protection are laid down in Chapter III of Act CXXIX of 2007 on the Protection of Arable Land (**Arable Land Protection Act**). According to this, the user of the land is liable for any breach of the regulations of the Arable Land Protection Act and is obliged to pay a fine as defined in the Act. In the application of the Arable Land Act, the user is the person who is registered in the land use register as the user of the land, or who is actually using the land on the basis of an agreement or a usufruct right. If such person cannot be determined, the owner of the land is considered to be the user.

Government Decree 219/2004 (VII.21.) on the Protection of Groundwater sets out the rules regarding the contamination of groundwater. According to the Decree, if the environment users breach certain prescriptions of the Decree regarding the protection of groundwater, fines can be levied on them. Furthermore, those entities or persons who are liable for environmental damage under the Environment Act must participate in the remediation of the groundwater. Failure to do so may result in a fine.

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

According to section 344 of the Civil Code and according to section 102 of the Environment Act, if more than one person is responsible for the contamination, such persons are jointly and severally liable for the damage caused.

### 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?

The owner/user of the real property is considered to be a "client" in the application of the Administrative Proceedings Act. The authority and the client may agree on the remediation obligations of the client, but the outcome is not embodied in an agreement, but a resolution of the environmental protection authority, which resolution does not require the consent of the client.

Once the first instance resolution has been made, the first instance authority may modify its own resolution if it finds that the resolution is contrary to law and the resolution has not been reviewed yet by the authority of second instance or a court. The first instance authority may do so only on one occasion and within one year calculated from the delivery of the resolution to the client.

The second instance authority may also review the resolution of the authority of first instance and may modify or cancel the resolution of the first instance authority and may order the first instance authority to repeat the first instance procedure.

Parties whose rights are affected by the resolution of the authority (e.g. neighbours, etc.) may appeal against the resolution made at first instance. In environment-related issues, civil associations pursuing environmental protection activities are also considered to be parties in the administrative procedure, and therefore they may also appeal against the decision (see question 1.3 above).

Once the resolution becomes non-appealable and the deadline open for initiating the judicial review of the second instance resolution has expired, the possibilities for amending the resolution are very limited.

### 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?

In practice, real property sale and purchase agreements contain appropriate warranties according to which the purchaser can seek remedies from the seller. But, even if there is no such warranty included in the agreement, the purchaser may claim damages from the seller if the seller failed to disclose that there was a contamination of the soil in the past (see question 7.3 below). However, there is a remote possibility that the new owner will be held liable for the contamination as the owner of the land, if he fails to prove that the land was contaminated by the previous owner.

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

The concept of aesthetic harm is not specifically dealt with under Hungarian law. Compensation for damage caused may be sought according to the regular rules of tort liability. As outlined in question 4.2 above, the person claiming compensation must prove that the action of the wrongdoer was illegal, he suffered damage and the occurrence of this damage has a causal connection with the action of the wrongdoer. The wrongdoer may be exempted if he can prove that he has acted in a manner that can generally be expected in the given situation.

## 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.?

The procedural rules for the administrative procedures carried out by the environmental protection authorities are laid down in the Administrative Proceedings Act. According to section 88 of the Administrative Proceedings Act, the authority - within the confines of its jurisdiction - must monitor compliance with the provisions of legal regulations, and the implementation of decisions that may be

executed. In the course of an inspection the authority has powers to request the client (e.g. the beneficiary of an environmental permit) to supply data, and to present documents, and may make other inquiries; furthermore, it may conduct site inspections.

While performing the monitoring of the compliant behaviour/actions of the licensee, the authority may require the production of documents, take samples, conduct site inspections, or interview employees. On-site inspections may be carried out even without previously informing the licensee of the inspection, if such notice would jeopardise the efficiency of the inspection. The authorities must, however, always act in compliance with the rules of the Administrative Proceedings Act and other relevant legal regulations.

## 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?

The general rules regulating this question are set out in the Environment Act. According to section 50 of the Environment Act, environment users must measure – in a manner defined by other legal regulations - the environmental loading and the utilisation of the environment caused during the activities of the environment user. Furthermore, they must substantiate and record environmental loading with technological calculations, and must make their records available and/or must provide data to the authorities with jurisdiction and competence.

Certain environment users - specified in other specific legislation - must survey the impact on the environment caused by their activities, summarise the results in regular reports and submit them to the environmental protection authorities. The detailed regulations regarding these environmental reports are laid down in other specific (secondary) legislation.

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

As mentioned above already in question 2.3, according to section 74 of the Environment Act, in order to explore the environmental impact caused by the activities of an operator, the environmental protection inspectorates may require the operator to carry out a full-scale or partial environmental audit in order to ascertain and study the environmental impact of certain activities, as well as to determine whether the environmental protection requirements are being met. The inspectorate also may do so if it detects that the environment has been endangered or polluted. In order to explore the environmental impact caused by the activities of the operator, the environmental protection inspectorate may order the operator to carry out a full-scale or partial review:

- if it detects that the operator has caused any damage to the environment;
- if the operator is engaged in activities that endanger, pollute or damage the environment of areas placed under any degree of protection (national parks, landscape conservation areas, nature conservation areas, natural relics, the protective zones of any of these, water quality protection areas, hydro-geological protection areas, and the protective zones of drinking, mineral and thermal water resources);
- if the operator is engaged in any activity that requires an

environmental licence or a consolidated environmental use permit without having such permit or licence; or

- the conditions specified in other specific legislation are met.

If in the course of the environmental audit, the environmental protection inspectorate detects that the environment is being endangered or damaged, it may fully or partially restrict or suspend the audited activity that is causing such problems in the impact area.

Such obligation to investigate land for contamination may also arise when the operator applies for an environmental permit (please see question 2.3 above).

### 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?

The Environment Act and other rules of law relating to environmental protection do not provide for such obligations of a seller. However, according to section 205(3) of the Civil Code, contracting parties must cooperate during the conclusion of an agreement, and they must respect each other's rightful interests. Parties must inform each other regarding all essential circumstances in relation to the proposed contract before the agreement is concluded. Furthermore, according to section 367(1) of the Civil Code, the seller must inform the purchaser regarding the essential characteristics of and all important requirements pertaining to the asset to be transferred, particularly any potential rights in connection with or any encumbrances on the asset to be transferred. The seller must also convey the documents concerning such circumstances, rights, or encumbrances to the purchaser. If the seller omits to inform the purchaser of the important circumstances, for example that the seller's property has environmental problems, then the seller will be liable for damage claims.

In practice, the warranty obligations (including environment-related warranties) of the seller are contained in the transactional documents. Environmental due diligence investigations may reduce the risk of the purchaser; however, due diligence investigations are not common yet in Hungary (in addition, no such obligation is prescribed by mandatory law), except where the purchaser is a foreign legal entity or private person.

## 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?

Legal entities or private persons may agree in a private contract on indemnification for environmental damage, but this contract will bind the contracting parties only. Criminal liability cannot be excluded; moreover, the authorities dealing with environmental protection are not bound by these agreements either.

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

If the environmental liability of a company is already assessed, then this liability must be indicated in the balance sheet, there is no possibility to shelter this liability off balance sheet. If the company is faced with an assessment of environmental liability (e.g. it is

likely that a fine will be levied on the company in the future), then, depending on the company's accounting policy, the company may place an amount in reserve and in this case the liability is indicated in the balance sheet, or the company may indicate this future liability off balance sheet; however, in this latter case this liability is indicated in the supplementary report, which is part of the annual financial statements of the company, and is as such, public.

In the first place a company will be held liable for the environmental damage it causes. However, according to the Environment Act, those members (shareholders) and who have passed a resolution or measure, in respect of which they knew, or should have known given reasonable care, that such resolution or measure, if carried out, will cause environmental damage, will bear unlimited and joint and several liability in the event of the termination (dissolution) of the business entity for the company's ensuing liability for remediation and compensation for any damage that the company did not satisfy. Of course, in order to be held liable for the environmental damage it has to be proven that the members knew or should have known given reasonable care that the action of the company would result in an environmental damage, which is difficult in practice.

### 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?

In the case of a limited liability company, the possibilities of breaking through the limited liability of the members (shareholders) of the company, i.e. piercing the corporate veil, are considerably limited. However, according to section 20(7) of the Companies Act, those members (shareholders) who have passed a resolution, in respect of which they knew, or should have known given reasonable care, that such resolution was clearly contrary to the significant interests of the company, will bear unlimited and joint and several liability toward the business entity for any resulting damage. This may be applied even in case of a breach of environmental law; however, in practice there are difficulties in proving the liability of the shareholders. Beside this regulation of the Companies Act, the Environment Act also creates the possibility of holding the shareholders liable for environmental damage, as described in question 8.2 above.

According to Hungarian law, the parent company is a legal entity which is independent from its foreign subsidiaries, affiliates (not including, however, the foreign branch of a Hungarian company, which is considered to be a part of the parent company). Therefore the Hungarian parent cannot be held liable in Hungarian courts for any pollution caused by a foreign subsidiary.

From the opposite perspective, a foreign parent company may be held liable in a very narrow sphere for the pollution caused by its Hungarian subsidiary. Namely, according to the Companies Act, an owner which has at least 75% of the votes in a company is fully responsible for the liabilities of the company if the company went into liquidation and the court, on the basis of the request of the company's creditors, stated that the owner must take full responsibility for the liabilities of the company due to the permanent detrimental business policy pursued in the past by the owner in the debtor company.

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

There are no specific regulations in respect of the protection of whistle-blowers in Hungary; no anonymity or other special protection is provided for them when reporting environmental violations.

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

As of the time of writing, group or class actions in Hungary are not possible; however, the Hungarian parliament accepted an Act modifying the Civil Procedure Act, according to which class actions would be possible, but this modifying Act has not been promulgated and it is uncertain if it will be promulgated.

According to section 51 of the Civil Procedure Act in force, plaintiffs may jointly initiate a lawsuit and/or defendants may be sued jointly if (i) the subject of the litigation is a joint right or joint obligation which can be judged jointly only or if the decision of the court would have an effect on other parties even if those parties did not participate in the legal procedure; or (ii) the claims in the lawsuit originate from the same legal relationship; or (iii) the claims in the lawsuit originate from similar factual and legal backgrounds and the same court is competent in respect of all claims.

Hungarian legislation does not provide for penal or exemplary (punitive) damages.

## 9 Emissions Trading and Climate Change

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

The local rules pertaining to the issuance, allocation and trading in greenhouse gas emissions permits in Hungary are in harmony with the provisions of the Kyoto Protocol and the Emissions Trading Directive.

The government determines the National Allocation Plans and the National Allocation Lists for five-year terms (Phases), on the basis of which the operators of installations that emit greenhouse gases receive emissions permits gratuitously from the Hungarian state (which cover, in the current Phase II, 90% of the total planned emissions).

The emissions permits are freely tradable within the EEA. The permits are traded on the stock exchange and outside the stock exchange as well. Any transfer must be recorded in the Hungarian Emissions Register.

## 10 Asbestos

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

Liability for exposure to asbestos may, in theory, be incurred on various legal grounds (employment law, civil law, product liability and administrative law). Despite the variety of the potential grounds for liability, asbestos-related litigation is relatively rare in Hungarian practice. The majority of such infrequent cases arose on the basis of employment relationships, where the employees were in direct physical contact with asbestos and they became ill/died due to the exposure (inhaling of asbestos fibres). Due to the differences between the US and the Hungarian legal systems and the different notions of "damage", the claimant should expect a significantly smaller amount of compensation in Hungary compared to what might be awarded in the US.

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

Both the trading in and the use of products that contain asbestos

have been prohibited in Hungary. With respect to structures which already contain asbestos, certain administrative and work safety regulations come into play. Generally speaking, where there are any demolition/maintenance works in which exposure to asbestos can be expected, protective measures must be taken and the competent Hungarian authorities must be informed.

## 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 Hungary?

In the case of certain activities which may cause harm to the environment, Hungarian law requires the pursuer of such an activity to provide security whereby the potential damage may be mitigated. The required security may be a deposit or bank guarantee (such as in the case of mining) or a liability insurance policy. The latter is required from enterprises which are engaged in handling hazardous waste in Hungary.

In addition to obligatory liability insurance policies, it is possible to obtain environmental insurance policies on the Hungarian market on a voluntary basis. One can find on the market general liability policies which can be extended to damage caused to the environment by the insured outside the scope of its normal business operations.

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

No reliable public information is available on this question. Environmental liability insurance is an emerging market in Hungary; therefore, it is generally recommended to survey the market to identify new potentially-available policies before commencing a new activity which involves any environmental risk.

## 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 Hungary.

The new Hungarian Civil Code (2009), as opposed to the current Civil Code, recognises liability for environmental damage as a distinctive form of strict liability. According to the current regulations, the relevant parts of the new Civil Code regulating liability for environmental damage will be applicable from next year (although this may change). It appears that liability for environmental damage as regulated in the new Civil Code is not different conceptually from what one can already see in specific Hungarian environmental laws.

Please also see the discussion of class actions under question 8.5 above.

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## SZABÓ KELEMEN & PARTNERS ATTORNEYS

Szabó Kelemen & Partners Attorneys is a full-service law firm that traces its origins back to Szabó & Partners Attorneys, which was established in 1996. The firm is the Hungarian member of the International Alliance of Law Firms, and was the Hungarian member of the Ernst & Young Law Alliance from 1996 to 2003. The firm's impressive client base consists of multinationals, as well as large and medium-sized Hungarian companies.

The firm is particularly strong in employment, tax, and corporate and commercial work, including corporate restructuring and insolvency, as well as in various industry sectors, including financial services and real estate, with the latter practice allied to wide-ranging experience in environmental and town planning matters.

Many of the firm's Hungarian lawyers have worked in law offices or barristers' chambers abroad, and many hold postgraduate qualifications from foreign institutions. The working languages of the firm are Hungarian, English and German.