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Environment

in 22 jurisdictions worldwide

2013

Contributing editor: Carlos de Miguel

Published by
Getting the Deal Through
in association with:

Andreev, Stoyanov & Tsekova
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Environment 2013
Published by
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London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
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ISSN 1752-8798

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Legislation

1 Main environmental regulations

What are the main statutes and regulations relating to the environment?

The main statute relating to the environment in Malta is the Environment and Development Planning Act, 2010 (EDPA). The EDPA was brought into force over the months of November and December of 2010 (LN511/10), with the exception of a few remaining provisions some of which were brought into force over the course of 2011 and 2012 and others which are still to be brought into force. This new act replaces what used to be the Environment Protection Act (EPA) and the Development Planning Act (DPA) in an effort to reconcile the occasionally conflicting concepts of 'environmental protection' and 'development planning'. The two old laws are merged within the new EDPA, which reproduces most of the environmental and development principles originally contained in the old laws. The EDPA, like the old EPA, still lays down a set of cardinal environmental law principles for the Maltese islands albeit in relatively generic terms. The EDPA sets the way very early in its provisions (EDPA, section 3) when it states that it is the duty of everyone together with the government to protect the environment and to assist in the taking of preventive and remedial measures to protect the environment and manage natural resources in a sustainable manner. The EDPA also enshrines the principle that it is the government's duty to protect the environment for the benefit of present and future generations (EDPA, section 4). The more elaborate legislation that has been passed in Malta over the years takes the form of subsidiary legislation promulgated on the strength of the EDPA, the parent act. At least 175 sets of regulations are presently in force, tackling various aspects of environmental law ranging from the protection of wild rabbits to more sophisticated subjects such as integrated pollution prevention and control.

Another important source of Maltese environmental policy is the Structure Plan drawn up in 1990 under the DPA and updated over the years. The Structure Plan serves as the basis for future land use and development policy for the islands of Malta. Indeed, Malta is one of the most densely populated countries in the world and the sustainable use of land is one of its most pressing priorities both from an economic and an environmental perspective. The stated basic objective of the Structure Plan is that of optimising the physical use and development of land that respects the environment and, at the same time, ensuring that the basic social needs of the community are, as far as is practical, satisfied. The Structure Plan is currently being reviewed and a Strategic Plan for the Environment and Development is being drawn up in terms of the EDPA which will supplement and possibly replace the Structure Plan.

Other primary legislation that is very relevant to environmental law is the Crimes Against the Environment Act that implements Directive 2008/99/EC Act No. XI of 2012; the Sustainable Development Act (Act No. X of 2012); the Malta Competition and Consumer Affairs Authority Act (which repealed the Malta Standards Authority Act (chapter 419)) on the basis of which (among other things) the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH as per EC Directive 1907/2006) is administered in Malta through the Technical Regulations Division of the Malta Competition and Consumer Affairs Authority. The Malta Resources Authority Act (chapter 423) is also relevant because it addresses the protection of local resources. European Community legislation is also a further important source of Maltese environmental law and policy.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

Industrial activities and installations of a particular scale that present a degree of environmental risk will have their operation regulated by specific regulations, namely the Integrated Pollution Prevention and Control Regulations (SL 504.54 – LN234/02, LN230/04, LN426/07,LN56/08 and LN437/11 adopting EU Directive 96/61/EC). The said regulations require such plants to obtain an 'integrated pollution prevention and control' (IPPC) permit from the Malta Environment and Planning Authority (MEPA). The IPPC permit is, in fact, the focal point of the aforementioned regulations intended to create a system for the integrated control of pollution in Malta.

The regulations are intended to encourage industrial installations to identify ways of minimising pollution risk. In striving to achieve this, the regulations require that local plants captured by the legislation adhere to the following:

- apply and obtain the said IPPC permit, submitting in the application for the permit a full disclosure of their activities;
- monitor for noise and vibrations, energy efficiency and site protection against pollution;
- apply general principles of energy conservation in their operations; and
- return the site to a satisfactory state after operations cease.

The permission, enforcement and control procedures are coordinated and negotiated between the competent authorities and the operator. The operator is duty-bound to carry out 'self-monitoring'.

The IPPC permits are referred to as integrated because they are intended to address the environmental performance of the target plant in the wider context. This means that a wide spectrum of actual or potential sources of pollution are taken into consideration (that is, emissions to air, water and land, generation of waste, use of raw materials, energy efficiency, noise, prevention of accidents, risk management, etc). IPPC permits are intended to set pollution standards for the installations to which they apply. The unit of measurement that is applied is that of the best available techniques (BAT). BAT will demand balancing environmental protection against the cost of achieving it. The permit application, the decision

and the permit itself are in the public domain. The public is also entitled to view the monitoring reports.

As integrated pollution prevention is a multi-disciplinary task, a committee to deal with the regulatory aspect of the regulations has been set up. The IPPC Committee oversees the definitive establishment of IPPC installations, the inspection of installations and ensures that the necessary guidance in the legislation is carried out.

3 Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

Soil is an important and protected natural resource in Malta protected through specific legislation, namely the Fertile Soil (Preservation) Act, 1973 and the Preservation of Fertile Soil Regulations, 1973 (L/N 104/1973). The law protects fertile soil by prohibiting among other things the 'mixture' of soil with other materials in ways which would sterilise it, the deposition of material on soil, or covering of soil with material, building upon soil, deposition of fertile soil on land already covered with 1 metre of soil, deposition of soil in heaps or in any manner which would render it unsuitable for immediate cropping. The National Environment Policy for Malta, approved in February 2012 (the 2012 NEP), establishes, among other things, the nationwide strategy targets for soil quality management. According to the 2012 NEP, the government plans to, inter alia, undertake a legislative review to address lacunae related to threats to soil quality and also plans to put in place a soil quality monitoring system by 2014.

Under existing legislation, pollution to soil will be dealt with depending on the particular circumstances of the case. For example, oil-spill pollution originating from plants that are operated under an IPPC permit will be regulated principally under that regime. If pollution of soil affects the geological and geomorphological features of the land, its regulation and control will also fall within the competence of the Environment Protection Directorate and the Superintendence of Cultural Heritage (these being responsible for the conservation of geological and geomorphological sites in Malta). The Sludge (Use in Agriculture) Regulations, 2001, regulate the use of sewage sludge in agriculture in such a way as to prevent harmful effects on soil.

Industries setting up shop in Malta will be required, as part of the industrial processes, to address issues such as radioactivity and other environmental risks as part of the related permitting requirements. Industrialists that nevertheless cause pollution to soil will be subject to the possibility of having their operating permits revoked or made subject to additional conditions. Likewise with landowners who are developing land: in a case of soil pollution, the owner developing a stretch of land may find its development permit withdrawn by MEPA or made subject to its restoration, regardless of who caused the contamination and when it was caused.

In certain circumstances, actual or imminent contamination of the soil will also spark off the provisions of the Environmental Liability Directive (2004/35/EC). The Directive as transposed into Maltese law through the Prevention and Remedying of Environmental Damage Regulations is discussed further below (SL504.85).

Risks of pollution from agricultural and farming activities (that fall outside IPPC), such as pollution from sludge (SL504.19 – LN426/07 and LN212/2001) or from manure, is dealt with under specific legislation (SL504.43 – LN343/01, LN233/04 and LN426/07) where the focus is predominantly on the threat to water resources (dealt with below). Otherwise, environmental risks from such activities are treated as issues of 'waste management' (SL504.78 – LN106/2007).

4 Regulation of waste

What types of waste are regulated and how?

The EDPA defines 'waste' as any thing, substance or object that the holder discards or intends to discard, or is required to keep to discard and includes such other things, substances or objects as the minister for the environment may prescribe (section 2).

Management of waste (and this includes, inter alia, the storage and sorting of waste) and in certain cases even production of waste require a permit and are specifically regulated by the Waste Management (Activity Registration) Regulations (SL504.78 – LN106/07) and the Waste Regulations which have been most recently amended in 2011 (SL504.37 – LN184 of 2011 and 441 of 2011 implementing Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste (the Waste Regulations)). A producer of waste would, therefore, have to obtain a permit if it intends to store or dispose of, on site, the waste that it produces. Waste must be handled, stored and managed in accordance with the Regulations and the permit. Producers of the waste, among other things, are duty bound to ensure that such waste is safely contained.

Certain categories of waste are also specifically regulated: for example, a specific permit is required to deposit hazardous waste (SL504.37 – LN184/2011: Hazardous Waste Directive 91/689). Likewise, specific approval from the competent authorities would be required in the case of radioactive waste whether it is intended to be disposed of in Malta or shipped out of Malta (SL504.38 – LN338/01 and 426/07 (originally LN48/09)). Similarly, vehicles for scrap, that is, vehicles that have ended their life, are regulated by a specific legal regime (SL504.62 – LN99/04, LN426/07, LN340/10, LN244/11 and LN96/12 adopting Directives 2000/53/ EC and 2011/37/EU). Specific rules also apply to electrical and electronic equipment (SL504.75 – LN63/2007, LN426/07, LN341/10 transposing Directive 2002/96/EC as amended (WEEE)).

The same can be said for packaging and packaging waste, legislatively dealt with in Malta in accordance with Council Directive 94/62/EC on Packaging and Packaging Waste (SL504.72 – LN277/06 and LN426/07). Producers of packaging waste are specifically obliged to recover and recycle such waste (Regulation 8 et seq). This legislation is aimed at, as a first priority, preventing the production of excess packaging waste, but also promotes the reuse of packaging and the recycling and other forms of recovery of packaging waste to reduce the impact of the final disposal of such waste. The regulations are intended to address all sorts of packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level, regardless of the material used.

Waste from extractive industries and backfilling is another category of waste that is specifically regulated (SL504.87 – LN22/09 and LN216/11 transposing Directive 2006/21/EC), as is waste from batteries and accumulators (SL504.91 – LN55/10 and LN245/11), and from landfill operations (SL504.53 – LN168/02, LN289/02, LN70, 146,426/07) among others.

In order to meet its obligation under EU legislation, Malta published its strategic waste management plan in 2001 seeking to set up a framework for decision making for the management of waste in the future. As per the 2012 NEP, the government plans to, inter alia, update the waste management plan and also to formulate an Action Plan on construction and demolition waste by 2014.

5 Regulation of air emissions

What are the main features of the rules governing air emissions?

With regard to ambient air pollution, different pieces of legislation have over time transposed EU Directives and address specific emissions. Such legislation included the regulation of emissions of

benzene and carbon monoxide (LN163/02), nitrogen dioxide, sulphur dioxide and oxides of nitrogen, particulate matter and lead (LN224/01, LN231/04) and also ozone in ambient air (LN11/03). These various regulations have now been revoked and replaced by the Ambient Air Quality Regulations (SL504.100 – LN478/10 and LN482/11) which transpose Directives 2004/107/EC and 2008/50/EC. Some subsidiary legislation has survived the coming into force of the Ambient Air Quality Regulations and continues to regulate other compounds. Volatile organic compounds (VOCs), for example, are still regulated separately (SL504.27 – LN225/01, LN151 and 426/07; SL504.70 – LN78/06, LN426/07, LN162/08, LN251 and 348/10; SL504.88 – LN54/09, LN163/09 and LN5/11). These regulations are intended to prevent or reduce the direct or indirect effects of emissions of VOCs on the environment and human health by setting emission limits for such compounds and laying down operating conditions for industrial installations using organic solvents. Other legislation deals specifically with air quality, assessment and management and with national emission ceilings (SL504.58 – LN291/02, LN232/04 and 426/07) setting standards or limits in the process. LN292/07 relating to Arsenic, Cadmium, Mercury, Nickel and Polycyclic Aromatic Hydrocarbons in Ambient Air Regulations transposes Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004.

Specific legislation also addresses air emissions from large combustion plants (SL504.93 – LN172/10), and likewise specific legislation (SL504.31 – LN229/01, LN77/06, LN426/07 and LN185/11) addresses and controls gaseous and particulate pollutants that are emitted from plants that operate internal combustion engines (non-road mobile machinery), setting limit levels for emissions and regulating ambient air quality. Other subsidiary legislation addressing emissions into the air from construction sites are regulated under construction site management regulations (SL504.83 – LN295/07, LN358/07, LN371/07, LN426/07).

Most pollutants are the result of anthropogenic activity, with the principal sources being power generation, industry and transport. This is particularly true in urban areas. MEPA is responsible for monitoring air pollution in ambient outdoor air only (not indoor air) and for coordinating abatement measures.

With regard to the ozone layer, the production, importation, exportation and placing on the market or use of CFCs or other similar substances that deplete the ozone layer is controlled. Our law effectively transposes EU law that in turn absorbs international standards as reflected in the basic international instruments on the subject (the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, SL504.28, SL504.11, SL504.21 and SL504.96). Likewise, certain fluorinated greenhouse gases (HFCs) are also specifically controlled due to their 'global warming potential', in line with the relative EU legislation (SL504-92 – LN93/2010).

Older legislation continues to regulate 'dark' smoke emissions and 'clean air' (Clean Air Act, Chapter 200, LN148/75 and LN410/2007).

Air pollution continues to be addressed at a national level through the Air Quality Plan and various initiatives continue to be taken to improve air quality at the most basic of levels. These include, among others, the recent and continuing reform of the public transport system, the promotion of alternative modes of travel and use of cleaner fuels. According to the 2012 NEP, Malta is in the process of identifying and implementing a set of controlled emission zones to address urban air pollution hotspots.

The Convention on Long-Range Transboundary Air Pollution aims to combat acidification, eutrophication and ground-level ozone. The aim of the Convention is to limit, reduce and prevent air pollution including long-range transboundary air pollution. Parties develop policies and strategies to combat the discharge of air pollutants through exchanges of information, consultation, research and monitoring. The EU is a party to this Convention through Council Decision 2003/507/EC.

6 Climate change

Are there any specific provisions relating to climate change?

Malta was instrumental in launching and piloting the concept of climate change through various international fora. Particularly, on 22 August 1988, Malta requested the inclusion of an item entitled 'Declaration Proclaiming Climate as part of the Common Heritage of Mankind' in the provisional agenda of the 43rd session of the UN General Assembly urging the protection of global climate for present and future generations. On 21 September 1988, the General Committee of the General Assembly included an item entitled 'Conservation of Climate as part of the Common Heritage of Mankind' and allocated the item for consideration in the Second Committee.

On 24 October 1988, Malta formally introduced the item at a meeting of the Plenary Session of the UN General Assembly. During the session, Malta's policy was explained in the sense that there should be global recognition of the fundamental right of every human being to enjoy climate in a state that best sustains life. Malta then presented a concrete proposal in the form of a draft resolution that was submitted for consideration in the Second Committee. Resolution 43/53 was unanimously adopted in the plenary meeting of the General Assembly on 6 December 1988. This resolution paved the way for a series of events that led to the formulation of the United Nations Framework Convention on Climate Change (UNFCCC) adopted by the world's governments on 9 May 1992 at the Earth Summit in Rio de Janeiro. Malta ratified UNFCCC in March 1994 as a non-annex I state and, on 11 November 2001, went on to ratify the 1997 landmark Protocol to the UNFCCC (the Kyoto Protocol). The UNFCCC and its Protocol reflect Malta's policy on climate change.

Domestically, Malta continued to take steps regarding policy on climate change with its submission in April 2004 and May 2010 of its First and Second Communication to the UNFCCC reflecting Malta's National Action Plan, which puts forward various measures that ought to be adopted in support of the mitigation of greenhouse gas emissions and, furthermore, embraces measures that must be taken to allow the Maltese islands to adapt to climate change.

In June 2008, the Climate Change Committee was set up by the government to address climate change, tap into sources of alternative energy and ensure that Malta's national obligations to reduce carbon dioxide emissions are adhered to in order to attain its emission targets as agreed between Malta and the EU. In September 2009, the Ministry of Resources and Rural Affairs presented a Report entitled 'National Strategy for Policy and Abatement Measures Relating to the Reduction of Greenhouse Gas Emissions' consolidating the work carried out by the Climate Change Committee. The Strategy seeks to articulate the action to be adopted by Malta in the years to come. Malta's obligations have, in fact, since its accession in 2004, been closely associated with those of the European Union, especially through the implementation of the common and coordinated policies and measures being advanced within the Union (Directive 2003/87/EC). Each EU member state is required to prepare a national allocation plan (NAP) for a given 'trading period'. Malta's NAP determines the total quantity of allowances to be allocated to relevant installations operating in Malta and allocates the allowances among the different sectors and installations. The determination of allocations is based upon a number of criteria listed in the aforementioned Directive. Moreover, the European Community Greenhouse Gas Emissions Trading Scheme Regulations were adopted in 2005 and have been revised as necessary to implement Directive 2003/87/EC on emissions allowances trading. The overall

scope of these regulations is to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. These regulations require installations carrying out certain activities resulting in emissions to obtain a greenhouse gas emissions permit. The permit authorises the emission of greenhouse gases and also imposes certain obligations, including reporting obligations, on the installation holding the permit. The allowances are made to the permit holders in accordance with these regulations with reference to the relevant NAP. The regulations thus provide for the amount of allowances and also for the validity, transfer and cancellation of such allowances. The competent authority under these regulations is MEPA and it is charged establishing and maintaining a registry in order to ensure the accurate accounting of the issue, holding, transfer and cancellation of allowances. These particular regulations cover installations within the minerals industry or carrying out energy activities or the production of ferrous metals. The aviation industry has also been brought into the emissions trading fold through the European Community Greenhouse Gas Emissions Trading Scheme for Aviation Regulations (SL 504.99 – LN445/10 and LN4/11). These regulations apply to aircraft operators performing aviation activities, resulting in emissions of greenhouse gases.

The two installations which fall within the scope of this legislation in Malta at present are the two national power stations. In both the first trading period (2005–2007) and the second trading period (2008–2012), the total allowances allocated to these two installations (at no cost) fell (to date) within the 'cap' that was set at national level under the NAP and was sufficient to meet the emission requirements of the said installations. Thus, to date, these installations have had no need to buy further allowances from the EU market or the international market operating under the Kyoto Protocol. As the third trading period (2013–2017) approaches, Malta will be obliged to auction at least some, if not all, of the allowances approved for Malta under the third NAP. Malta is expected to apply for a transitional derogation from full auctioning for the power sector (although this is not possible for all installations over the whole period). Allowances will continue to be granted (for a limited period) to the installations at no cost to them, whereas the remaining will be auctioned within the EU ETS market.

The above-mentioned regulations also provide for the implementation in Malta of the projects under the Clean Development Mechanism contemplated under the Kyoto Protocol and the transfers of certificates representing allowances to emit GHG emissions both within the EU and also under Kyoto (Emissions Trading).

A recent related development is the transposition into local law of Directive 2009/28/EC on the promotion of the use of energy from renewable sources (through SL423.19 and SL423.37, among others), which has brought with it Malta's obligation to meet its national overall target of a 10 per cent share of energy from renewable sources in gross final consumption of energy in 2020. Malta's National Renewable Energy Action Plan (NREAP) indicates measures that are already in place and evaluates other possible measures that may aid in achieving this target. Post Kyoto, climate change will continue to be regulated in Malta via EU law albeit the legislation will be regional rather than an international in scope.

7 Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

With regard to fresh water, the geostructural division of Malta has enabled the formation of two different types of groundwater bodies: the perched aquifers, which are limited to the north-western extent of the island, and the mean sea-level aquifer, which is located in the southern and central parts of Malta and western part of Gozo. A few freshwater springs can also be found in cases where the perched aquifer water table outcrops. In Malta, as in most Mediterranean countries, water is a scarce, over-exploited resource and desalination of seawater needs to be employed to meet household and industry demands. Today, the mean sea-level aquifers are being abstracted at high rates both for public and private use. Problems associated with high abstraction rates include localised upcoming of seawater and thus an increase in salinity. Other human-induced pressures include various activities that can be categorised as point and diffuse pollutants of groundwater.

Apart from the pollution risks from seagoing vessels, coastal seawater in Malta is under threat from other pressures, namely tourism, fish farming, over-fishing and other industry demands. The sea and seawater are not subject to private ownership although the government does, from time to time, grant concessions to specific industries (such as fish farming) and, in such cases, sea quality is monitored.

Fresh water is protected through regulations that control the discharge of dangerous substances into the aquatic environment (SL423.16 – LN203/02 and LN426/2007 and SL504.20 – LN213/01and LN426/07) and which serve to transpose the relevant European Directive CD76/464/EEC. The main scope of the Directive is the establishing of a permitting system for discharges of what are known as List I and List II substances. The aim of this legislation is the total phase-out of pollution from List I substances and the reduction of pollution from List II substances. List I includes a number of groups and families of pollutants selected on the basis of their persistence, toxicity and bioaccumulation. The European Commission issued emission limit values and quality objectives for a number of List I substances, and these have also been transposed.

With regard to groundwater and inland water, Malta adopts a water policy framework that emulates EU Directive 2000/60/EC (SL423.20 – LN194/04, LN426/07, LN24/11 and LN115/12). The Malta Resources Authority (MRA) has been designated as the authority responsible for the protection of Malta's groundwater and inland waters. MRA is empowered to take the necessary remedial action even if the pollution occurred prior to the acquisition of the land by the present owner, operator or permit-holder (even though, as a rule of thumb, owners, operators or permit-holders cannot be held liable for damages for pollution not caused by them).

Contamination of groundwater gives rise to criminal liability on the part of the offender and is specifically protected under the Protection of Groundwater against Pollution and Deterioration Regulations, 2009 (SL423.36 – LN108/2009). Pollution caused to groundwater by nitrates from agricultural sources is specifically regulated (SL504.43 – LN343/01, LN233/04 and LN426/07).

Extraction of groundwater (whether for private or industrial use) is controlled and permits are required (Borehole Drilling and Excavation Works within the Saturated Zone Regulations, 2008, SL423.32 – LN254/08).

Likewise, the filling of pools with water is regulated, requiring that this be done with fresh water to avoid harmful leakage of seawater into groundwater on which Malta is dependent. The sale and distribution of fresh water in bulk (typically extracted from boreholes and transferred to the buying public through truck-driven water bowsers) is also regulated in order to 'safeguard public interest and safety' (SL423.23 – LN525.04, LN427/07, LN337/09, LN31 and 38 2010).

Fresh waters that support fish life are also protected (SL504.42 – LN342/01 and LN426/07, Directive 78/659/EEC of 18 July 1978) although this has limited relevance in a Maltese context. The limited inland surface waters present in Malta fall within the competence of MEPA (not MRA).

The marine environment is also protected on the basis of the EU Marine Strategy Framework Directive 2008/56/EC that establishes a framework for community action in the field of marine environmental policy and complements the Water Policy Directive and in the context of the regional Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution

and the Washington Declaration on Protection of the Marine Environment from Land-Based Activities (1995). The EU Marine Strategy Framework Directive was transposed into Maltese legislation through the Marine Policy Framework Regulations 2011 (LN73/2011). The regulations establish the Office of the Prime Minister as the competent authority, which coordinates the strategic approach and policy direction for the implementation of the Directive. Currently Malta is working on the initial assessment, determination of good environmental status and the establishment of environmental targets and indicators. Meanwhile, in September 2010, the EU adopted the Commission Decision on criteria and methodological standards on good environmental status of marine waters 2010/477/EU. This Decision establishes a set of criteria and indicators for each annex I descriptor to assess progress towards achievement of good environmental status in marine waters. The Directive also calls for the establishment of environmental targets and associated indicators for their marine waters so as to guide progress towards achieving good environmental status.

Popular swimming bays as well as other sensitive areas (the sea area surrounding fish farming, the coastal waters exposed to the Maghtab waste disposal site, the coastal waters close to a newly constructed ferry terminal) are continuously monitored for pollution and water quality. A number of detailed reports have been drawn up in the context of the applicable conventions and can be freely viewed at www.mepa.org.mt. As a contracting party to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, Malta is bound with this regional framework Convention and its Protocols. The Mediterranean Action Plan has facilitated action on Integrated Coastal Zone Management (ICZM) through its Priority Actions Program Regional Activity Centre which assisted a number of Mediterranean States to undertake Coastal Area Management Projects. From 2000 to 2002 Malta benefited from funding under the Mediterranean Action Plan for a Coastal Area Management Program (CAMP), which was aimed at introducing and applying the principles, methodologies and practices of sustainable coastal management in Malta, particularly in the north-west area. A major achievement for ICZM has been the adoption by the contracting parties of the Protocol on Integrated Coastal Zone Management in the Mediterranean in January 2008. Malta is signatory to this Protocol. Coastal waters fall within the competence of MEPA.

8 Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

Presently, terrestrial protected areas in Malta taken as a whole represent 20 per cent of the total land area of the Maltese islands (source: MEPA). Originally, the protection of natural spaces in Malta was dealt with on an ad hoc basis, with particular areas of natural beauty and value being declared a 'nature reserve' either under an act of parliament or under subsidiary legislation. One such case is the little island of Filfla off the west coast of Malta, which is protected as a nature reserve in terms of Act XV/88; access to the island is restricted (except by permission for educational and scientific purposes) and all flora and fauna is protected. Other small islands are also similarly protected, namely Selmunett Island, also known as St Paul's Island (SL504.05 – LN25/93 and LN426/07) and Fungus Rock (SL504.01 – LN22/92 and LN426/07). The government has also designated a large tract of country in the north-west of the mainland as a park (the Majjistral, Nature and History Park SL504.82 – LN251/07, LN224/09).

Since then, the Habitats Directive (EU Directive 92/43/EEC) has come to the fore, having been transposed into Maltese law in 2003 (SL504.73 – LN311/06, LN426/07, LN162/09 and LN24/10). This legislation also serves to implement a number of conservation and biological diversity conventions. On the basis of this legislation, MEPA has declared various locations in Malta to be protected as candidate Natura 2000 sites, whether as special protection areas (13 sites) or special areas of conservation (SACs) (28 sites) or other types of protected areas. These 28 candidate SAC sites, selected by Malta in terms of the said Directive, have been proposed to the EU Commission and endorsed by the latter. The designation of such sites as Natura 2000 is intended to protect and conserve the ecology of these islands. They include Old Holm Oak forest remnants (Il-Ballut, limits of St Paul's Bay), pine and oak woodlands as at Buskett, garrigue and phrygana as at Dingli Cliffs and Comino, sand dunes as at Ramla l-Hamra and coastal cliffs as those on the west coast of mainland Malta. More recently, regulations concerning infrastructure for 'spatial information' have been published (SL504.89 – LN339/09). These regulations came into force in December 2009 and concern, principally, the sharing and accessibility of information and data that also focuses on the environment.

In 2000 Malta signed the European Landscape Convention, albeit it has not ratified it yet. Meanwhile, MEPA has carried out a national Landscape Assessment Study. The study mapped out 'landscape sensitivity areas', of which 'very high' and 'high' landscape sensitivity areas cover 51 per cent of the Maltese islands. One of the principal tools for landscape protection is legal designation under the provisions of the EDPA (originally under the DPA) as areas of ecological importance (AEIs), sites of scientific importance (SSIs) and areas of high landscape value (AHLVs).

The Landscape Assessment Study highlights the features that influence the dynamic Maltese landscape. The Study was undertaken in the light of the revision to the Structure Plan for the Maltese islands and within the framework of the European Landscape Convention. The term 'landscape' refers to the visual aesthetic component of the surrounding environment. This definition is compatible with that of the European Landscape Convention as it addresses the perception factor of a landscape through the human mind.

MEPA is empowered to issue conservation orders to protect natural spaces (EDPA article 81).

The EDPA provides for the preparation of a Strategic Plan for Environment and Development which is to regulate the sustainable management of land and sea resources in the context of sustainable development and the safeguarding of future generations. The legislation introduces the concept of spatial planning that encompasses a more comprehensive approach to development planning than traditional land use planning to ensure a better quality of life.

9 Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

The Maltese Islands harbour a diverse array of flora and fauna, especially when considering the relatively small land area, the limited number of habitat types and the intense human pressure. Malta's biodiversity shares affinities with other areas of the Mediterranean, not only in view of its central position, but also in view of historical land bridges. Some of the earliest legislation at the start of the previous century (GN269/33) already dealt with issues concerning the protection of Holm oak, ash trees and olive trees that were older than 200 years; under the guise of the protection of the islands' 'antiquities'. Notwithstanding the dearth of legislation protecting the environment in Malta, some legislation trickled into this area, such as the regulations concerning the protection of wild thyme (GN85/32) and those concerning the protection of conifer trees (GN328/49). Currently, it is the Habitats Directive (EU Directive 92/43/EEC) transposed into Maltese law (SL504.73 as quoted above) that dominates in this area. The aim of the subsidiary

legislation which transposes the Directive is the conservation of natural habitats, flora and fauna. This legal notice sits side-by-side with the Tree and Woodland Protection Regulations (SL504.16 – LN200/11) that protect various categories of trees and also cater for protected areas and alien species. Trade in certain species of fauna and flora is also protected (SL504.64 – LN236/04 and LN426/07) in terms of the 'Convention on International Trade in Endangered Species of Wild Fauna and Flora' (CITES) that Malta adopts in its entirety.

With regard to fauna, reptiles are specifically protected (SL504.02 – LN76/92): other fauna fall within the subsidiary legislation mentioned above.

Malta is a contracting party to and has adopted the Convention on Biological Diversity (Rio de Janeiro, 1992), transposed directly into Maltese law in 2002 (SL504.50 – LN160/02). Among other things, the Convention has led to the continuing development of a National Biodiversity Strategy & Action Plan that aims to implement the Convention on a national scale (for more information see www.mepa.org.mt).

The 2012 NEP reveals various plans to continue to strengthen and implement legislation in this area. According to the policy document, the government plans to, inter alia, update the red list of threatened Maltese species by 2016, boost efforts to safeguard species and habitats in the context of the Natura 2000 network to ensure improved sufficiency of coverage by 2015 and also draw up the necessary management plans for terrestrial Natura 2000 sites by 2013. The 2012 NEP also envisages the drawing up of an action plan to restore at least 15 per cent of damaged ecosystems by 2020. Meanwhile, on 28 February 2012, the Ministry for Tourism, Culture and the Environment and MEPA have published the draft National Biodiversity Strategy and Action Plan (NBSAP) for Malta. NBSAP provides a comprehensive framework for safeguarding Malta's biodiversity over the period 2012 to 2020, as required by the National Environmental Policy. The NBSAP has been given the theme 'working hand-in-hand with nature' and a long-term vision that 'all Maltese citizens will value the importance of Malta's biodiversity and work hand-in-hand with nature in their daily lives'.

10 Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

The applicable regulations on environmental noise (or noise pollution, as it is sometimes referred to) are intended to avoid, prevent or reduce the harmful effects and annoyance created by exposure to environmental noise (SL504.63 – LN193/04 and LN426/07, adopting EU Directive 2002/49/ EC). The main features laid down in the Regulations, on the basis of which the above are to be achieved, are the following:

- determining exposure to environmental noise through noise mapping;
- ensuring that information on environmental noise and its effects is made available to the public; and
- adoption of action plans, based upon noise-mapping results, with a view to preventing and reducing environmental noise where necessary and particularly where exposure levels can induce harmful effects on human health, and preserving environmental noise quality where it is good.

The Noise Emission in the Environment by Equipment for Use Outdoors Regulations, 2002 (SL427.19 – LN64/02) regulate noise emissions from non-powered equipment intended for environmental applications and used outdoors, albeit the Regulations' applicability is restricted to the exhaustive list of items of equipment set out in its schedules. The control of 'vibrations' is regulated under the IPPC and the construction site management regulations, both mentioned above. Vibration generated from quarrying is regulated on the basis of the minerals subject plan approved by the Planning Authority Board, March 2002, in terms of the then DPA section 24 together with the adjoining code of practice for quarry workings and restoration. Odours are controlled by the authorities through general permitting requirements, such as trading licences or environmental permits, according to circumstances.

The 2012 NEP envisages the preparation of an action plan on environmental noise and the review of noise legislation related to neighbourhood noise. Meanwhile a White Paper entitled Neighbourhood Noise Prevention, Abatement and Control has been published by the authorities for public consumption.

11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

The regulation of liability for environmental damage arises in very general terms under the Civil Code, which provides a legal regime for 'liability for damage' generally that is not specific to the environment. The Code contemplates civil liability in situations where the person causing harm is responsible for damages caused towards the person who actually suffered the relative loss. Under our legal system, only material (or real) damages, including loss of future profits, may be claimed by the person who suffers the harm. Moral, psychological or penal damages are not permitted in such cases.

The general rules under the Civil Code are supplemented with specific environmental legislation that deals with particular environmental issues. Specific environmental legislation addresses in most, if not in all, cases, criminal liability, in which case a person found guilty by a court of law can be sentenced in some of the more serious cases to imprisonment, and in less serious cases to a penalty. The Criminal Code and the Code of Police Laws and 'older' legislation in certain instances continue to provide for criminal liability in very general terms.

Malta adopted the Prevention and Remedying of Environmental Damage Regulations in 2008 (SL504.85 – LN126/08 and LN439/11) implementing the provisions of EU Directive 2004/35/CE. These regulations apply to 'environmental damage' caused by certain defined occupational activities (schedule III) and to any imminent threat of such damage occurring by reason of any of those activities. With regard to protected species and natural habitats, the regulations apply to damage caused by any occupational activity and to imminent threat of such damage therefrom in cases where the operator is at fault or negligent. Standard defences can be brought by the wrongdoer in opposition of claims levied against him or her, whether in civil or in criminal law. In civil actions, for example, the defence that the damage is not a direct consequence of the breach (lack of causa nexus) would be available to the wrongdoer.

12 Environmental taxes

Is there any type of environmental tax?

The main objective of the Eco-Contribution Act (Chapter 473, Laws of Malta) supplemented by various other regulations (SL473.01-473.06) is to provide for the levying of an eco-contribution on products that generate end-of-life products or waste, with the ultimate aim of ensuring better disposal, reuse and recycling management. Consumers pay a tax, or an eco-contribution, to the state when purchasing certain products identified in the Act as contributing to waste. Eco-contribution arises once the products are placed on the market, so it is only the final product that is subject to this tax. The new regulations promulgated under this Act (LN84/10) provide measures and procedures to regulate the granting of exemptions in respect of the eco-contribution due on products placed on the market by producers who participate in the recovery of packaging

waste through waste recovery schemes. Eco-contribution is intended to discourage the use of certain environmentally harmful products by imposing upon consumers of those products the obligation to make a contribution.

Hazardous activities and substances

13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Although there is no specific legislation that addresses hazardous activities, invariably such activities will fall within the remit of existing environmental legislation and the requirements thereunder including those relating to licensing. For example, an activity consisting of transboundary movement of toxic substances is controlled in terms of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (implemented locally through SL504.15 – LN205/00 and LN427/07).

In August 2003 MEPA issued a 'supplementary planning policy guidance' entitled 'major accidents, hazards and hazardous substances'. This document sets out a land-use planning policy framework for the control of development involving hazardous substances and of development close to installations using or keeping hazardous substances. The overall objective is to reduce the number of people at risk and to reduce the likelihood and the extent of harm if an accident occurs. This planning policy and the procedures for implementing it form part of a wider local response to applying the Seveso II Directive.

14 Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

The main feature of the rules governing hazardous products and substances is that of achieving a high level of protection from chemicals by requiring the producers of chemicals to identify the intrinsic hazards of the chemicals they manufacture or import (ie, to 'classify' chemicals according to their dangers such as flammability, toxicity, carcinogenicity); to label these chemicals according to strict rules (ie, warnings about the dangers and safety advice); and to package them safely. The law in Malta regulating such products and substances is principally made up of EU regulations namely: Regulation (EC) No. 1272/2008 concerning the classification, labelling and packaging of substances and mixtures, and Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency. REACH is designed to manage and control the potential hazards and risks to human health and the environment from the manufacture, import and use of chemicals within the EU and at the same time enhance the competitiveness of European industry by fostering innovation. LN306 of 2008 (The Dangerous Substances Regulations, 2008), as amended, transposes the Dangerous Substances Directive (DSD) 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances. LN10 of 2007 (Dangerous Substances and Preparations Regulations, 2007) transposes the Dangerous Preparations Directive (DPD) 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the classification, packaging and labelling of dangerous preparations.

Otherwise, certain particular substances are regulated by subject-matter specific legislation, such as pesticides, explosives, fertilisers, asbestos and so on. The Regulations and their enforcement fall within the responsibility of the Malta Competition and Consumer Affairs Authority, more specifically, its Technical Regulations Division.

Hazardous waste is specifically regulated under waste legislation as has been mentioned above (SL504.78 – LN106/07 incorporating EU Directive 91/689).

Industrial accidents

15 Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

The Seveso II Directive (Directive 96/82/EC on the control of major-accident hazards involving dangerous substance) has been transposed into Maltese law through the Control of Major Accident Hazards (COMAH) Regulations – LN37 of 2003 as amended by LN6 of 2005. Seveso is the principal legislation in Europe relating to the prevention and control of chemical accidents. Eleven COMAH establishments have been identified in Malta, six of which are upper tier sites. The establishments are all designated as COMAH sites due to the type and quantity of fuels stored at the facilities.

Issues relating to measures intending to prevent industrial accidents are normally also addressed in the exchanges between the authorities and the industrialists that precede the granting of operating licences or development and other permits (including IPPC permits) or both. Invariably, the measures that the authorities will determine as necessary for the safe operation of the industry or its development (or both) will be imposed in such permits as may be required, including any IPPC permit that may apply.

Environmental measures imposed upon the industrialist are also, normally, in close affinity with occupational health and safety requirements and often there is a high degree of overlap. MEPA or the Occupational Health and Safety Authority (or both) will require the applicant to file with MEPA and with other authorities prevention plans, both within the company and in relation to the community, measures to prevent the 'domino' effect, implications in urban planning and such other safety requirements in anticipation of the issuance of the required permits.

Environmental aspects in transactions

16 Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

In cases where companies merge, the newly created, merged company will assume the liabilities of the companies that it succeeds and will be expected to answer for any environmental wrongdoing committed by the latter company.

In those cases where a company acquires shares in another company that would have committed a wrongdoing, the acquiring company qua shareholders cannot be held liable for the wrongdoings of the target company unless the acquiring company directly participated in that wrongdoing. In other words, the liability of the company cannot be 'passed on' to the company's shareholders unless the action in question falls within a very limited category of cases where the piercing of the corporate veil is specifically allowed by law. Such cases are very limited and, generally speaking, occur when fraud is proven and will, therefore, not normally apply in an environmental sphere. Hence, the purchaser of shares does not take on, itself, the environmental liability of the company; any liability would continue burdening the company as distinct from its shareholders.

The same considerations will apply in the case of an investor acquiring shares in a company that carries out activities that have an environmental aspect. Shareholders will not want to acquire shares in a company that operates under an environmental permit that may be revoked on account of previous wrongdoing.

In the context of mergers and takeovers, it has become the practice in Malta for the merging parties to include in the merger agreement specific environmental warranties. Local experience has shown that such warrants do take up some of the negotiations leading to the merger. In acquisitions, such warrants would be granted by the acquired company in favour of the acquiring company and would cater for potential environmental liabilities arising from the assets held by the target company. Unless such environmental warranties are specifically agreed upon between the merging parties contractually, they do not arise ex lege. This is because, under Maltese law, there is no affirmative duty on the part of the target company to disclose environmental problems to the acquiring company if such problems are apparent or can be readily ascertained by the acquirer. If an environmental problem is not apparent or if it is 'latent', the acquirer can annul the deal claiming the existence of a latent defect in the transaction.

Nevertheless, there is a duty on the part of the target company to act in good faith. The duty to act in good faith is a general principle of Maltese law and arises automatically – the parties need not mention it in the contract. The acquiring party will be in a position, therefore, to bring an action against the target company if the failure on the part of the latter to disclose an environmental problem is deemed to be tantamount to a failure on the part of the target company to act in good faith or tantamount to fraud or deceit. This would be the case if the environmental problem that was not disclosed to the acquiring company is of considerable gravity and was intentionally camouflaged by the seller. Furthermore, a purchaser would also have a remedy against the seller if the buyer demonstrated successfully that the environmental problem that was not disclosed renders the object purchased unfit for its intended use or diminishes its value. Invariably, therefore, it will be in the seller's interest to disclose environmental problems to a potential purchaser, particularly if such problem impacts the sale in the sense just described.

17 Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

In financing transactions, unless the lender's collusion with the wrongdoer is actually proven or unless fault or negligence is directly attributable to the lender, liability of the latter for environmental wrongdoing does not arise. The concept, evident in some jurisdictions, of deeming the lender to be an accomplice with the borrower in committing an environmental offence, attributing in that way liability to the lender for the wrongdoing of the borrower, is as yet completely alien to Maltese law.

In cases relating to real estate transactions (referred to as acquisition of immoveables in this jurisdiction), although the new owner will not be held responsible for any environmental wrongdoing caused by the previous owner prior to the acquisition of the asset, the environmental permit attached to the holding or operation of that asset may be revoked when that wrongdoing is discovered by the authorities, and it will be no legitimate excuse for the new owner to argue that the wrongdoing was caused at a stage when it was not the owner. The acquirer may also lose control over that asset once environmental officers impound it and operations are brought to a halt. Therefore, even though the new owner may not be held responsible for the actions of the previous owner, the former has an interest in ensuring, prior to purchase, that all is in order even from an environmental point of view.

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

Certain developments, because of their nature, extent and location or on account of other environmental considerations, will require an environmental impact assessment (EIA) before a decision on development permission is taken by MEPA. The categories of projects that require an EIA are described in the Environmental Impact Assessment Regulations, 2007 (SL504.79 – LN114/07, LN425/07 and LN438/11) dividing the types of development projects into two categories depending on their relative impact on the environment.

In general, large-scale projects and, particularly, polluting industries would be subject to the said legislation and require an EIA. Additionally, MEPA itself can demand that an EIA is carried out if it assesses the proposed development to have significant impacts on the environment. MEPA's assessment is made on criteria set out in the regulations. The EIA itself is not the licence but part of the process leading to it.

With effect from 30 December 2005, a further level of assessment has been introduced. Governmental plans and programmes that are 'likely to have a significant effect on the environment' are subject to a strategic environmental assessment (SEA). The relative regulations on SEA (SL504.102 – LN497/10 transposing the SEA Directive 2001/42/EC) provide a high level protection of primarily but not exclusively the environment. They contribute to the integration of environmental and health considerations by means of plans and programmes with a view to promoting sustainable development by ensuring that a strategic environmental assessment is carried out on plans and programmes which are likely to have a significant effect on the environment. The SEA Audit Team which was specifically set up to oversee the implementation of the SEA Regulations is now known as the SEA Focal Point.

The Plans and Programmes (Public Participation) Regulations, 2006 (SL504.69 – LN74/06) implement the provisions of article 2 of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

An EIA ultimately serves as a tool to achieve environmentally sound and sustainable development proposals, activities and programmes.

19 Environmental assessment process

What are the main steps of the environmental assessment process?

The first step in the EIA process is the submission of a proposal. The proposal is screened by MEPA for a decision to be taken as to whether an EIA is required. If an EIA is required, the applicant is informed whether an environmental impact statement (EIS) or an environmental planning statement (EPS) will be required. These are prepared by the developer and submitted to MEPA. An EIS is a full EIA study presented as a report that describes the development. An EPS, on the other hand, is a limited EIA covering fewer topics, requested for certain smaller scale developments. At this stage the terms of reference (TOR) for the study are formulated by MEPA. Once the TOR are ready, consultants collect data and prepare reports within their respective discipline, where impacts and mitigation measures are proposed. Once the study is finalised, the EIS or EPS which incorporates the findings and the procedures adopted is produced and is reviewed and assessed by MEPA. The public are usually involved in this review stage and their opinion taken into account in decision-making. The process then moves

for a decision to be taken in the light of the reports and the views received from the public. The EIA process does not end when the decision is taken; should a development be approved and subjected to conditions such as monitoring then the EIA continues. This stage is known as 'post-decision follow-up'.

Where an SEA is required in terms of the Strategic Environmental Assessment Regulations, the strategic environmental assessment must be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure. The starting point is the drafting of a report in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The report together with the relevant plan or programme is then submitted to the relevant authorities and the public who will have a time-frame within whichh to express their opinions on the draft plan or programme and the report. These regulations also provide for consultation with other relevant states where the plan or programme could have significant environmental effects in other states. Feedback from the consultations with the relevant authorities, the public and any other state are then taken into consideration when the relevant plan or programme is being adopted and this is then subjected to monitoring by the responsible authority.

Regulatory authorities

20 Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

MEPA is responsible for implementing environmental law and policy. MEPA is a statutory authority, independent of the government, originally set up under the DPA and presently regulated by the EDPA. It plays the role of the competent authority that takes charge of planning and environmental matters in Malta (SL504.34 – LN334/01, LN107/02 and LN172/02). It is very active in this respect and as such has the leading role. Invariably, enforcement of environmental law is principally carried out by MEPA through the hand of its enforcement officers.

Various aspects of environmental law enforcement, however, fall (occasionally, jointly with MEPA) within the portfolio of other state entities such as Transport Malta, the Malta Resources Authority (MRA), the Malta Competition and Consumer Affairs Authority (MCCAA) particularly its Technical Regulations Division and its Standards and Metrology Institute, the executive police and the local wardens.

Act X of 2012 brought into force Malta's new Sustainable Development Act which sees the responsibilities of the National Commission for Sustainable Development (NCSD), set up in February 2002 in the aftermath of the United Nations Conference on Environment and Development, but which has in the interim been abolished, passing over to the portfolio of the Office of the Prime Minister, which has been designated as the competent authority for the purposes of this act. The purpose of the Act is to create a framework through which sustainable development is to be mainstreamed across government and, within the context of the private sector and civil society, seeks to enable the raising of awareness of the principles of sustainable development such that these may be adopted on a voluntary basis. The act sets up two new entities. The first is a commission known as the Guardian of Future Generations which aims to safeguard inter-generational and intra-generational sustainable development in Malta. It convenes at least every quarter and its mandate is that of, inter alia, promoting sustainable development advocacy, developing a scientific research network that could positively contribute towards the sustainability of society, developing audits and proposing goals. The second entity is the Sustainable Development Network which is set up with the aim of promoting sustainable development in Malta and which also convenes at least every quarter. There are other bodies with specific tasks, such as the Department for Parks, Afforestation and Countryside Restoration, responsible for the national and regional recreational parks, and for afforestation under the responsibility of the Ministry for Rural Affairs and the Environment. As mentioned above, the Strategic Environmental Assessment Focal Point has replaced what used to be the Strategic Environment Assessment Audit Team (LN497/2010) and took on its function of overseeing of the implementation of the new SEA regulations of 2010, which implement the EU SEA Directive (Directive 2001/42/EC). WasteServe Malta Ltd is responsible for providing waste management infrastructure, which it administers at a national level.

Since the elections of May 2008, the Office of the Prime Minister (OPM) has taken over the responsibility for the environment and the parliamentary secretary for tourism, the environment and culture within the OPM is now responsible for the formulation and implementation of policies relating to the protection and management of the environment and the management of natural resources. The minister for resources and rural affairs remains responsible for climate change and the protection of resources generally.

The EDPA has also introduced a number of other bodies to the Maltese environmental scene. For instance, the Heritage Advisory Committee, which consists of two panels, one dealing with cultural heritage and another with natural heritage, and the Standing Committee on Environment and Development Planning, which is intended to discuss plans or policies and report thereon to Parliament. A Users' Committee is also provided for with the functions of supervising the general functioning of MEPA so as to ensure, in the interest of the general public, an expeditious and fair process and the transparency and uniformity in the Authority's decisions and actions.

21 Investigation

What are the typical steps in an investigation?

Typical steps involved in an investigation include assessment of the complaint or the facts by the authorities, onsite inspections, inquiries, documentation and collection of evidence and the taking of submissions of interested parties. Interim measures are also possible. Apart from MEPA, other authorities such as the Merchant Shipping Directorate of Transport Malta (TM and previously the MMA), are involved in carrying out investigations – in these cases such investigations will typically relate to oil spills committed either in Malta's territorial seas or outside Malta by Maltese-registered ships.

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

In general terms, the powers granted by law to environmental regulators are reasonably generous. In connection with the enforcement of environmental law, environmental inspectors have the following powers (EDPA, section 83):

- the right to enter any premises, public or private, at all reasonable times, and inspect or survey any land, or verify whether an illegal development or activity is taking or has taken place;
- board any vehicle or vessel licensed under the EDPA, or as may otherwise be prescribed;
- examine any article to which the EDPA or any regulations under it may apply and take such samples as it may deem fit for examination;
- make plans of any premises, vehicle or vessel and take photographs of the same after entry or boarding; or
- do anything that is ancillary or consequential thereto.

MEPA also has monitoring and review powers (EDPA, section 84) and may issue enforcement notices or orders to ensure compliance with environmental law. MEPA may appoint officers entitled to enquire from any person information in connection with any activity or other matter regulated by the EDPA.

Having said that, the environmental authorities (such as MEPA, the MSA, MRA and TM) have substantial powers of investigation within the area of competence laid down in the law for that particular authority and in that particular case. All wrongdoings that give rise to a criminal offence are investigated by the police and their powers of investigation are those general powers given to them to investigate all criminal offences carried out in Malta. The other authorities have powers of investigation that are, however, limited to the investigation of incidents that fall within their area of competence. There is a general principle of law that allows all administrative action that is ultra vires the powers of the administrative body that is carrying it out to be challenged in a court of law. The Administrative Justice Act (chapter 490 of the Laws of Malta) has set up an administrative tribunal that reviews administrative and government acts on the basis of legality. There are, otherwise, few instances where the law itself addressing a particular subject makes ad hoc provision for a mechanism of review, such as, for example, in MEPA under the EDPA as explained above.

23 Administrative decisions

What is the procedure for making administrative decisions?

In principle, decisions are discretionary as long as they are intra vires and conform to the law. In numerous cases, prior consultation is legislatively imposed and will form part of the procedure that must be followed for a decision to conform with legal requirements. Additionally, from time to time, authorities issue guidelines and policy papers; in such cases, the procedure for such decisions will be required to respect any procedure contemplated therein.

24 Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

In practice, sanctions can be light, such as warnings to the operators, but in other cases sanctions can be substantial, such as the imposition of hefty fines and, in those cases where the environmental wrongdoing amounts to an offence, criminal liability arises, in which case imprisonment or revocation of licences or permits (or both) are envisaged in the law.

25 Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

The general rule of thumb is that a right of appeal always arises from a decision of an authority. For example, in the case of development permits concerning land or property, if an applicant considers that the conditions imposed upon a development permission, or the refusal of such a permission, are unreasonable, it may either request MEPA to reconsider its decision or alternatively lodge an appeal with the Environment and Planning Review Tribunal (EDPA sections 41, 73 and 74), which performs the functions and obligations that used to pertain to the Planning Appeals Board originally constituted under the old DPA. The Planning Appeals Board now remains in existence solely for the purpose of hearing appeals pending before it that, before 31 December 2010, have been put off for a decision (EDPA section 97 (5) and LN27/2011). A further and final appeal may be lodged with the Court of Appeal (EDPA section 41(6)). In the latter case, appeals are restricted to points of law. Appeals from refusals of (or from the imposition of conditions on) other permits emulate, more often than not, the same structure as for land permit appeals. It is also possible to have an administrative action reviewed judicially when claimed to be ultra vires as explained above. Additionally, aggrieved parties have the option of presenting a complaint to the ombudsman, albeit in such cases a favourable recommendation from the ombudsman will not necessarily mean that the organ of the state concerned will necessarily abide therewith (albeit in most cases it does).

Judicial proceedings

26 Judicial proceedings

Are environmental law proceedings in court civil, criminal or both?

Environmental proceedings in court are characterised as either civil or criminal, depending on their nature. An act or omission could give rise to both civil and criminal proceedings, albeit the respective trials are independent of each other. Environmental proceedings can also consist of judicial review of administrative action or a constitutional dispute.

27 Powers of courts

What are the powers of courts in relation to infringements and breaches of environmental law?

In civil matters, the courts can award damages or the rectification of the wrongdoing, whereas in criminal cases the courts can impose fines, penalties or order imprisonment in the more serious cases.

28 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

Non-contractual breaches or infringements for violation of the law or for tortious actions (see question 11) make up the large majority of claims. However, a contractual claim for an environmental wrongdoing would also be allowed if that claim amounts to a contractual violation under general principles of breach of contract.

29 Defences and indemnities

What defences or indemnities are available?

All defences under general principles of law apply. For example, the local 'statute of limitations' (under the Civil Code) can serve to neutralise an action for damages suffered as a consequence of an environmental wrongdoing: such claims would, generally speaking, be time-barred after the lapse of two years from the time the wrongdoing is committed. Strict or vicarious liability only applies exceptionally, if at all. In fact, under general principles the party responsible at law must answer for the damage caused by his or her action up to that degree and no more: joint and several liability applies in those cases where it is specifically provided for (section 1089, Civil Code). One instance where joint and several (in solidum) liability occurs is where two or more persons cause damage maliciously. In such cases their liability to make good the damage will indeed be joint and several. If some of the offenders acted with malice and others without, the liability of the former will be joint and several while the latter will only be liable for such part of the damages as they may have caused (section 1049, Civil Code). Otherwise, in cases where the part of the damage that has been caused cannot be ascertained, the injured party is entitled to claim that the whole damage be made good by any one of the tortfeasors even though none or only some of the tortfeasors would have acted with malice. If the injured party, in such cases, decides to institute proceedings against only one of the

Update and trends

A considerable amount of environmental law and policy continues to be promulgated In Malta. New legislation has been enacted and existing legislation has been updated in order to implement more fully the provision of Directive 2009/28/EC on the promotion of the use of energy from renewable sources. These include the enactment of new Electricity Market Regulations (SL423.22 – LN166 of 2011), the amendment of the existing Guarantees of Origin Regulations (SL423.38 – LN92/10 and LN126/11) and the existing Promotion of Energy from Renewable Sources (Amendment) Regulations (SI423.19 – LN210/12).

Malta, for the first time in its legislative history, has adopted the concept of an 'environmental crime'. The Crimes Against the Environment Act came into force on 20 July 2012 implementing Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law. The Act sets out a list of acts that shall henceforth be considered to amount to 'crimes against the Environment' and shall be prosecutable as such. Among the criminal wrongdoings included in the Act are the disposal of waste and of nuclear material, the destruction of wild fauna or flora, conduct which causes the significant deterioration of a habitat within a protected site, and the importation of ozone-depleting substances. The principles embodied in the Act are all well and good: as with other aspects of environmental law, the crux of the matter is lack of resources to monitor and enforce.

July 2012 also saw the coming into force of the new Sustainable Development Act, the purpose of which is to create a framework through which sustainable development is to be mainstreamed across government and, within the context of the private sector and civil society, seeks to enable the raising of awareness of the principles of sustainable development such that these may be adopted on a voluntary basis. The competent authority for the purposes of the Act is the Office of the Prime Minister but two new entities have also been set up for the promotion of sustainable development and the safeguarding of inter-generational and intra-generational sustainable development in Malta. These are the Guardian of Future Generations and the Sustainable Development Network.

Malta's recently-launched National Environment Policy is expected to generate considerable interest in Malta in terms of policy development. The NEP is a comprehensive environmental policy document covering various environmental sectors and natural resources, including air, waste, water, land, soil, climate, biodiversity, coastal and marine areas, noise, chemicals and mineral resources.

Given the extremely high density of the Maltese Islands, proposed legislation intended to regulate noise pollution is likely to be a hot topic. A White Paper on the Prevention, Abatement and Control of Neighbourhood Noise has been published.

tortfeasors, the respondent in those proceedings will be entitled to demand that all the persons causing the damage be joined in those proceedings. The court may apportion among them the sum fixed by way of damages, in equal or unequal shares, according to the circumstances. This exercise will not, however, prejudice the right of the injured party to insist not only that it be awarded the whole sum, but also that the sum awarded be recoverable from any one of the persons concerned. In other words, in such circumstances, the tortfeasors remain jointly and severally liable towards the injured party (section 1050, Civil Code).

30 Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

Under general principles, civil liability for damages committed by a company or other corporate body cannot be attributed to a director or other officer of the company. The exceptions to this rule of thumb are normally linked to cases where directors commit fraud or wrongful trading, in which case specific defences provided for in the Companies Act can be raised (inter alia, section 316, Companies Act). Where the liability is of a criminal nature, different rules apply; the punishment levied for the offence committed will be attributed to the person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer, or was purporting to act in any such capacity, unless that person manages to prove in court that the offence was committed without his or her knowledge and that he or she exercised all due diligence to prevent the commission of the offence (Interpretation Act, chapter 249, section 13). If the offence arising from the environmental wrong is deemed not to be a corporate wrongdoing but to have been committed by the director or officers personally, then the latter would be liable for their wrongdoing in accordance with general principles of law.

31 Appeal process

What is the appeal process from trials?

Appeals are allowed to the court of appeal. An appeal from a judgement of a court of first instance is lodged by application filed in the relative court of appeal. There is no right to a further appeal from a judgment of a court of appeal. There are very specific and limited instances where a retrial is allowed. In cases where a violation of a constitutional right is claimed, the court may refer the constitutional issue to the court that enjoys constitutional jurisdiction for the matter to be decided by the latter court. From that decision, an appeal may be lodged to the Constitutional Court, the highest court of Malta.

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International treaties and institutions

32 International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

Yes. Malta is a party to numerous international conventions protecting the environment such as the UNFCCC and its Kyoto Protocol; the UN Convention on the Law of the Sea; the International Convention on Civil Liability for Oil Pollution Damage; the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage; the Convention on the Prevention of Marine Pollution by Dumping of Wastes at Sea and other Matter; the Geneva Convention on Long-Range Transboundary Air Pollution; the EMEP Protocol to the Convention on Long-Range Transboundary Air Pollution; the Basel Convention for the Transboundary Movement of Hazardous Wastes and their Disposal; the Vienna Convention on the Protection of the Ozone Layer; the Montreal Protocol on Substances that Deplete the Ozone Layer; the Montreal Protocol; the Aarhus Convention on Access to Information and Access to Justice in Environmental Matters; the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water; and the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil thereof, among others.

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

Multilateral environment agreements affect regulatory policy to a high degree – so much so that, when ratified, such agreements become law in Malta.

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