



# ICLG

The International Comparative Legal Guide to:

## Environment & Climate Change Law 2019

**16th Edition**

A practical cross-border insight into environment and climate change law

Published by Global Legal Group, with contributions from:

Ambientalex - Studio Legale Associato

Atuguba & Associates

Bär & Karrer Ltd.

Blake, Cassels & Graydon LLP

Borenus Attorneys Ltd

Bowmans

Bryan Cave Leighton Paisner (Russia) LLP

Daud Silalahi & Lawencon Associates

David Desforges, Avocat à la Cour

Del Pozo & De la Cuadra

Freshfields Bruckhaus Deringer LLP

Gaastra attorneys at law

Guyer & Regules

Kanagawa International Law Office

Katende, Ssempebwa & Co. Advocates

LAER Abogados, S.C.

LAVÍN Abogados & Consultores

Linklaters LLP

M.V. Kini

Machado Meyer Advogados

Macías Gómez & Asociados Abogados S.A.S.

Maddocks

Noerr LLP

SIRIUS advokater

Snell & Wilmer L.L.P.

United Kingdom Environmental Law Association  
(UKELA)

URBAN FALATH GAŠPEREC BOŠANSKÝ

Wistrand Law Firm



**EELF**  
European Environmental  
Law Forum

**glg**  
global legal group



**Contributing Editor**

Jonathan Isted, Freshfields  
Bruckhaus Deringer LLP

**Sales Director**

Florjan Osmani

**Account Director**

Oliver Smith

**Sales Support Manager**

Toni Hayward

**Editor**

Nicholas Catlin

**Senior Editors**

Caroline Collingwood  
Rachel Williams

**CEO**

Dror Levy

**Group Consulting Editor**

Alan Falach

**Publisher**

Rory Smith

**Published by**

Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

**GLG Cover Design**

F&F Studio Design

**GLG Cover Image Source**

iStockphoto

**Printed by**

Ashford Colour Press Ltd  
February 2019

Copyright © 2019

Global Legal Group Ltd.  
All rights reserved  
No photocopying

ISBN 978-1-912509-55-3

ISSN 2045-9661

**Strategic Partners**



**General Chapters:**

1	<b>Future Horizons: The Next Generation of UK Environmental Law</b> – Simon Tilling, United Kingdom Environmental Law Association (UKELA)	1
2	<b>The Courts as Guardians of the Environment – New Developments in Access to Justice and Environmental Litigation</b> – Jerzy Jendrośka & Moritz Reese, European Environmental Law Forum (EELF)	5
3	<b>The Parent Trap: When is a Parent Company Liable for Environmental Harm Caused by a Foreign-Registered Subsidiary?</b> – Jonathan Isted & Ian Jones, Freshfields Bruckhaus Deringer LLP	11
4	<b>Overview of Trends in Environmental and Climate Change Law in Sub-Saharan Africa</b> – Mandy Sherwin & Michael Vermaak, Bowmans	14

**Country Question and Answer Chapters:**

5	<b>Australia</b>	Maddocks: Michael Winram & Patrick Ibbotson	20
6	<b>Belgium</b>	Linklaters LLP: Lieve Swartenbroux & Melissa Verplancke	29
7	<b>Brazil</b>	Machado Meyer Advogados: Roberta Danelon Leonhardt & Daniela Stump	39
8	<b>Canada</b>	Blake, Cassels & Graydon LLP: Jonathan W. Kahn & Anne-Catherine Boucher	44
9	<b>Chile</b>	LAVÍN Abogados & Consultores: Julio Lavín Valdés & Andrés Del Favero Braun	50
10	<b>Colombia</b>	Macías Gómez & Asociados Abogados S.A.S.: Luis Fernando Macías Gómez	57
11	<b>Denmark</b>	SIRIUS advokater: Søren Stenderup Jensen & Aleksander Pilgaard	65
12	<b>England &amp; Wales</b>	Freshfields Bruckhaus Deringer LLP: John Blain & Rachel Duffy	70
13	<b>Finland</b>	Borenius Attorneys Ltd: Casper Herler & Henna Lusenius	89
14	<b>France</b>	David Desforges, Avocat à la Cour	95
15	<b>Germany</b>	Noerr LLP: Uwe M. Erling & Dr. Tim Uschkereit	106
16	<b>Ghana</b>	Atuguba & Associates: Prof. Raymond A. Atuguba & Courage Asabagna	112
17	<b>India</b>	M.V. Kini: Els Reynaers & Tavinder Sidhu	118
18	<b>Indonesia</b>	Daud Silalahi & Lawencon Associates: Kristianto P. H. Silalahi & Maurice J. R. Silalahi	126
19	<b>Italy</b>	Ambientalex - Studio Legale Associato: David Röttgen & Andrea Fari	132
20	<b>Japan</b>	Kanagawa International Law Office: Hajime Kanagawa & Yoshiko Nakayama	139
21	<b>Mexico</b>	LAER Abogados, S.C.: Luis Alberto Esparza Romero & David Huerta Ruiz	148
22	<b>Netherlands</b>	Gastra attorneys at law: André H. Gastra	155
23	<b>Russia</b>	Bryan Cave Leighton Paisner (Russia) LLP: Vitaly Mozharowski & Tatiana Khovanskaya	162
24	<b>Slovakia</b>	URBAN FALATH GAŠPEREC BOŠANSKÝ: Marián Bošanský & Ján Falath	169
25	<b>Spain</b>	Del Pozo & De la Cuadra: Covadonga del Pozo	176
26	<b>Sweden</b>	Wistrand Law Firm: Rudolf Laurin	183
27	<b>Switzerland</b>	Bär & Karrer Ltd.: Prof. Dr. Markus Schott	189
28	<b>Uganda</b>	Katende, Ssempebwa & Co. Advocates: Fred Businge Kiiza & Edwin Buluma Wabwire	196
29	<b>Uruguay</b>	Guyer & Regules: Anabela Aldaz Peraza & Betania Silvera Perdomo	203
30	<b>USA</b>	Snell & Wilmer L.L.P.: Denise A. Drago	210

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

**Disclaimer**

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

# Finland

Casper Herler



Henna Lusenius



Borenus Attorneys Ltd

## 1 Environmental Policy and its Enforcement

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

Finland does not have a federal structure, therefore the environmental policy is regulated through state and municipal authorities. The state authorities have a regional representation.

The Ministry of the Environment defines environmental policies and makes strategic plans at national level, sets administrative controls as well as targets for environmental protection, and prepares environmental legislation. The Finnish Environment Institute (“SYKE”) produces and compiles environmental data, develops new ways to protect the environment and supervises international waste transportation.

The AVI Agencies (the Regional State Administrative Agency) are the main environmental authorities responsible for environmental licensing. In certain smaller-scale activities specified in the Finnish Environmental Protection Act (527/2014, “FEPA”), environmental and water permits are granted by municipal environmental protection authorities.

The ELY centres (the Centre for Economic Development, Transport and the Environment) are regionally responsible for supervision of compliance with the environmental permits throughout the entire life cycle of operations. In addition, the ELY centres ensure that public interest is taken into account in environmental and water issues.

In addition, municipalities promote and supervise environmental protection locally. Chemical safety permits and mining permits are granted by the Finnish Safety and Chemicals Agency, which also acts as the supervisory authority with respect to the compliance of operators with the said permits.

In connection with the implementation of the major amendment of the FEPA, a new permitting authority called the State Permitting and Supervisory Authority (“LUOVA”) will be established (for more information, see question 12.1).

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

The enforcement of Finnish environmental law is strongly based on preliminary supervision, which in practice relies on a comprehensive environmental permitting system. Recently, however, the role of

subsequent supervision has increased due to a wide-ranging transition in environmental legislation to a lighter permitting process.

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

In accordance with the Finnish Act on the Openness of Government Activities (621/1999), all official documents must be available to the public unless specifically otherwise provided by law.

## 2 Environmental Permits

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

An environmental permit is required for all activities listed in Appendix 1 of the FEPA. Under certain preconditions, an environmental permit is also required for activities that may cause pollution of a water body or place an unreasonable burden on the surroundings, as well as for conducting wastewater. All the environmental effects of an activity are considered within the same permit procedure, regardless of in which element of environment the effects occur (soil, water, air, etc.). The scope of activities covered is broader than in the EU’s Directive Concerning Integrated Pollution Prevention and Control (“IPPC”) and Industrial Emissions Directive (“IED”). In accordance with a recent amendment to the FEPA, certain functions that currently require an environmental permit have been transferred under the range of a lighter notification procedure as of 1 January 2019. An environmental permit is granted for the operations in question and not tied to a specific operator, but the supervisory authority must be informed of a change of operator.

### 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 competent appeal body in environmental issues is the Administrative Court, and all parties to the permission procedure may appeal the authority’s decisions. In addition, environmental non-governmental organisations have a right of appeal in most environmental decision-making processes.

There are generally no specific grounds for appeal, although the grounds for appeal are slightly more limited in zoning matters. As of January 2018, nearly all environmental issues require a leave of appeal from the Administrative Court to the Supreme Administrative Court.

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

Environmental impact assessment (“EIA”) procedure must be applied to projects that may have a significant adverse impact on the environment or for which an assessment is required by an international agreement binding on Finland. Projects subject to EIA are specified in the EIA Act (252/2017). The list covers 50 project types. In addition, a discretionary EIA may be organised for other project types as well as smaller projects close to the thresholds if the project, in terms of its quality and scope, would likely cause significant environmental impact comparable to the projects listed in the EIA Act.

An EIA does not free the operator from its duty to apply for an environmental permit. However, a permit cannot be granted before the permit authority has obtained the assessment report and the coordination authority (the ELY centre or, in projects related to nuclear power plants, the Ministry of Employment and the Economy) has given its statement. Even when an EIA under the EIA Act does not apply, the environmental licensing procedure under the FEPA and the zoning procedure under the Finnish Land Use and Building Act (132/1999, “LUBA”) require a limited EIA.

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

If the permit regulations or the environmental legislation are violated, the supervisory authority (ELY centre) may use administrative compulsion, which may take the form of a coercive fine suspension of the activity or notice of enforced compliance. In case of violation of the permit conditions despite a written caution by the supervisory authority, the permit authority may revoke the permit, forcing the operator to close down the activity.

In the event of soil or groundwater contamination, the supervisory authority may impose a remediation obligation on the operator. The supervisory authority may also initiate a criminal investigation where a corporate fine and confiscation of the proceeds of crime are possible. The threshold for doing so has become lower in recent years, hence companies and officers face a material risk for criminal investigation and prosecution in cases of non-compliance with permits and legislation.

## 3 Waste

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

In accordance with the EU Waste Directive and the Finnish Waste Act (646/2011), waste is defined as any substance or object which the holder discards, intends to discard or is required to discard. According to the Waste Act, a substance or object is not waste but a by-product, if it results from a production process whose primary aim is not the production of that substance or object, and:

- further use of the substance or object is certain;
- the substance or object can be used directly as is, or without any further processing other than normal industrial practice;

- the substance or object is produced as an integral part of a production process; and
- the substance or object fulfils all relevant product requirements and requirements for the protection of the environment and human health for the specific use thereof and, when assessed overall, its use would pose no hazard or harm to human health or the environment.

There is special regulation for the handling (e.g. storage, packaging, transport and recycling) of hazardous waste.

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

Under the Waste Act, the producer/holder of waste is responsible for organising waste management. This includes the obligation to see to the appropriate disposal of waste in landfills and waste processing facilities in accordance with the relevant legislation. The storage and disposal of waste originating from operations subject to environmental permit is, however, regulated in the permit conditions.

### 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)?

The waste producer/holder’s responsibility for organising waste management is terminated and transferred to a new holder when the waste is delivered to a lawful consignee. However, responsibility is not transferred to a mere carrier transporting waste on behalf of another party. Waste may only be delivered to a party that:

- has been registered as a professional waste transporter or dealer; or
- has the right under an environmental permit to receive the waste in question.

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

The producer’s liability applies for certain products specified in the Waste Act (e.g. certain vehicles, car tyres, electronic equipment, batteries, packages, recycled paper). Hence, the producer of the product is responsible for organising waste management, regardless of who the waste holder is.

## 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?

The breach of environmental laws or permits may lead to civil, criminal or administrative sanctions.

In the event of soil or groundwater contamination, either the party which has originally caused the contamination or the party currently in possession of the area (e.g. the current owner or tenant) may be required to assess the need for remediation and take the necessary actions required by the authorities. There are not many defences available, but the extent of remediation required for the contaminated site is dependent upon the purpose of use of the site.

The supervisory authority for operations subject to an environmental permit may impose a remediation obligation on the operator and may also initiate a criminal investigation where a corporate fine and confiscation of the proceeds of crime are possible.

Environmental liability in relation to third parties cannot be avoided by contractual agreement. However, as agreements regarding the division of environmental liability are binding between the parties, a party may raise a civil action against the counterparty and claim that it should stand for the costs accrued to the party due to environmental liabilities.

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

An operator may be liable for restoring contaminated soil and groundwater, paying compensation for environmental damage as well as for damage to protected species and natural habitats notwithstanding that the polluting activity has been 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?**

There is no legislation or case law explicitly allocating liability under public law or regulations concerning environmental damage to the directors of a company, unless their ownership in the company is significant enough for them to be regarded as the factual polluter or operator. In contrast, chapter 48 of the Criminal Code (39/1889) allocates liability for environmental offences to the person in whose sphere of responsibility the act of negligence belongs. The allocation rules do not exclude, e.g. external board members or officers of a parent company. The formal position of an officer in the corporation does not as such exclude liability, as the assessment is made on an overall basis with due account to the factual participation and responsibility of the person in the unlawful activity. As the Criminal Code prohibits both intentional and negligent impairment of the environment, breaches of environmental legislation may easily lead to a criminal investigation.

Criminal liability of directors and officers is best prevented by monitoring compliance and clearly allocating the environmental responsibilities within the company, as well as by providing the officers of a local subsidiary enough power to remain in factual control of the subsidiary's operation. Based on a ruling by the Supreme Court (KKO:2016:58) in 2016, directors of the board can also be held liable if they have not supervised so that substantial environmental issues are sufficiently attended to.

#### **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?**

The acquisition of company shares implies that the whole target company, its environmental liabilities included, is transferred to the acquiring company. Consequently, the acquiring company may face liability for possible contamination of soil or groundwater, or other environmental damage that the activity may have caused in the past. As liabilities for soil and groundwater contamination may extend far back in time, the risks may be substantial, especially in acquisitions of old industrial companies. Potential liabilities for previous sites of operations will also follow the acquired company.

The acquisition of assets may imply a risk of secondary liability for soil or groundwater contamination, as the acquirer may be considered liable as the holder of the contaminated property if the actual polluter cannot be found or has ceased to exist. Moreover, the acquirer may also face liability under the Act on Compensation for Environmental Damage (737/1994, ACED) if the acquirer knew or should have known about the pollution or the risk of pollution at the time of the transfer. The acquirer of a facility may also become liable for responsibilities under an environmental permit regarding the closing of operations and aftercare of, e.g., non-operational industrial landfills.

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

In certain justified situations specified in the ACED and the FEPA, liability may be extended to the shareholder of the operator of the polluting activity. This rule may also be applied to the lender financing the operations; however, only in the rare event that the lender exercises factual control over the operator (e.g. ordinary covenants should not as such render the lender liable).

## **5 Contaminated Land**

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

In accordance with the FEPA, liability for remediation of so-called new soil contamination (contamination that occurred after 1 January 1994) lies primarily with the polluter, i.e. the party whose activities have caused the contamination. The polluter is required to restore the contaminated soil to a condition that will not cause harm or hazard to the environment or harm to health. The holder of the property where the contamination has occurred may face secondary liability – however, only if the polluter cannot be found or cannot be made to fulfil its remediation responsibility – and:

- the contamination has taken place with the consent of the holder of the property; or
- the holder was or should have been aware of the contamination when the property was acquired.

Finnish legislation does not, as a main rule, allow retroactive application of liability. However, case law developed on the basis of the old Waste Management Act (673/1978) allows the establishment of liability for historic soil contamination that originates from activities between 1 April 1979 and 31 December 1993 on the polluter or the holder (owner and/or tenant) of the contaminated property. Although there are no specific rules on which party should be responsible for remediation, recent court practice suggests that polluters would be primarily liable before holders. However, if the soil-polluting activities ceased prior to 1 April 1979, only the holder of the property can be held liable for remediation based on the Waste Management Act (Supreme Administrative Court, KHO 2006:30). Other grounds for liability may also evolve; in KHO 2013:187 the Supreme Administrative Court considered a municipality liable for landfill which was closed in the 1950s based on waste management rules in the 1927 health protection legislation. In addition to soil contamination, the FEPA contains a groundwater pollution prohibition. Liability for groundwater contamination lies with the polluter. A non-polluting holder of the contaminated groundwater area cannot be held liable for remediation. If the groundwater has been contaminated through polluted soil, it is possible to impose both soil and groundwater remediation liabilities for the polluter

(KHO 1996 A 29). Liability for groundwater contamination can be extended on the basis of the old Water Act (264/1961) to activities that have been operational as of 1 April 1962.

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

There are no clear rules for allocation of liability where more than one person is responsible for contamination.

## 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?

This is possible if the circumstances around the original decision have changed.

## 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?

The current owner may demand authorities to take action and order a liable party to assess and/or remediate a site. An *inter partes* agreement does not bind authorities or third-party claimants for the benefit of a polluter.

An acquirer may be considered liable as the holder of the contaminated property if the actual polluter cannot be found or has ceased to exist. Moreover, the acquirer may also face liability under the ACED if the acquirer knew or should have known about the pollution or the risk of pollution at the time of the transfer.

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

In accordance with the ACED, a polluter shall pay reasonable compensation for the costs incurred by authorities for preventing environmental damage or reinstating a polluted environment. In addition, the Water Act (587/2011) regulates liability for damage caused by water resources management projects to, e.g., fish stocks or fishing.

## 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.?

For the purpose of supervision and enforcement of the environmental legislation, the environmental authorities are entitled to gain access to places where activities are engaged in and to make inspections and tests, carry out measurements and take samples. The supervision of activities is primarily conducted through monitoring and reporting conducted by the operator, which means that investigations usually take place only if the operator does not present an adequate report or otherwise neglects its monitoring duties. The new FEPA introduces

risk-based monitoring, thus the intensity of authority monitoring is determined based on dependency on risk, size and track record.

## 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?

Yes, the relevant environmental acts contain such duties towards the authorities.

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

The FEPA contains a list of so-called directive facilities in accordance with the IED which are, under certain preconditions, under obligation to perform a soil and groundwater baseline study to be attached to an environmental permit application. When the company dissolves activities, soil and groundwater conditions must be reinvestigated and compared to the results of the baseline study. In the case that increased contamination of soil or groundwater is detected, or if the baseline of the site is found harmful for health or environment, the operator is under obligation to remediate the site.

In addition, if there are grounds to suspect contamination of soil and/or groundwater, the operator of the polluting activity or, under certain preconditions, the holder of the area, is under obligation to establish the size of the contaminated area and the need for remediation.

### 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 FEPA contains a specific provision on the obligation to disclose environmental information in connection with transfer of land. The provision applies to asset sales, real estate sales and new lease contracts.

## 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?

It is possible to agree on an environmental indemnity. However, such indemnity is only effective between the parties to the agreement and is therefore not binding upon the authorities.

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

No, Finnish legislation does not allow this.

**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?**

The Finnish general corporate law does not contain any specific rule regarding piercing the corporate veil. However, in certain justified situations specified in the ACED and the FEPA, liability may be extended to the parent company or shareholder of the operator of the polluting activity. Liability is not limited to officers of the corporation. However, this rule only applies if the parent company or shareholder is deemed to exercise factual control over the operator.

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

No, there are none.

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

No, they are not.

**8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?**

No, but the Finnish administrative process is low in costs for the parties, as damages are seldom imposed and high bills of costs are adjusted. However, parties to a civil process bear a much greater risk of costs (e.g. damages based on the ACED).

## 9 Emissions Trading and Climate Change

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

As a member of the EU, Finland has implemented the EU Emissions Trading Directive through the national Emissions Trading Act (311/2011), meaning that most sectors of heavy industry, and with certain restrictions in the aviation industry, are subject to the European Union Emissions Trading Scheme (“EU ETS”). About 600 facilities in Finland are currently subject to the EU ETS. In November 2018, the government gave a proposal for changing the Emissions Trading Act in order to implement the recent changes to the EU Emissions Trading Directive. The proposed changes concern e.g. the application procedure for free emission allowances, an obligation to deliver necessary information to the emissions trading authority, and the distribution of emission allowances.

**9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?**

The IED has been implemented in Finland in connection with the major amendment of the FEPA in 2014, including the requirement to employ the best available technique for reducing greenhouse gas emissions in industrial operations. If the operations are not subject

to emissions trading, the monitoring and reporting of greenhouse gases is regulated in the environmental permit.

**9.3 What is the overall policy approach to climate change regulation in your jurisdiction?**

Finland’s national climate actions are largely based on the framework set by the UN Climate Change Convention, the Kyoto Protocol, the Paris Convention and the EU. The Finnish national strategy for adapting to climate change outlines adaptation measures for 15 sectors up to the year 2050 and includes anticipatory measures as well as measures responding to the effects of climate change. In order to achieve the long-term objective, the parliamentary committee on energy and climate issues has prepared a roadmap extending to the year 2050 and serving as a strategy guide on the journey towards achieving a carbon-neutral society. The measures to be taken in order to reduce greenhouse gas emissions by 80–95% are related to renewable energy, energy efficiency and clean-tech solutions.

The Parliament accepted the Government Report on Medium-term Climate Change Plan for 2030 in March 2018. The plan outlines the necessary measures for reducing greenhouse gas emissions in sectors that are not subject to the EU ETS. The goal is to reduce greenhouse gas emissions by 39% compared to the year 2005 by the year 2030.

## 10 Asbestos

**10.1 What is the experience of asbestos litigation in your jurisdiction?**

Asbestos litigation cases in Finland relate mostly to neglect of asbestos safety regulations and compensation for occupational diseases caused by asbestos.

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

The use of asbestos-containing materials was partly prohibited in Finland in 1977 and totally prohibited in 1994. Asbestos is currently not considered to constitute a health risk when found in intact materials, which are in normal use. Therefore, there is no explicit legal obligation to remove asbestos-containing material on-site unless it is found hazardous for health (i.e. loose or friable). It is, however, obligatory to conduct asbestos testing on all buildings built before 1994 prior to any construction work. The handling of asbestos-containing materials (e.g. demolition work) is strictly regulated.

## 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 your jurisdiction?**

Under the Finnish Environmental Damage Insurance Act (81/1998), all companies whose activities involve a material risk of environmental damage, or whose operations cause harm to the environment in general, shall be covered by environmental damage insurance. Voluntary insurance types, such as liability insurance and property insurance, are also available.

## 11.2 What is the environmental insurance claims experience in your jurisdiction?

The environmental insurance claims experience in Finland is limited, as there is only one case involving a dispute over the statutory environmental damage insurance.

## 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 your jurisdiction.

The third phase of the major amendment of the FEPA is currently under preparation. The amendment is planned to introduce, *inter*

*alia*, a more focused supervision system and a lighter environmental permitting procedure by adopting a one-stop-shop model. The one-stop-shop model will combine various permits, such as the environmental permit, water permit and building permit, into one application procedure. The model allows the combination and temporal coordination of various environmental matters.

In October 2018, the Finnish government gave a proposal for a new law for phasing out from the use of coal in heat and power production by the year 2029. As a substitute for the use of coal, the government also gave a proposal for a law on promoting the use of biomass fuels.



#### Casper Herler

Borenus Attorneys Ltd  
Eteläesplanadi 2  
00130 Helsinki  
Finland

Tel: +358 20 713 3288  
Email: [casper.herler@borenus.com](mailto:casper.herler@borenus.com)  
URL: [www.borenus.com](http://www.borenus.com)

Casper Herler (LL.M. 2000, LL.D. 2008, University of Helsinki; Attorney-at-law; Managing Partner) heads the Environment and Natural Resources practice at Borenus. He advises clients on a wide range of issues related to environmental law, natural resources and infrastructure projects as well as corporate responsibility ("CSR"). He is regularly involved in assessing environmental liabilities in transactions and financing arrangements. Clients also recognise him as the leading Finnish mining lawyer. Trade associations and industrial clients frequently rely on his experience when safeguarding their interests in legislative reforms.

Prior to joining Borenus, Casper was a Partner with another law firm. He has also worked at the Ministry of the Environment and teaches environmental law at the University of Helsinki. Casper also has previous experience in legislative work in the field of environmental and mining law and has been a specialist counsel at Pöyry Oyj. He has a doctoral degree in law and completed a dissertation on soil and groundwater contamination liability.



#### Henna Lusenius

Borenus Attorneys Ltd  
Eteläesplanadi 2  
00130 Helsinki  
Finland

Tel: +358 20 713 3587  
Email: [henna.lusenius@borenus.com](mailto:henna.lusenius@borenus.com)  
URL: [www.borenus.com](http://www.borenus.com)

Henna Lusenius (LL.M. 2007, University of Turku; Senior Associate) advises clients in the fields of environmental, energy and land use law. Henna has extensive experience in a wide range of environmental and natural resources law assignments, with a specific focus on the sectors of mining and exploration, wind power and land extraction. Henna regularly advises on matters relating to e.g. environmental permitting, zoning and land use, nature conservation and environmental contamination. Henna has also successfully represented clients in numerous administrative court proceedings related to environmental law and natural resources.

# BORENIUS

Established in 1911, Borenus is one of the largest and most experienced law firms in Finland. Our services cover all areas of corporate law. Our commitment to our clients' success is firmly grounded in strong expertise, long-term commitment, genuine involvement, experience and innovation.

The environment and natural resources practice of Borenus is one of the largest and most acknowledged in Finland. Our practice is specialised in providing strategic advice for large projects requiring coordination of a number of regulatory proceedings and complex stakeholder relations. We frequently advise clients on land use planning, building and other environmental licensing, environmental impact assessments, environmental liabilities, nature conservation, mining and natural resources, chemicals, renewables, energy and emissions trading.

## Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Financial Services Disputes
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [info@glgroup.co.uk](mailto:info@glgroup.co.uk)