Chapter 7

Bulgaria

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1 Environmental Policy and its Enforcement

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

The basic principles of the environmental policy in Bulgaria are established by the Constitution of the Republic of Bulgaria which stipulates that the Republic of Bulgaria shall ensure the protection and reproduction of the environment, the maintenance and diversity of wildlife, and the rational utilisation of the minerals and the resources of the country. Further to the above general rule, the Environment Protection Act (the "**EPA**"), which is the main piece of law in the environmental field, sets forth the principles upon which environmental protection is based, such as: sustainable development; the prevention and reduction of risk to human health; the priority of pollution prevention over subsequent remediation of the damages caused thereby; the "polluter pays" principle, etc.

The state policy on environmental protection is to be integrated into the respective sector policies – transport, industry, agriculture, tourism, construction and others, as well as into regional policies for economic and social development; and is to be implemented by the competent bodies of the executive power.

The EPA regulates the structure and competencies of the authorities that administer and enforce environmental law – the main body in charge is the Ministry of the Environment and Waters and certain agencies within its structure such as the Executive Agency on Environmental Protection and its Regional Inspectorates on Environment and Waters, the basin departments (responsible for waters management), the national park departments (responsible for natural parks management) as well as the district governors, and municipal authorities.

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

The bodies mentioned above basically enforce environmental law through various administrative mechanisms established in the effective legislation such as:

- preventative measures – by way of requiring prior environmental impact assessment, compatibility assessments or licences and permits for implementing investment projects or carrying-out environmental sensitive activities;
- current-control on the quality of the components of the environment; control on the compliance with the terms of issued environmental permits, etc.; and
- follow-up-control aimed at the establishment of the results of implemented environmental measures under the respective environmental permit or at compliance with mandatory instructions, etc.

As part of their control powers, the competent bodies may impose one-off or recurrent fines on the polluters and/or undertake coercive administrative measures against them, including *inter alia* the suspension of industrial operations.

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

The EPA specifically declares the public access to environmental information as a priority and regulates the procedures for that purposes. In principle any person is entitled to access available information on the environment without the necessity of proving a specific interest.

Access to environmental information may be refused only in certain cases exhaustively listed in the law, such as when the information represents: classified information; intellectual property; a statutory determined trade or industrial secret, etc. The above limitation of the right of access to information does not refer to data on the emission of harmful substances into the environment as valued according to the criteria determined by the effective laws and by-laws.

2 Environmental Permits

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

Usually, Bulgarian law imposes a requirement for an environmental permit if this could contribute to the prevention, limitation and control of the pollution of the different components of the environment. In other cases permits are required with the aim of ensuring the effective and sustainable use of respective natural resources (e.g. waters).

The main environmental permits as required by the effective Bulgarian legislation include:

- a permit for water use or a permit for waste water discharging and/or other forms of use of water objects (such as rivers; lakes, etc.). Said permits are regulated by the Waters Act;
- a permit or registration required for engaging in waste management operations (such as waste collecting, transporting, utilisation, etc.). Said permits/registrations are regulated by the Waste Management Act;
- a permit for use of volatile organic compounds by new or existing installations within the scope of the activities listed

in an appendix to a regulation issued under the Clean Ambient Air Act;

- a permit, including a management plan, for activities relating to management of all mining waste kept in a certain category facilities as specified by the Underground Resources Act;
- a permit for greenhouse gas emissions. As of October 2005 the building and the operation of new and the operation of existing installations and facilities, as listed in the EPA (such as combustion thermal power plants with an installed capacity from 20 to 50 MW; crude oil refineries, etc.) are admissible after the issuance of the above permit. A regulation issued under the EPA sets the procedure on the issuance of the permit;
- an integrated permit for the construction of new facilities as well as for the expansion and operation of existing facilities as listed in an appendix to the EPA (such as combustion plants with more than 50 MW of installed capacity; waste depots/installations meeting certain criteria, etc.). The permit is called "integrated" because if issued, it will replace the requirement for issuance of separate permits for: treatment of waste; waste water discharging; and other activities influencing the natural status of the water objects; and
- the construction of new as well as the operation and the expansion of existing enterprises and equipment where certain dangerous substances are used or located, is admissible on the basis of a special permit issued under the Environment Protection Act. This permit requirement is part of the statutory measures for the prevention of industrial failures, and the reduction of the consequences thereof.

In the case of a change in the operator of an installation/facility to which a complex permit, a greenhouse gas emissions permit or an "industrial failures prevention" permit refers, the new operator of the installation/facility assumes the rights and the obligations under the permit. Most of the other environmental permits may not be transferred by one person to another. However, under certain circumstances, the legal successor of a permit holder may be issued a new permit through a simplified procedure.

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

The refusal by an administrative body to issue an environmental permit, the terms of issued environmental permit may be appealed by the applicant before a superior administrative body (if any) and/or before court. The appeal may be submitted within expressly fixed statutory deadlines. Otherwise the right of appeal is precluded, unless the act subject to the appeal is null and void.

The appeal procedures are regulated by the Administrative Procedure Code. The administrative body which is to resolve the appeal may control both the lawfulness of the appealed act as well as its reasonableness. The court on its part may resolve only on the lawfulness of the act (e.g. it may cancel the refusal to issue a permit on the grounds of its contradiction with the substantive law, but not because it is not reasonable).

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

Yes, environmental impact assessments are required for investment proposals for particularly polluting constructions, activities and technologies.

An environmental impact assessment is mandatory for certain investment projects as listed in Appendix No. 1 to the EPA such as: thermal-electric power plants with a capacity of at least 50 MW; installations for burning and chemical treatment of hazardous waste; oil storage facilities of 200,000 tonnes and over, etc.

In respect of other investment projects as listed in Appendix No. 2 to the Act, (such as underground mines; equipment for surface fuel storage; production and assembling of motor vehicles, etc.), the competent environmental bodies have to decide on a case by case basis whether an environmental impact assessment is to be made or not. The same regime of case by case evaluation of the necessity to prepare an environmental impact assessment is applicable to projects for expansion or change of the technology or operations of a project listed in Appendix No. 1 or Appendix No. 2 to the EPA. Upon making said evaluation, the competent authorities have to take into account whether the proposed extension and/or change may lead to a considerable negative impact on the environment.

Special type of environmental assessment is required for projects affecting the territory of site included in the Nature 2000 network for compatibility of the project with the applicable special requirements.

If the environmental impact assessment is approved by the environmental regulator, the investment proposal may be implemented in compliance with the terms set out in the approval.

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

In the case of permit violations, the environmental regulators may impose fines on the permit holder; undertake coercive administrative measures against him/it (including suspension of industrial operations), and/or revoke the granted permit.

3 Waste

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

The Waste Management Act defines "waste" as any substance, object or part thereof, which the holder discards or intends or is required to discard, and which belongs to at least one of the categories listed in the Act. Such categories include among others:

(a) residues of industrial operations (slag, residues from distillation and similar);

(b) products not corresponding with the respective standards;

(c) products with an expired date of fitness or of maximum effectiveness;

(d) materials which as a result of accidents, disasters or other mishaps have been spilled, scattered, lost or have otherwise caused damages, irreparably impairing their original qualities, including any materials and equipment contaminated as a result of a mishap;

(e) materials contaminated as a result of planned actions (residues from cleaning operations, packing materials, containers and similar); and

(f) parts which may not be subject to further use (used batteries; exhausted accelerators and similar), etc.

In principle, the management of hazardous waste involves additional duties and controls. All operations on hazardous waste treatment are subject to licensing, whilst some of the operations with non-hazardous waste (such as collecting, temporary storage and transporting) may be implemented solely on the basis of a registration. The holders of hazardous waste have some additional

duties, such as: to designate a responsible person and to create an organisation for safe hazardous waste management; to ensure periodical training of the personnel, etc.

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

The industrial non-hazardous wastes may be treated (i.e. collected; stored; utilised, etc.) by their producer with its own equipment according to a project for the production activity as approved by the environmental regulators. The treatment of hazardous waste may be done directly by the producer only on the basis of a waste treatment or an integrated permit, at sites, landfills or installations which are designated in the permit.

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

Producers will retain liability if they have transferred the waste to a person who is not authorised to effect the respective waste management operations, and/or if the transfer is not done on the basis of a written agreement. If the transferee has the required authorisations (waste management permit or registration) and it has accepted the waste on the basis of a written agreement, the liability in respect of the waste will be on the transferee.

In the relations between the producer of the waste and the transferee, the producer could retain a liability for the waste, if this is expressly fixed in their agreement and according to the terms of said agreement.

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

A producer could be obliged to take back and recover their waste in the case where they have disposed of the waste in a manner which is contradictory to the law. In addition, in the case where the exported waste is not accepted by the state-importer or by the states through which the waste was to be transported, an exporter of waste is obliged to ensure that it is rendered harmless or is utilised.

4 Liabilities

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

Liability for a breach of environmental laws and/or permits could be: administrative; civil; and criminal. In brief the specifics of the different types of liability are:

- Administrative Liability

Both individuals and legal entities may be administratively liable in the case of a violation of established statutory/permit requirements, if under the law such a violation constitutes grounds for imposing administrative sanctions. The administrative sanctions are usually in the form of fines. Said sanctions are imposed by the competent administrative bodies.

A typical defence against administrative liability is to prove that the violation is a result of the acts of third parties, force majeure events, etc. Arguments can also be exposed on the basis of the interpretation of the statutory requirements.

- Civil Liability

A person who through a breach of environmental law has caused damage to third parties is liable to compensate them. In general, the pre-condition for said liability is the guilt of the infringer (i.e. negligence or wilful misconduct). However, the owner of movable/immovable property (e.g. equipment) and the person supervising it are jointly liable for the damage caused to third parties by such property, even where they have not acted wilfully or negligently.

The infringed persons may submit a claim against the violator for termination of the violation (e.g. pollution) and remediation of the consequences thereof.

Again *force majeure* events, acts by third parties, contribution by the infringed person, etc. may exclude or limit the liability of the infringer.

In addition, there are special provisions in the Liability for Prevention and Remedying of Environmental Damage Act. Generally it is stated that the costs for application of preventive and remedial measures under the said Act including the costs for commissioning of additional analyses, shall be borne by the operators (as defined in the said Act) as a result of whose activity an imminent threat of environmental damage occurred or environmental damage has occurred. These costs shall not be borne by the operator where the said operator can prove that the imminent threat of environmental damage or the environmental damage was caused by a third party and occurred despite the fact that the operator took all appropriate safety measures or resulted from compliance with a mandatory prescription issued by an executive authority, other than a prescription issued consequent upon an emission or incident caused by the operator's own activities.

- Criminal Liability

Some of the environmental violations represent crimes under the Criminal Code. For example, an individual who admits pollution of soil, air or waters (and the said pollution creates high social hazards) is to be sanctioned with imprisonment of up to 5 years plus a fine of up to BGN 5,000.

Criminal liability always lies on the individual who has committed the crime. Such liability cannot be transferred, inherited, etc. Legal entities are not subject to criminal penalties.

Until otherwise established by a verdict that has entered into force, the individual accused in crime is considered not-guilty.

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

As a matter of general principle of Bulgarian civil legislation, any person who has negligently or intentionally caused damages to another is obliged to remedy them. Hence an operator may be held liable for environmental damages notwithstanding that the polluting activity is operated within the permit limits.

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

Directors and officers of a corporation may attract personal liabilities for the environmental wrongdoing of the corporation if this is expressly provided for by administrative or criminal law. Civil liability for damage caused to third parties by a corporation lies on the corporation. Even more, if environmental damage is caused

to third parties by the directors or officers of a corporation upon implementation of duties assigned by the corporation, the directors (officers) and the corporation shall be jointly liable for the compensation for such damages. If the corporation compensates for the damages, it may fully or (in some cases) partly have reimbursed the sums paid from the guilty directors/officers. On a contractual basis the directors (officers) may limit their civil liability vis-à-vis the corporation. However such a limitation will not be valid in a case of wilful or gross negligent breach of their contractual duties.

Directors and officers may get civil liability insurance or legal expenses insurance, although such insurances are not so commonly used in Bulgarian practice.

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

In the case of a share sale, the target company (joint-stock company; limited liability company) continues to be liable for its past and future operations; i.e. it could have a property sanction imposed on it (in practice, a fine) in a case of past or future violations of the environmental law; it could be obliged to compensate third infringed parties; or it could be instructed to remedy environmental damages, etc.

In the case of an asset purchase environmental liability will formally lie on the seller if the breach of environmental law is made prior to the purchase; or on the purchaser if the breach is committed after the purchase; i.e., the purchaser is only a successor to the rights of the seller on the asset, but not to the seller's existing liabilities. Deviations from the above general rules could be seen in the following circumstances:

First, it is possible for the asset subject to the purchase (e.g. land) to have been contaminated prior to the purchase, whilst the damages from the contamination were caused after the purchase. In this case, the purchaser as owner of the asset at the time that the damages were caused may also be held liable for their remediation.

Second, the Waste Management Act provides that in the case where the generators of waste are unknown, the expenses for the restoration of the quality of the environment are assigned to the possessor of the waste (e.g. a purchaser of land). Formally in this case the possessor is entitled to reimburse the incurred expenses from the real polluter, if discovered, and if not apply and possibly receive a financial aid from the municipality/State.

Third, practical risks for the liability of the purchaser for historic environmental breaches also exist in the case where there is no strong evidence about the time of past pollution. Under such circumstances there is always a chance that the controlling agency/court will rule that the pollution or other breach of environmental laws was committed at a time the asset was owned and operated by the purchaser, and hence the purchaser will be liable therefor.

In both cases - share purchase and asset purchase – it is strongly recommendable for the purchase contract to expressly address the issue of environmental liability for the past operations of the target company or the asset on the basis of proper environmental due diligence.

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

Under the law, lenders may not be liable for wrongdoings by borrowers. Such a liability could be assumed only on a contractual basis, although contracts of this type would be rare in practice.

5 Contaminated Land

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

Generally under Bulgarian law, the polluter is liable for the contamination of soil and groundwater, i.e. he/it is to remedy the contamination at his/its own expense; he/it may be fined or imposed coercive administrative measures, etc. The Liability for Prevention and Remedying of Environmental Damage Act provides the "polluter pays" principle.

In addition, the owner of property as well as the person effecting supervision on such property may also be held liable for environmental (and other) damages caused by the property to third parties (e.g. for contamination of groundwater caused by defects in equipment). Formally, liability lies with the owner/supervisor at the time the damages were caused. As discussed in question 4.1 above this is a "no-fault" civil liability.

The above rules also apply to the liability for historic contamination although certain deviations are possible if there is no sufficient evidence about the time and the source of the contamination. In this case certain statutory Acts assign liability for remediation of the contamination to the State, whilst according to others liability is assigned to a third "innocent" party (such as e.g. a possessor of waste).

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

Under civil law, if more than one person is responsible for the contamination, all of them are jointly liable *vis-à-vis* the infringed party.

This rule reiterated by the Liability for Prevention and Remedying of Environmental Damage Act. When the contamination (as one possible case of environmental damages) is caused by more than one operator (as defined by the said Act) then these operators are jointly liable for costs of the remedial measures provided in the said Act. This rule does not prejudice the recourse claims between the operators referred, as well as other claims at civil law of the operator to other parties. Where an imminent threat of environmental damage is created or environmental damage is caused by successive operators, liability shall be incurred by the last operator which has the right of recourse against the rest.

Under administrative and criminal law, all accomplices are subject to the sanction provided for the committed administrative violation or crime, as the nature and the extent of their contribution are taken into consideration. Normally the sanction is not fixed in law but varies in order to enable the administrative body or court to impose a sanction corresponding to the individual seriousness of the violation or crime.

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

Generally under Bulgarian law, a programme of environmental remediation is not agreed with an environmental regulator but is rather approved by it through an individual administrative act. Terms related to environmental remediation may be imposed in the respective environmental permit, which also represents an individual administrative act. In both cases a regulator may require amendments to the approved programme or changes of the terms of the permit in the case of a change in the relevant circumstances or

a change in the effective environmental legislation. Under certain laws the amendments may be done ex officio, whilst according to others the permit holder is obliged to apply for the amendment. The amendment generally aims at ensuring compliance with environmental law, and/or the proper protection of public interests.

A third party that could prove that his rights and lawful interests are affected by an administrative act (including a permit) may challenge it before superior administrative body and/or the court. The challenge should be made within the statutory established deadlines. This way a third party may provoke the imposition of more stringent terms (e.g. additional work on environmental remediation) on the permit holder.

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

Yes, a private owner may claim compensation from a previous owner or occupier of contaminated land when that owner or occupier has caused contamination. The prescription period for the claim is 5 years. It starts running as of the moment that the polluter is uncovered, i.e. from the moment it is established that the previous owner or occupier has caused the contamination.

In addition, as mentioned in question 5.2 above, where an environmental damage is caused by successive operators, liability shall be incurred by the last operator which has the right of recourse against the rest.

The polluter may transfer the risk of contaminated land to a purchaser on the basis of a contract. However such transfer will be binding only on the purchaser (i.e. the contracting party) but not on any environmental regulator or third party.

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

No. The government may not obtain compensation for moral damages, including aesthetic harms to public assets. Only property damages, such as, for example, expenses for clean-up of pollution, could be subject to compensation.

6 Powers of Regulators

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

Under Bulgarian law the control powers of environmental regulators are quite broad. They are empowered to: conduct site inspections; effect measurements and monitoring; require provision of documents, data and explanations from the persons subject to the inspection or (under some laws) from third parties related to the carrying out of the controlled activity; take samples from current and potential sources of environmental pollution and/or damage, etc.

The inspected persons, on their part, are obliged to cooperate with the environmental regulators.

7 Reporting / Disclosure Obligations

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

Under Article 23 of the Environment Protection Act, in the case of average or other pollutions in excess of the limits established in a statutory act, by-law and/or an individual administrative act (e.g. a permit), the polluters and the persons responsible for ensuring compliance with the limits are obliged to immediately inform the respective environmental regulators. On their part the environmental regulators are obliged to immediately inform the Ministry of Health Protection and the population affected by the existing excessive pollution by offering measures for the protection of human health and property.

Under the provisions of the Liability for Prevention and Remedying of Environmental Damage Act When environmental damage has occurred, the operator (as defined by the said Act) shall be obligated to inform the relevant competent authority without delay of the environmental damage caused. The information must have contents as provided by the Liability for Prevention and Remedying of Environmental Damage Act. Within 10 days after the causation of the damage, the operator shall propose to the competent authority the necessary remedial measures, as well as a financial estimate of the costs for execution of the said measures. Furthermore, the Liability for Prevention and Remedying of Environmental Damage Act provides for the procedure on the determination of the remedial measures to be applied by the operator.

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

An affirmative obligation to investigate land for contamination may be imposed as a pre-condition for the issuance of an environmental permit, or in an issued environmental permit, or be prescribed by an environmental regulator to a potential polluter. The investigation of land for contamination may need to be performed upon termination of a licensed activity, or upon or after closure of a facility (such as e.g. waste landfill).

The investigation of land for contamination may be also an element of the procedure for re-designation of agricultural land.

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

The law establishes no specific obligations for environmental disclosure in relation to merger and/or takeover transactions. Under certain circumstances the failure of a seller to disclose environmental problems may be qualified as an act of bad faith during negotiations, entitling the prospective purchaser to compensation for the losses suffered.

In practice, the purchaser usually implements environmental due diligence on the target company, whilst the seller makes respective representations and warranties in the sale agreement. Breach of such representations and warranties would normally entitle the purchaser to claim reduction of the purchase price or compensation for damages, or even to cancel the agreement if the breach is material.

In the case of an asset deal, failure to disclose an environmental

problem (e.g. pollution of land) by a seller could result in his liability for "hidden" defects of the property sold.

8 General

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

A person may limit exposure for actual or potential environmentally-related liabilities on a contractual basis. A clause to that end will be enforceable only against the other party to the contract. It will not be binding on environmental regulators or other third parties. Hence a payment under an indemnity could discharge the indemnifier's potential liability for that matter only in respect of the other contracting party.

Furthermore, agreements by which the liability of a contracting party for wilful or gross negligent breach of contract is excluded or limited are null and void (Article 94 of the Obligations and Contracts Act). Therefore even where such an agreement is entered into, the respective contracting party will be still fully liable for gross negligence or wilful misconduct.

Agreements with environmental regulators or other public bodies on the limitation of administrative or criminal liability are not admissible.

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

Actual environmental liabilities are included in the balance sheet. Contingent liabilities recognised and assessed according to accounting standards may be disclosed off balance sheet. This is also applicable to contingent environmental liabilities (e.g. liabilities under environmental bonds). Liabilities of uncertain timing or amount may be recognised as provisions and included in the balance sheet. Generally this is admissible in the case where the undertaking has a present obligation that has arisen as a result of a past event; funds are possibly needed for its payment, and a reliable assessment of its amount could be made.

As to the corporate taxation, only expenses made for the payment of civil indemnities (contractual or tort) may be recognised for tax purposes. The taxable profit is however increased by the expenses for fines or similar property sanctions, which are imposed for breach of environmental and other laws.

Generally even if a company is dissolved it could not avoid environmental liability. If the dissolution is combined with liquidation, the liquidators of the company are obliged to sell the company's assets and distribute the sale proceeds amongst the company's creditors. The company may be de-registered from the commercial register (i.e. cease to exist as legal entity) after all the company's debts are paid.

If the company is dissolved as a result of reorganisation (e.g. merger, separation) the environmental liabilities will pass to the legal successor/s of the reorganised company.

There is only a possibility of avoiding environmental liabilities as a result of insufficiency of assets if the company goes bankrupt.

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

A shareholder in a limited liability company or a joint-stock company may not be held liable for breaches of environmental law and/or pollution caused by the company. Such types of companies are liable only up to their own property and their shareholders may only lose their contribution in the company's capital if, for example, the company goes bankrupt.

Under Bulgarian law a commercial company may also be incorporated in the form of a partnership or similar structure where the partners of the company, or some of them, are jointly liable for the company's debts. Such types of companies, however, are rarely established in practice.

From a procedural point of view, a Bulgarian parent company can be sued in its national court for pollution caused by a foreign subsidiary/affiliate. However, whether the claim against the parent company would be successful will depend on the applicable substantive law.

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

Under effective Bulgarian legislation there is no special legal protection for "whistle-blowers" reporting environmental violations/matters. Witnesses of environmental crimes could be ensured protection (through keeping their identity confidential; ensuring of guards, etc.), if there are grounds to assume that their or their relatives' vital interests or property would be jeopardised as a result of the testimony giving.

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

The Bulgarian Civil Procedures Code provides for class action as a procedural instrument for protection the rights of persons who are harmed by the same infringement where, according to the nature of the infringement, the circle of the said persons cannot be defined precisely but is identifiable. This instrument may be used for remedying of any environmental damages that harms the property, health or other rights and interests of the affected persons as well.

Bulgarian law does not provide for penal or exemplary damages, and the indemnity may only cover the actual losses suffered and benefits omitted as a result of the respective violation. Generally, a contractual forfeit could have a punitive element.

9 Emissions Trading and Climate Change

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

At the end of September 2005 the Bulgarian Parliament adopted amendments to the Environment Protection Act, establishing a scheme for greenhouse gas emissions allowance trading. The scheme is opened for participation by Bulgarian individuals or legal entities, individuals or legal entities from the EU Member States, or from other countries having international treaties with Bulgaria to that end. The greenhouse gas emission allowances allocation is realised in

compliance with five-year national plans, which are approved by the Council of Ministers. The first national plan however had a one-year term of validity (1 January 2007 – 1 January 2008).

Real emissions trading started at the beginning of 2007. The emission allowances were allocated to about 170 Bulgarian undertakings.

Pursuant to the decision of the European Commission dated 26th October 2007, 42,269,658 quotas of CO2 emissions annually were allocated to Bulgaria for the period starting as of 2007 to 2012. Those quotas amounts were defined by the Bulgarian Chambers of Commerce as discriminative to the Bulgarian industry. The expected average annual deficiency for the period of 2008-2012 varies between EUR 146 million and EUR 312 million.

For 2007 there were 39.1 million tonnes actually verified CO2 emissions and 3.3 million tonnes not-verified yet reported CO2 emissions.

10 Asbestos

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

Considering the current practice, Bulgaria is not likely to follow the US experience in asbestos litigation in the very near future. However a tendency of increasing environmental litigation could be established in the next few years.

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

Persons using asbestos in their activity and/or working with products containing asbestos are obliged to ensure measures for the prevention or decrease of asbestos emissions in the air and the water, and of asbestos-containing solid waste upon its source.

The construction or operation of any installations for the production of asbestos or asbestos-based products may be done only after obtaining a complex permit under the Environment Protection Act. A special permit by the health protection authorities is also required when planning to demolish or dismantle asbestos and/or materials containing asbestos from buildings, constructions, installations, etc.

Employers in industries where asbestos exposure is available or possible are imposed additional reporting and other obligations. Exposure to asbestos must be evaded or restricted to the minimal possible level, and employees must be provided with protective working clothing and be informed of the asbestos risk, which is also the subject of a periodic assessment. Employers are also obliged to keep a register of employees exposed to asbestos and to ensure a periodic assessment of their health status.

Owners/occupiers of premises where asbestos is located may be prescribed specific measures by the environmental and/or heath protection authorities for the avoidance, limitation or remediation of asbestos contamination.

11 Environmental Insurance Liabilities

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

Environmental insurances are rarely offered as an independent product in the Bulgarian insurance market. Environmental risks are usually covered by the general civil liability insurances. In certain limited cases, the insurance of environmental risks is mandatory under the law and as a result of this, specific insurance policies may be offered by the Bulgarian insurers. For example, such mandatory insurance is required for covering losses or expenses related to transportation, rendering harmless and utilising of waste upon its import, export or transit.

According to the Liability for Prevention and Remedying of Environmental Damage Act the operators (as defined by the said Act) carrying out any occupational activities listed in Annex 1 to the Act are obliged to secure the execution of the preventive and remedial measures in the cases provided for by the Act through at least one of the following financial security instruments: insurance policy, bank guarantee, mortgage of corporeal immovables and/or rights in rem thereto, pledge of receivables, movable things or securities. Thus the operators may furnish to the Ministry of Environment and Water an insurance policy to the benefit of the Ministry of Environment and Water covering the risk of creation of an imminent threat or occurrence of an environmental damage within seven days after conclusion of the insurance contract. The amount of the sum insured under the insurance contract may not be less than BGN 50,000. However, these provisions are effective as of 1st January 2011.

Under the Safe Use of Nuclear Energy Act licensees using nuclear energy or sources of ionizing radiation or dealing with radioactive waste management and spent fuel management is obligated to maintain insurance or other financial security against nuclear damage. The liability of the operator for damage caused by any one nuclear accident is limited to BGN 96 million and the insurance has to cover the liability of the operator to the same amount for the period of operation of the nuclear installation.

11.2 What is the environmental insurance claims experience in Bulgaria?

As a result of the insufficient development of environmental risks insurance, Bulgaria does not have substantial environmental insurance claims experience up until now.

12 Updates

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

In the last year amendments to several environmental statutory acts were adopted.

The EPA was amended to introduce progressive continuous sanctions that shall be imposed for environmental damage or pollution in excess of the permissible levels and/or in case of non-compliance with the established emission standards and emission limit values. The procedure for the making of environmental impact assessment decisions was simplified and some of the applicable procedural terms were shortened. Some amendments were introduced to implement Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances and the provisions set out in European Parliament and Council Directive 2003/105/EC of 16 December 2003 on amendments to Directive 96/82/EC on the control of major-accident hazards involving dangerous substances

The Waste Management Act was amended as well to introduce an explicit ban for deployment of sites for waste treatment on the territory of zone I of sanitary protection zones of water resources and water supply facilities for drinking water and around the

sources of mineral waters used for therapeutic, prophylactic, drinking and hygiene needs.

Rules for blending of biofuels with liquid fuels of crude oil origin in certain proportions were implemented in the Renewable and Alternative Energy Sources and Biofuels Act (before such rules were stipulated by an ordinance of the Council of Ministers).

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