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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), Chapter 504 of the Laws of Malta. The EDPA was brought into force over the months of November and December 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 at present 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 EDPA places the onus on the government of Malta to prepare a Strategic Plan for the Environment and Development (SPED), which aims to replace the Structure Plan. The draft public consultation on SPED was published in February 2012.

Other primary legislation that is very relevant to environmental law includes the Crimes Against the Environment Act, which implements EU Directive 2008/99/EC, Chapter 522 of the Laws of Malta; the Sustainable Development Act, Chapter 521 of the Laws of Malta); the Malta Competition and Consumer Affairs Authority Act (which repealed the Malta Standards Authority Act (Chapter 419 of the Laws of Malta)) on the basis of which (among other things) the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH, as per Directive 1907/2006/EC) is administered in Malta through the Technical Regulations Division of the Malta Competition and Consumer Affairs Authority. The Malta Resources Authority Act, Chapter 423 of the Laws of Malta, is also relevant because it addresses the protection of local resources. European Union 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 Industrial Emissions (Integrated Pollution Prevention and Control Regulations) (SL504.54 of the Laws of Malta) adopting Directive 96/61/EC). These 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 multidisciplinary 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 (Chapter 236 of the Laws of Malta) and the Preservation of Fertile Soil Regulations (SL236.02). 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 (SL504.19) 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 their industrial processes, to address issues such as radioactivity and other environmental risks as part of the related permit 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) or from manure, is dealt with under specific legislation (SL504.43) 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).

4 Regulation of waste

What types of waste are regulated and how?

The Code of Police Laws, Chapter 10 of the Laws of Malta, in article 121(2)(i), clearly and unequivocally forbids dumping or throwing in any place refuse or rubbish. Any person who is found guilty of breaking this provision shall be liable on conviction to a fine. A definition of waste may be found in the EDPA, which 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).

The management of waste (and this includes, inter alia, the storage and sorting of waste) and, in certain cases, even the production of waste requires a permit and is specifically regulated by the Waste Management (Activity Registration) Regulations (SL504.78) and the Waste Regulations that were most recently amended in 2011 (SL504.37 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, therefore, has 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 waste are duty bound, among other things, to ensure that such waste is safely contained.

The legislature has enacted a number of waste management regulations, which aim to address the waste management of various waste streams, for example, a specific permit is required to deposit hazardous waste (SL504.37: 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). Similarly, vehicles for scrap, that is, vehicles that have ended their life, are regulated by a specific legal regime (SL504.62 adopting Directives 2000/53/EC and 2011/37/EU). Specific rules also apply to electrical and electronic equipment (SL504.75 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 Regulations (SL504.72). Producers of packaging waste are specifically obliged to collect, 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 transposing Directive 2006/21/EC), as is waste from batteries and accumulators (SL504.91) and from landfill operations (SL504.53), 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, inter alia, to update the waste management plan and also to formulate an action plan on construction and demolition waste by 2014. In line with the European Waste Framework Directive, Malta has until December 2013 to publish a National Waste Prevention Programme.

5 Regulation of air emissions

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

With regard to ambient air pollution, a vast amount of legislation has been enacted in order to transpose the EU acquis and in order to address specific emissions. The Air Quality Framework Directive was transposed into Maltese law via Subsidiary Legislation 504.100, the Ambient Air Quality Regulations. The main aim of this law is identical to the objectives of the directive it transposes, namely that of ensuring ambitious but realistic reduction in the concentration of particle pollution in the air. This would guarantee a better living

environment and a better quality of life for citizens. The directive seeks to consolidate existing EU Law on air quality, with the exception of the four daughter directives. The daughter directives have also been transposed into Maltese law via Subsidiary Legislation 504.100. According to the Ambient Air Quality Regulations, operators are obliged to control their emissions and to provide the competent authority with reliable and continuous data on their emissions. To date the Malta Environment and Planning Authority (MEPA) is the competent authority responsible for the implementation of this legislation and is also endowed with the responsibility to monitor the implementation of the directive into Maltese law and to secure the monitoring on this implementation. Limitation of emissions from volatile organic compounds (VOCs), for example, is still regulated separately (SL504.27 and SL504.88). 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 subsidiary legislation addressing emissions into the air from construction sites are regulated under the Construction Site Management Regulations (SL504.83).

The Quality of Fuels Regulations (SL423.29), which regulate the quality of fuels available in Malta, transposes the EU's acquis on this matter and relate to the specifications of various fuels. The regulations also specify the maximum sulphur content that needs to be present in heavy fuel oil. Like most Maltese subsidiary legislation relating to environmental issues this law also prescribes penalties on anyone who infringes the provisions of these regulations.

Specific legislation also addresses emissions from large combustion plants (SL504.93A and SL504.93). Both legal notices aim at limiting the atmospheric emissions from large combustion plants. Likewise specific legislation (SL504.31) addresses and controls gaseous and particular 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. Furthermore, the Regulations on Industrial Emissions (Waste Incineration) (SL504.36) mandates waste incineration plants and waste co-incineration plants to have a permit and to control their emissions in accordance with the modalities expressed in the same regulations. In addition, the Industrial Emissions (Framework) Regulations (SL504.116) provide a robust framework for the integrated prevention and control of pollution arising from industrial activities. They also lay down the rules designed to prevent or, where that is not practical, to reduce emissions into air, water and land. The legislature grants the minister responsible for environmental issues the power to enact additional regulations in order to implement the above-mentioned regulation. Operators also have reporting obligations that aim at aiding the competent authority to monitor emissions. SL04.81 on European Pollutant Release and Transfer Register Reporting Obligations Regulations obliges operators to report to MEPA the activities conducted by them as well as the necessary estimates of release into the atmosphere. SL504.18 on Combating of Air Pollution from Industrial Plant Regulations transposes Council Directive 84/360/EEC on the Combating of Air Pollution from Industrial Plants as well as the Long Range Transboundary Pollution Convention to which Malta is a party.

Malta has implemented numerous legal notices that seek to transpose the EU acquis regarding the Climate and Energy Package and, in particular, with regards to emissions trading and effort-sharing decisions, discussed in question 6. SL504.66 on the European Community Greenhouse Gas Emissions Trading Scheme Regulations provides for the implementation in Malta of a Scheme for Greenhouse Gas Emissions Allowances Trading within the European Union in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. Since the beginning of 2012, emissions from international aviation have been included in the EU ETS System. Like industrial installations, covered by the EU ETS, airlines receive tradable allowances covering certain levels of CO2 emissions from their flights per year. This legislation was the centre of an important judgment of the European Court of Justice, when a number of American and Canadian airlines and airline associations contested the transposition of this directive in the United Kingdom. Malta has transposed this obligation in SL504.99 and SL504.115. Currently, the application of this legislation has been suspended at both EU and national level on the basis of Decision No. 377/ 2013/EU of the European Parliament and of the Council of 24 April 2013 derogating temporarily from Directive 2003/87/EC Establishing a Scheme of EU ETS Aviation Regulation, thus allowing for progress on international market-based measures to be made at the international level and specifically in the International Civil Aviation Organisation in 2013. The Regulations on National Emissions Ceilings for Certain Atmospheric Pollutants, SL504.58, set upper limits for total emissions in 2010 of the four pollutants responsible for acidification, euthrophication and ground-level ozone pollution.

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. Maltese 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).

Subsidiary Legislation 504.55 on the Availability of Consumer Information on Fuel Economy and Carbondioxide Emissions in Respect to the Marketing of New Passenger Car Regulations seeks to ensure that the information relating to the fuel economy and CO2 emissions of new passenger cars offered for sale or lease is made available to consumers to make informed choices when purchasing a car. An EU regulation on the CO2 from cars and vans will be formally adopted by the Council and the Commission in the coming months. This will reduce average CO2 emissions from new cars to 95g per kilometre from 2020. The target is an average for each manufacturer's new car fleet. Although Malta does not have a car manufacturing industry, this regulation, if properly implemented, will have a positive effect in Malta since cars imported from EU manufacturers would be cleaner.

Older legislation continues to regulate 'dark' smoke emissions and 'clean air' via the Clean Air Act, Chapter 200.

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 forums. In particular, 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's original status was a non-Annex I state. Consequently, Malta did not take on emissions reduction targets for the first commitment period (2008 to 2012). As a result of Malta's membership of the EU and the obligations in the Climate Change and Energy Package, Malta currently has legally binding obligations to curb its greenhouse gas emissions, since EU law on climate change is based on requirements on Annex I countries. In fact, out of all the EU member states, only Malta and Cyprus did not have emissions reduction targets under the Kyoto Protocol for the first commitment period. In view of its status as an EU member state and the obligations to cap its emissions under EU law, in 2009 Malta submitted a formal application for an amendment to include Malta in the list of Annex I parties to the convention. This amendment was adopted by the Conference of the Parties (COP) 15 in Copenhagen and formally came into force in October 2010.

Domestically, Malta continued to take steps regarding policy on climate change with its submissions in April 2004 and May 2010 of its first and second communications 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 EU (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. These particular regulations cover installations within the minerals industry or carrying out energy activities or the production of ferrous metals.

From an EU perspective the EU ETS has led to a surplus of allowances on the market, meaning that the price for each allowance has dropped from €30 to less than €5 (in January 2013), with some arguing that the scheme is now ineffectual to produce any credible incentives to cut down emissions. In order to counteract this situation, the European Commission proposed changing the current system so that the amount of current surplus carbon allowances in the market could be cut to rebalance supply and demand and to increase price stability without any impact on competition. The impact assessment to this regulation carried out by the Commission shows that Malta will gain auctioning revenue once the backloading proposal is introduced. On 3 July 2013, the European Parliament voted in favour of this proposal. The aviation industry has also been brought into the emissions trading fold through the European Community Greenhouse Gas Emissions Allowance Trading Regulations (SL504.99 and SL504.115). This legislation was the centre of an important judgment of the European Court of Justice, when a number of American and Canadian airlines and airline associations contested the transposition of this directive in the United Kingdom. Malta has transposed this obligation in SL504.99 and SL504.11. Currently, the application of this legislation has been suspended at both European and national level on the basis of Decision No. 377/2013/EU of the European Parliament and of the Council of 24 April 2013 derogating temporarily from Directive 2003/87/EC Establishing a Scheme of EU ETS Aviation Regulation, thus allowing for progress on international market-based measures to be made at international level and specifically in the International Civil Aviation Organisation in autumn 2013.

The two installations that fall within the scope of this legislation in Malta at present are the two national power stations. In both the first trading period (2005 to 2007) and the second trading period (2008 to 2012) the total allowances allocated to these two installations (at no cost) fell within the 'cap' that was set at national level under the NAP and were sufficient to meet the emission requirements of these 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 to 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.

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.

Malta is obliged to submit every two years a report on national projections, policies and measures in accordance with article 3(2) of Decision No. 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a Mechanism for the Monitoring Community of Greenhouse Gases Emissions and for the Implementation of the Kyoto Protocol (PAMS Reports). The scope of these reports is to assess projected progress made by member states on greenhouse gas emissions limitations and reduction until the year 2020. The Malta Resources Authority has recently published Malta's second PAMS Report.

With reference to the Kyoto Protocol, Malta will deposit the instrument of ratification to the amendments to the Kyoto Protocol that establish its second commitment period together with the EU and the other member states. In the interim Malta has concluded its internal ratification process. The amendments to the Kyoto Protocol that establish its second commitment period were adopted by the Conference of the Parties in Doha in 2012 and may be summarised as follows:

- new commitments for Annex I parties to the UNFCCC who agreed to take on commitment in the second commitment period under the Kyoto Protocol, which runs from 1 January 2013 until 31 December 2020;
- a revised list of greenhouse gases to be reported on by the parties to the second commitment period; and
- amendments to several articles of the Kyoto Protocol that specifically referenced issues pertaining to the first commitment period and which need to be updated for the second commitment period.

The adoption of these amendments to the Kyoto Protocol include an amendment to Annex B of the Kyoto Protocol with a prescribed target for Malta as part of the EU's common emissions reduction target for the second commitment period. It was agreed by the Environment Council in March 2012 that, under the second commitment period, the obligation for the EU and its member states would reflect those already established and adopted under EU legislation in force (EU Climate and Energy Package). Therefore, as a result of this ratification, Malta should not have further emission reductions commitments other than those already prescribed under the EU's Climate and Energy Package.

Further to this, Malta still needs to attain eligibility according to Kyoto rules to participate in the Kyoto mechanisms. In brief, eligibility is achieved by fulfilling a number of criteria under the Kyoto Protocol rules. A decision needs to be taken by the COP in November 2013 in Warsaw to establish the modalities in order to expedite eligibility for Malta. Should this decision be adopted it would ensure Malta's participation in the Kyoto mechanisms.

In order to address climate change issues the Maltese government launched a National Climate Change Adaptation Strategy in May 2012. The strategy addresses climate change adaptation in Malta and proposes a number of action points on a sector-by-sector basis.

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 and SL504.20). SL449.57 on the Water Intended for Human Consumption Regulations concerns the quality of water intended for human consumption, with the objective of protecting human life from the adverse effects of any contamination of water intended for human consumption by ensuring that it is clean.

With regard to groundwater and inland water, Malta adopts a water policy framework that emulates EU Directive 2000/60/EC (SL423.20). 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). Pollution caused to groundwater by nitrates from agricultural sources is specifically regulated (SL504.43). Recently, amendments have been made to the Nitrates Regulations that prescribe stricter conditions to further regulate pollution from nitrates. Moreover, in order to avoid lengthy court proceedings, the government recently adopted the possibility of applying administrative penalties that seek to rectify any wrongdoing with immediate effect, thereby avoiding court proceedings.

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).

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).

Fresh waters that support fish life are also protected (SL504.42, 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 currently 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 (SL504.107).

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 by this regional framework convention and its protocols. The Mediterranean Action Plan has facilitated action on integrated coastal zone management (ICZM) through its Priority Actions Programme 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 programme (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?

At present 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 are protected. Other small islands are also similarly protected, namely Selmunett Island, also known as St Paul's Island (SL504.05) and Fungus Rock (SL504.01). 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)).

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). 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 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 such as those on the west coast of mainland Malta. More recently, regulations concerning infrastructure for 'spatial information' have been published (SL504.89). These regulations came into force in December 2009 and concern, principally, the sharing and accessibility of information and data that also focus on the environment.

In 2000 Malta signed the European Landscape Convention, although 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 that 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 more than 200 years old, 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)) that protect various categories of trees and also cater for protected areas and alien species. The Plant Quarantine Act, Chapter 433 of the Laws of Malta, controls the trade in plant material, plant pests and diseases and indirectly contributes to the welfare of biodiversity. Trade in certain species of fauna and flora is also protected (SL504.64) in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) that Malta has adopted in its entirety.

With regard to fauna, reptiles are specifically protected (SL504.02); other fauna fall within the subsidiary legislation mentioned above.

Wild birds are protected through SL504.71, which deals with the conservation of wild birds. The legal notice seeks to protect wild birds by prohibiting a number of activities including hunting. The law also lists illegal methods for capturing wild birds.

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). Among other things, the convention has led to the continuing development of a National Biodiversity Strategy and 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, inter alia, to 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 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, 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) 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 consultation.

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 damage caused towards the person who actually suffered the relative loss. Under Malta's 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) implementing the provisions of EU Directive 2004/35/EC. 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 to 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 placing on the market certain products identified in the act as contributing to different waste streams. 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 provide measures and procedures to regulate the granting of exemptions and refunds 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 and manage to prove that the selected products have been recycled. 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).

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. The Dangerous Substances Regulations, SL427.14 as amended, transpose 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. SL427.28 on Dangerous Substances and Preparations Regulations 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-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, specifically its Technical Regulations Division.

Hazardous waste is specifically regulated under waste legislation as mentioned above (SL504.78 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 (SL424.19). 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 merging companies.

In those cases where a company acquires shares in another company that would have committed prior to the acquisition a wrongdoing, the acquiring company qua shareholder 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 or in exceptional cases specifically provided for by law. Such cases are very limited and, generally speaking, occur when fraud is proven. Hence the purchaser of shares does not itself take on 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, it has become the practice in Malta for the parties to include in the relative agreement specific environmental warranties. In acquisitions, such warranties 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 object of 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 problems affect 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), 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 (SL504.791), 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 a significant impact 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 was 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, 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 that 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) 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 timeframe within which 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). 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.

The Sustainable Development Act, Chapter 521 of the Laws of Malta, defined 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. The NCSD has in the meantime been abolished and its portfolio passed to 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 Sustainable Development, the Environment and Climate Change. As mentioned above, the Strategic Environmental Assessment Focal Point has replaced what used to be the Strategic Environment Assessment Regulations (SL504.102) 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.

Following the elections of March 2013, the Maltese government has introduced a new ministerial portfolio on sustainable development, the environment and climate change. Owing to the interdependence between climate change, sustainable development and the environment, the new portfolio seeks to address these issues and challenges in a holistic manner while taking into account the relevant EU legislation on this matter.

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 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, on-site 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.

Certain government organs (directorates, departments, etc) also have investigative powers. Moreover, a number of legal notices give directors the power to impose administrative penalties on any person who admits a breach of law and who seeks to rectify this breach. The tool of administrative penalties is considered a time-efficient remedy especially in cases of urgency, as it avoids lengthy court proceedings and avoids overwhelming the courts.

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. Administrative penalties as mentioned above, are considered an important tool in this regard.

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, had been deferred for decision (EDPA section 97(5)). 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 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 the part of the damage that 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 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 damage 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, Chapter 386 of the Laws of Malta, 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 a 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.

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, among others: the UNFCCC and its Kyoto Protocol – Malta was the first EU member state to internally ratify the amendments to the Kyoto Protocol that establish its second commitment period; 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 Convention for the Protection

Update and trends

In May 2012 the minister responsible for climate change launched the Climate Change Adaptation Strategy. The strategy outlines the climate change adaptation policy that should be adopted by the various governmental authorities and indicates which government entity or authority is responsible for its implementation within a stipulated timeframe. The strategy aims at mainstreaming climate change adaptation within the various policy sectors in Malta. In November 2012, the minister responsible for energy launched the National Energy Policy for the Maltese Islands. The policy includes a number of initiatives that the government should implement in order to guarantee the use of cleaner energy as well as to grant energy security. These strategies, if correctly implemented, will aid Malta to reach its various targets mandated by EU legislation.

With reference to legislation in the environmental sector, Malta has continued to implement and transpose legislation emanating from EU law. In this respect we can identify that Malta will be compelled to implement the EU ETS Backloading Regulation, which amends the EU ETS Auctioning Regulation by postponing the auctioning allowances from the years 2013 to 2015 until 2019 to 2020. Legislation that requires implementation at the national level is the Monitoring Mechanism Regulation, which entered into force on 8 July 2013. This regulation aims at improving the quality of data reporting and helps member states to keep track of the progress they are making towards meeting their emissions targets. Other key legislation that requires implementation is the Decision on Land Use, Land Use Change and Forestry. Malta is required to transpose this decision into national law, and is required to account for emissions and removals from soils and forests, as well as to prepare action plans to regulate this sector. However, in some sectors further action is required. In this respect, we note that according to official websites Malta has not yet published an Initial Assessment of Environmental Status of Marine Waters in line with EU obligations, and furthermore Malta has until December 2013 to publish its Waste Prevention Programme.

MEPA has currently initiated the process for all local plans to be reviewed. The process is commencing with a three-month public consultation exercise, through which the authority has invited local councils, the public and all interested stakeholders to take the initiative in this process.

Following the election in March 2013, Malta has a Ministry for Sustainable Development, the Environment and Climate Change in order to address these issues in a robust and concrete manner.

of the Mediterranean Sea against Pollution; 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.

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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