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ENVIRONMENTAL LIABILITY UNDER HUNGARIAN LAW

In this article, we briefly address the issues of administrative and civil law liability from the perspective of environmental liability under Hungarian law.

1 General Basis of Liability

Anyone using the environment is liable for the impact (*e.g.* pollution) of its activities. There are four main types of liability: civil law, administrative, offense and criminal liability.

According to the Act on Environmental Protection, anyone using the environment shall:

- (i) refrain from engaging in any activity posing imminent threat or causing damage to the environment, and shall cease any such activity;
- (ii) notify the environmental authority without delay concerning any threat to the environment or environmental damage, and supply the information requested by the environmental authority and as specified in specific other legislation;
- (iii) where environmental damage has occurred, take all practicable steps to mitigate the adverse impact, and to limit and/or to prevent further environmental damage, such as in particular, to control, contain, remove or otherwise manage the relevant contaminants causing environmental damage and/or any other damage factors in order to limit and/or to prevent further environmental damage and adverse effects on human health or further environmental damage and impairment of services;
- (iv) where environmental damage has occurred, take measures to restore the baseline condition, or a similar level as specified in specific other legislation, or to restore or replace the damaged natural resources and/or to ensure equivalent environmental services;
- (v) assume responsibility for environmental damage caused and cover the costs of prevention and remediation.

If the requirements mentioned in points (i) and/or (v) above are not met, the environmental authority or the authority that has issued the relevant authorization at the request of the environmental authority or the court shall - depending on the degree of threat to the environment or the level of damage - limit the activity threatening or causing damage to the environment, or suspend or prohibit the activity pending compliance with the conditions it has established.



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2 Insurance and Securities

Anyone using the environment is required to provide an environmental security and may be required to obtain environmental liability insurance to finance any clean-up operations for any unforeseeable environmental damage that may result from their activities.

Based on the Act on Environmental Protection, anyone using the environment is required to obtain environmental insurance under the conditions set out in specific legislation.

Regarding the obligation to provide security, it is worth noting that in the event of the presence of imminent danger, the endangered person shall be entitled to request the court to restrain the person imposing such danger from continuing such conduct and/or to order such person to take sufficient preventive measures and, if necessary, to provide security. Therefore, the court may order such person to provide security even before the occurrence of damages and irrespective of whether the action is attributable to the person causing damage.

Based on the Act on Waste Management, economic operators producing hazardous waste in the course of their activities as well as waste management operators (i) are required to provide security as specified in specific other legislation and (ii) may be required - under the conditions set out in specific other legislation - to obtain environmental liability insurance to finance any clean-up operations for any unforeseeable environmental damage that may result from their activities.

When making an insurance quote, the two main factors Hungarian insurance companies take into account are the activities of the company and the risks they may trigger.

3 Administrative Liability

Liability for environmental damage or for any risk to the environment falls joint and severally - pending proof to the contrary - upon the owner and user of the real property after environmental damage or threat to the environment has occurred on which the activity resulting in damage to the environment or posing imminent threat to the environment was carried out.

The owner shall be exempted from joint and several liability if it is able to name the actual user of the real property and able to provide proof beyond any reasonable doubt that liability does not lie with him.

Based on the “polluter pays” principle, described in Article 102 of the Act on Environmental Protection, the site owner may also be relieved from liability if he is able



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to prove that the environmental damage was caused by another entity. However, if he is unable to establish the liability of either the actual user or he is unable to name another entity and prove that liability does not lie with him, the owner will be held liable.

Anyone using the environment is exempt from administrative liability if they are able to verify that the threat to the environment or the environmental damage:

- (i) was caused by an act of armed conflict, war, civil war, armed hostilities, insurrection, or natural disaster;
- (ii) is the direct result of the enforcement of a final and compulsory resolution of an authority or court.

Such person shall take the measures with a view to preventing environmental damage and, where environmental damage has occurred and remedial measures are required:

- (i) undertake primary remediation to restore the baseline condition of the environment, or to restore, rehabilitate or replace the damaged natural resources and/or equivalent environmental services;
- (ii) undertake complementary remediation where primary remediation failed

- provide a replacement for the damaged natural resources and/or impaired services, or provide an equivalent alternative to those resources or services;
- if the replacement referred to in the above subparagraph failed to produce results, the damaged natural resources and/or impaired services shall be replaced by an equivalent alternative to those resources or services, whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services.

Please note that even if this person is relieved from administrative liability, they are still required to undertake the measures with a view to preventing the threat to the environment or the environmental damage and/or to mitigate the adverse impact.

Where damage to the environment has been established by final decision of the competent authority, the environmental authority shall adopt a resolution on the prohibition of transfer of and encumbrance on the real properties of the entity required to undertake the remedial measures that are deemed sufficient to cover the estimated costs of the remedial measures.

The environmental authority may demand polluters of the environment to repay the costs of measures within five years from the date of taking these measures or from the identification of the polluter of the environment, whichever occurs later.



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4 Liability of Members and Executive Officers

The owners and executive officers who have supported a resolution/taken a measure that they knew or should have known with reasonable care would cause environmental damage if carried out, bear unlimited, joint and several liability in the event of the termination of the business association for the company's liability for remediation and compensation for damages, which the company has failed to satisfy. The members/shareholders and executive officers who did not take part in the process of adopting the resolution/taking the measure or voted against it, or protested against the measure are exempt from liability.

Any executive officer of the business association who is subject to the above liability may not serve as an executive officer of a business association whose activities are subject to an environmental license, a single environmental permit, or an authorization prescribed by the Act on Waste Management.

5 Civil Liability

Damage caused to third parties by virtue of activities or negligence entailing the utilization of the environment shall qualify as damage caused by an activity endangering the environment, and the provisions of the Civil Code on damages originating from hazardous operations shall apply.

If the aggrieved party does not wish to enforce its claim for damages as specified above against the party causing the damage - on the basis of a statement pertaining to this made by the aggrieved party within the period of limitation (3 years) - the Minister may enforce said claim to the credit of the environmental protection fund.

According to the regulations on damages originating from hazardous operations, the Act on Environmental Protection adopted a strict liability system making the entities causing damage liable irrespective of negligence or fault, with very limited exemptions available. Damage caused to third parties as a result of actions or omissions including the utilization of the environment must be remedied according to the regulations of the Civil Code on hazardous activities. In respect of such damage, the Civil Code provides that those carrying out activities involving increased hazards are strictly liable for any and all damages which such activities cause. To seek compensation, the aggrieved party is required to prove the existence of damages he claims to have suffered, the unlawfulness of the action causing damages and the causal link between the unlawful action and the damages sustained. If the aggrieved party succeeds in proving all of these conditions, the



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only excuse for the party causing the damage is to prove that the damage was brought about by an unavoidable cause falling out of the increased hazards of the relevant activity.

The period of limitation for claiming damages is, as a rule, three years.

With a share deal, there is no change in the entity using the environment, thus, no special liability issues arise in addition to those described above.

With an asset deal, there is a change in the entity (*i.e.* legal succession). Pursuant to the Act on Environmental Protection, in the absence of an agreement to the contrary between the contracting parties, if there is a change in the identity of the operator who has engaged in an unlawful conduct, the purchaser will, as successor in title, be held liable for any previous damage committed by the sellers (the successor liability rule). It is essential to address any and all historic environmental damage in the sale and purchase agreement. Purchasers usually obtain undertakings in the form of warranties and representations from the seller and may seek to negotiate an environmental indemnity to protect against future liabilities. Due to the change in the identity of the operator, as opposed to a share deal where the corporation whose shares are acquired remains liable for all past and future liabilities, the new operator will be liable for all damage committed and caused pre-completion, unless agreed otherwise between the parties. In the event of an asset transfer, one also has to pay attention to the transferability of permits and licences since, in general, the new operator needs to obtain a new permit or licence.

Under established judicial practice, if there is a change in the entity pursuing an activity polluting the environment, it is the carrying out of the activity (and not the entity) to which liability rules are attached. Therefore, when it comes to imposing a fine, the court will look at the period of time during which polluting activities were pursued no matter when the change in the entities took place and how long the legal predecessor polluted the environment.

6 Environmental Fine

Any person who infringes upon the provisions of law, official decisions or directly applicable EU legislation that are aimed - directly or indirectly - at the protection of the environment or who fails to comply with the limits set out therein, shall be obliged to pay an environmental fine consistent with the gravity, extent, duration and recurrence of the environmental pollution and environmental damage caused. The environmental fine shall be construed as a public debt collectible as taxes.



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It is worth noting that the fine does not exempt the relevant entity from criminal liability or liability for offence or for damages, nor does it exempt the entity from the obligation to restrict, suspend or ban the activities and develop adequate protection and restore the natural or original environment.

Furthermore, even if an environmental permit was issued in accordance with the emission limits set out in the relevant administrative regulations, the claimant may still argue that the polluting activity is illegal. When deciding whether conduct is illegal, judges are not bound by the limits provided for in the administrative regulations and may, therefore, set a different level for what constitutes a lawful and reasonable use of one's real property under civil law. Under civil law, it is established case law that the issue of a licence does not in itself mean that activities carried out within the limits set out in the licence are lawful, *i.e.* an activity which is lawful under the applicable environmental laws is not necessarily lawful from a civil law perspective. For the liability of the operator to arise, the existence of damages caused illegally (from a civil law perspective) and the causal link between the operator's activities and the damage have to be proved by the claimant. If the permit issued for the polluting activities turns out to have been issued in breach of the applicable regulations, the authority may also be held liable for damages, and, in such a scenario, the operator may also be found liable.

7 Offense and Criminal Liability

Depending upon the type and gravity, the relevant conduct may qualify as "damaging environment", "damaging a natural environment", "violation of waste management regulations" and are as such sanctioned by the Hungarian Criminal Code. The Code of Offences also contains certain provisions on the protection of the environment.

The contents of this article are intended to provide only a general overview of the subject matter. Specialist advice should be sought for specific matters. Queries relating to this article should be addressed to the author at:

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