Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Environmental Law 2023

Definitive global law guides offering comparative analysis from top-ranked lawyers

Finland: Law and Practice & Trends and Developments

Kari Marttinen, Tarja Pirinen, Outi Iso-Markku and Fiiu Linninen
HPP Attorneys Ltd

FINLAND

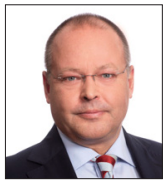
Law and Practice

Contributed by:
Kari Marttinen, Tarja Pirinen, Outi Iso-Markku and Fiiu Linninen
HPP Attorneys Ltd

Contents

HPP Attorneys Ltd (HPP) was established in 1975. HPP is Finland's leading legal services provider in environmental law, land use, mining and construction. HPP has one of the largest dedicated environmental teams in Finland, with eight skilled and experienced lawyers specialising in all aspects of environmental law. The team assists a diverse array of clients in addressing environmental challenges related to their projects. In areas like green transition, real estate, finance transactions and other M&A activities, where environmental aspects and additional investments are of central importance, HPP is ideally positioned to assess risks and offer solutions that incorporate environmental law concerns. The firm's clients include leading operators in the forestry, metals, chemicals, mining, battery, energy, food, waste management and logistics sectors.

Authors



Kari Marttinen is a partner at HPP Attorneys Ltd, and heads the firm's environmental group. His areas of expertise include permit procedures, matters pertaining to the application of administrative law, matters pertaining to environmental liability and nature protection, waste management and recycling and infrastructure projects. Kari has particular experience in liability issues related to old industrial areas and complex matters related to permits and complaints in accordance with the Water Act, Environmental Protection Act and Land Use and Building Act, and also in dispute resolution concerning environmental liabilities. He has held the principal responsibility as an attorney in several major projects.

Tarja Pirinen is a partner at HPP Attorneys Ltd, specialising in advising clients on environmental law matters and legal questions related to mining and other industrial and infrastructure projects. Her areas of expertise include environmental and other permit procedures, administrative court procedures and matters pertaining to environmental liabilities and nature protection. Tarja has also extensive experience in mining law and the wide range of environmental and other legal issues relating to mineral exploration and mining operations. She has assisted several domestic and foreign mining companies in their operations in Finland in all phases of the lifecycle of a mining project and has been involved in numerous M&A and finance transactions in the mining sector.

Outi Iso-Markku is senior counsel at HPP Attorneys Ltd. She has over 10 years' experience in advising clients on issues concerning environmental and water permits, environmental liabilities, environmental impact assessments, nature conservation and land use planning. Her specific areas of expertise also include waste legislation and environmental criminal law. Outi has broad experience in assisting a wide range of industrial clients in environmental administrative court procedures. She also provides daily support to operators developing large and complex industrial projects in sectors such as forestry, energy, batteries, chemicals, mining, infrastructure, and others. She is a member of the Finnish Bar Association's environmental law expert team.

Fiiu Linninen is an associate in the environmental law team at HPP Attorneys Ltd. She advises clients on legal questions related to permitting, land use planning, environmental liabilities and nature conservation. In addition, her areas of expertise include mining law and other legal issues relating to mineral exploration and mining operations. She also has experience in advising clients on environmental and land use matters related to wind farm acquisition and has participated in multiple wind power-related due diligence assignments, representing both domestic and international clients.

HPP Attorneys Ltd

Bulevardi 1 A
FI-00100
Helsinki
Finland

Tel: +358 40 779 7878
Email: kari.marttinen@hpp.fi
Web: www.hpp.fi

HPP ATTORNEYS

1. Regulatory Framework and Law

1.1 Environmental Protection Policies, Principles and Laws

In Finland, environmental issues are regulated by many different national laws, provisions, degrees and policies. In addition, as a European Union member state, a considerable share of the Finnish environmental legislation and policies is based on the EU's environmental policies and regulations, either as directly applicable EU regulations or through implementation of the EU directives.

The most essential Finnish environmental laws include:

- the Environmental Protection Act (No 527/2014, *ympäristönsuojelulaki*), which implements the European Union directive on industrial emissions (2010/75/EU, IED) and governs emissions caused by industrial operations;
- the Water Act (No 587/2011, *vesilaki*), which governs water-related construction projects and the use of water resources and the aquatic environment;
- the Waste Act (No 646/2011, *jätelaki*), which governs waste management and littering, the prevention of waste generation, and the prevention of danger and harm to human health and the environment caused by waste;
- the Nature Conservation Act (No 9/2023, l *uonnonsuojelulaki*), which governs nature and landscape conservation and management;
- the Land Use and Building Act (No 132/1999, *maankäyttö- ja rakennuslaki*), which governs planning, building development and the use of land and water areas (as of 1 January 2025, the Act will be divided into the Land Use Planning Act (No 132/1999, *alueidenkäyttölaki*), governing the planning, construction and use of land, and the Building Act (751/2023, *rakentamislaki*), governing the planning, construction and use of buildings); and
- the Chemicals Act (No 599/2013, *kemikaalilaki*), which governs the enforcement of the EU chemicals legislation and certain national obligations regarding chemicals.

The most essential environmental principles implemented by the environmental legislation include the following:

- pollution prevention and minimising harmful impact: harmful environmental impact shall be prevented or, if it cannot be prevented completely, reduced to a minimum; the operator shall reduce any emissions to the environment or sewer network to a minimum;
- caution and care: proper care and caution shall be taken to prevent pollution, taking into account the nature of the activity and the probability of pollution, risk of accidents, and opportunities to prevent accidents and limit their effects;
- best available technique: the best available technique shall be used in the operations;
- best environmental practice: best practices, fuels and raw materials shall be used in the operations in order to prevent pollution;
- knowledge obligation: operators must have sufficient knowledge of the environmental impacts of their activities, and the risks and mitigation measures;
- obligation to prevent pollution: should the activities cause environmental pollution or a threat thereof, the operator must take the appropriate action without delay in order to prevent pollution or the threat thereof, or, if pollution has already occurred, to reduce it to a minimum; and

- polluter pays principle: the party responsible for the activity producing pollution, shall be responsible for the costs resulting from preventing and minimising environmental damage and restoring the environment.

2. Enforcement Authorities and Mechanisms

2.1 Regulatory Authorities

The main general authority that controls environmental policy, drafts environmental legislation and guides other authorities' work relating to environmental issues is the Ministry of the Environment (*ympäristöministeriö*).

The competent permitting authorities for environmental permits are the Regional State Administrative Agencies (*aluehallintovirasto*) and the municipalities. The Regional State Administrative Agencies are in charge of issuing environmental permits for activities with major environmental impacts, as well as all permits under the Water Act. Other environmental permits are dealt with by the municipal environmental protection authorities (*kunnan ympäristönsuojeluviranomainen*).

The competent supervisory authorities are the regional Centres for Economic Development, Transport and the Environment, the ELY Centres (*elinkeino-*, *liikenne- ja ympäristökeskus*, *ELY-keskus*), and the municipalities. The ELY Centres also act as contact authorities in environmental impact assessments carried out in accordance with the Act on Environmental Impact Assessment Procedures (No 252/2017, *laki ympäristövaikutusten arviointimenettelystä*), and issue reasoned conclusions on the significant environmental impacts of the projects as part of the assessment.

The municipalities' role is central in relation to land use planning, as they have wide discretional power to decide whether to approve or reject a plan. Municipalities also function as permit authorities for construction permits and other permits granted under the Land Use and Building Act (No 132/1999, *maankäyttö- ja rakennuslaki*).

2.2 Co-operation

The requirement for co-operation among various authorities is mandated by legislation and is evident in scenarios such as communication between different permit authorities during simultaneous permit procedures. Additionally, it involves consulting the relevant supervisory authority during the permit procedure to ensure clarity and thoroughness in the matter.

3. Environmental Protections

3.1 Protection of Environmental Assets

Environmental assets such as air, water and soil are protected by the Environmental Protection Act (No 527/2014, *ympäristönsuojelulaki*), which governs emissions caused by industrial operations and aims to prevent the pollution of the environment and any risk of that, prevent and reduce emissions, eliminate adverse impacts caused by pollution and prevent environmental damage.

In addition, other environmental assets such as flora, fauna, natural habitats, landscapes and the aquatic environment are mainly protected by the Nature Conservation Act (No 9/2023, *luonnonsuojelulaki*), as well as the Water Act (No 587/2011, *vesilaki*) and the Forest Act (No 1093/1996, *metsälaki*). The protection provisions can directly concern species, for example, by prohibiting the deliberate disturbance of the

protected animals or by prohibiting the picking and destruction of a protected plant species. In addition, the protection provision can also concern the habitats of the protected species by prohibiting, for example, the deterioration and destruction of a habitat important for the survival of a species under strict protection or of breeding sites and resting places used by specimens of certain animal species.

Besides the abovementioned protection provisions for species, certain areas (national parks, nature reserves, landscape management areas, certain natural habitats, areas included to the EU Natura 2000 network) are subject to protection. The content of the protection provisions differs based on the legal basis of the protection and also on a case-by-case basis.

3.2 Breaching Protections

Breaching the protection provisions under the Nature Conservation Act might lead to a prohibition on continuing or repeating the offence or instance of negligence. One can also be required to correct the unlawful situation or redress the negligence under threat of penalty or suspension. In addition, the penalty for causing damage to the environment, or for any other nature conservation offence, is laid down in the Criminal Code (No 39/1889, *rikoslaki*). Please also see **5.1 Key Types of Liability** and **13.4 Proceedings Against Polluters**.

4. Environmental Incidents and Permits

4.1 Investigative and Access Powers

Pursuant to the Environmental Protection Act (No 527/2014, *ympäristönsuojelulaki*), relevant authorities have the power to obtain information from, for example, authorities and operators of a site suspected of engaging in contaminating activities, even if such disclosure may conflict with confidentiality obligations. The authority may also gain access to the site where the suspected contaminating activities have occurred and take measurements and soil samples.

The right of access is not subject to challenge, and consent of the involved parties is not required. However, according to the Administrative Procedure Act (No 434/2003, *hallintolaki*), as a general rule the authorities are obligated to give prior notification of an upcoming inspection on a site or property. Any investigations involving criminal liability are carried out by the police.

4.2 Environmental Permits/Approvals

Pursuant to the Environmental Protection Act, an environmental permit is required for activities that involve a risk of environmental pollution. The operations requiring an environmental permit are listed in Annex 1 of the Environmental Protection Act, which covers both the installations covered by the European Union Industrial Emissions Directive (2010/75/EU) and installations subject to permits under the national legislation. In addition, an environmental permit is required for activities that may cause pollution of a water body, for conveying wastewater that may lead to the pollution of a ditch, spring or streamlet, and for activities that may place an unreasonable burden on the surroundings.

A lighter registration or notification procedure is applicable with respect to some minor operations listed in Annexes 2 and 4 of the Environmental Protection Act.

An environmental permit shall be applied for in accordance with the Environmental Protection Act. The permit consideration is based solely on judicial discretion, meaning that the environ-

mental permit must be granted to the operator if the requirements set out in the Environmental Protection Act are fulfilled.

Rejection of a permit application or a permit decision and individual permit regulations may be appealed against. Further, the parties affected by the activity (permit applicants, neighbours and other concerned persons), environmental NGOs and those who may be affected by the operations, also have a right to appeal.

The first appellate instance is the Administrative Court of Vaasa, and the second and final instance is the Supreme Administrative Court. However, it should be noted that the right to appeal to the Supreme Administrative Court in environmental cases is subject to a requirement of leave to appeal, which is granted under the Administrative Judicial Procedure Act (No 808/2019, *laki oikeudenkäynnistä hallintoasioissa*) if the matter involves a need for a precedent or an obvious error, or if there are some other serious grounds for granting the leave to appeal.

4.3 Regulators' Approach to Policy and Enforcement

Authorities supervise polluting activities through surveillance visits and requests for information, monitoring reports provided by the operators and possible further clarifications that the authorities may request from the operators. In accordance with the Environmental Protection Act, a supervisory authority may issue an administrative order placing obligations on the operator in order to rectify a violation or negligence. A supervisory authority may prohibit an operator who violates the Environmental Protection Act or the permit regulations from continuing or repeating a malpractice or may order a violating operator to fulfil its obligations in some other way (eg, it may order the operator to apply for an environmental permit in respect of an action that is conducted without a permit).

It may also order the operator to terminate its operations. Unless it is deemed unnecessary, the competent authority shall issue the administrative orders with a threat of interruption, penalty payment, and/or remediation or other measures at the expense of the operator. The competent supervisory authority shall ensure that the order or prohibition provided in the administrative order is complied with.

It is also in the supervisory authority's power to order the operator to restore the environment to the state in which it was before the violation, or to eliminate the harm to the environment caused by the violation. The supervisory authority can also order the operator to investigate the environmental impacts of the operations, if there is a justified cause to suspect that they are causing pollution.

Before issuing an administrative order, the authority shall give the operator an opportunity to be heard in the matter, as provided in the Administrative Procedure Act (No 434/2003, *hallintolaki*). If necessary, other concerned parties, supervisory authorities and authorities protecting public interest shall also be heard.

Pursuant to the Environmental Protection Act, the supervisory authorities are obliged to report a matter to the police for preliminary investigation if they suspect that a criminal violation of a rule of environmental law, government decree or permit regulation has been committed. No notification needs to be made if the act can be considered minor in view of the circumstances and the public interest does not require charges to be brought. However, the recent tendency has generally been that supervisory authorities are

more likely to report the matter to the police for preliminary investigation.

4.4 Transferring Permits/Approvals

Environmental permits can be transferred to another operator without reassessment or the consent of the environmental authorities. Pursuant to the Environmental Protection Act, the new operator must notify the relevant supervisory authority of the change.

4.5 Consequences of Breaching Permits/Approvals

If the operator does not comply with the permit conditions, the competent authority can intervene by urging compliance and issuing administrative orders with threat of interruption of operations, penalty payment and/or carrying out of the required tasks by the authority at the cost of the operator.

The operator may also be prosecuted under the Criminal Code (No 39/1889, *rikoslaki*) for a breach of an environmental permit or regulations of the Environmental Protection Act as a criminal offence punishable by a fine and/or imprisonment. Criminal sanctions may be imposed for acts in breach of permits or legislation that have been carried out through negligence, gross negligence or intentionally. Depending on the gravity of the punishable offence, criminal sanctions for environmental offences include:

- fines imposed on natural persons (corporation officers responsible for the offence);
- fines imposed on the corporation; and
- imprisonment ranging from four months to six years.

Further, the property and the value of savings derived from an offence can be confiscated by the state.

Please also see **7.1 Liability for Environmental Damage or Breaches of Environmental Law**.

5. Environmental Liability

5.1 Key Types of Liability

Finnish legal environmental liability consists of public liability, civil liability and criminal liability. The key Finnish environmental legislation regarding environmental liability is:

- the Environmental Protection Act (No 527/2014, *ympäristönsuojelulaki*);
- the Act on Compensation for Environmental Damage (No 737/1994, *laki ympäristövahinkojen korvaamisesta*);
- the Act on the Remediation of Certain Environmental Damages (No 383/2009, *laki eräiden ympäristövahinkojen korjaamisesta*); and
- the Criminal Code (No 39/1889, *rikoslaki*).

The polluter may be ordered to restore polluted soil, groundwater or surface water, and/or to compensate the damage caused to the injured party. Environmental liability is strict liability – ie, damages are to be compensated and restoration obligations may be ordered even if the pollution is not caused negligently or intentionally. In addition, criminal liability (through a fine and/or imprisonment) serves as a deterrent. All three types of liability can be concurrently applied in the same case.

5.2 Disclosure

According to the Environmental Protection Act, the operator shall notify the state supervisory authority without delay of any substantial pollution of a water body and damage to protected species and natural habitats and imminent risks. Failure to comply with this notification require-

ment, whether intentionally or through negligence, is punishable by a fine under the Environmental Protection Act, unless a more severe punishment is provided elsewhere by law.

Please see also **17. Environmental Information and Disclosure** and **18.2 Disclosure of Environmental Information**.

6. Environmental Incidents and Damage

6.1 Liability for Historical Environmental Incidents or Damage

In general, based on the fundamental polluter pays principle, anyone who is operating or has operated an activity, or taken a measure that has caused a nuisance or damage to the environment, is liable for the environmental damage and shall restore the contaminated area to a condition that will not cause harm to health or the environment, nor present a hazard to the environment. The principle is contained, for example, in the Environmental Protection Act (No 527/2014, *ympäristönsuojelulaki*), according to which any party whose operations have caused contamination of soil or groundwater is required to restore the soil or groundwater (contaminated site) to a state where it does not pose a risk or cause harm to health or the environment.

The liability to compensate for environmental damage caused by activities carried out in certain areas and resulting from i) pollution of the water, air or soil; ii) noise, vibration, radiation, light, heat or smell; or iii) other similar nuisance, shall lie with the operator to whom the activity that has caused the environmental damage has been assigned, if the assignee knew or should have known, at the time of the assignment, about such environmental damage or nuisance, or the threat of the same.

In cases where historical environmental incidents or damage have led to soil contamination, please see **13. Contaminated Land**.

6.2 Reporting Requirements

Please see **17.1 Self-Reporting Requirements**.

6.3 Types of Liability and Key Defences

As explained in **5.1 Key Types of Liability**, Finnish legal environmental liability consists of public liability, civil liability and criminal liability.

Pursuant to the Environmental Protection Act, any party whose activities have caused the contamination of soil or groundwater is required to restore said soil or groundwater to a condition that will not cause harm to health or the environment, nor represent a hazard to the environment. The supervisory authority has the power to order the operator to restore the environment to the state in which it was before the incident, or to eliminate the harm to the environment caused by the incident. Environmental liability is strict liability, which means that restoration obligations may be ordered even if the pollution is not caused negligently or intentionally.

According to the Act on Compensation for Environmental Damage (No 737/1994, laki ympäristövahinkojen korvaamisesta), compensation shall be paid for a loss defined as environmental damage that is caused by activities carried out in a certain area and resulting from pollution of the water, air or soil, noise, vibration, radiation, light, heat or smell, or another similar nuisance. Compensation shall be paid if it can be shown that there is a probable causal link between the activities and the loss referred to above.

In assessing the probability of causality, consideration shall be given, among other things, to the type of activity and loss, and to the other possible causes of loss. Even when the loss has not been caused deliberately or negligently, liability for compensation shall lie with the person whose activity has caused the environmental damage or a person who is comparable to the person carrying out the activity. In addition, liability for compensation shall lie with the person to whom the activity that caused the environmental damage has been assigned, if the assignee knew or should have known, at the time of the assignment, about the loss or nuisance, or the threat of such.

Finally, according to the Criminal Code (No 39/1889, *rikoslaki*), criminal liability shall lie with the person within whose sphere of responsibility the act or negligence, which has caused the incident or damage, belongs. In the allocation of liability, due consideration shall be given to the position of said person, the nature and extent of the person's duties and competence, and the person's involvement in both the initiation and the perpetuation of the unlawful situation.

Please see also **8. Personal Liability**, **9.1 Environmental Insurance** and **13. Contaminated Land**.

7. Corporate Liability

7.1 Liability for Environmental Damage or Breaches of Environmental Law

The Finnish legal system makes no explicit distinction between corporate entities and natural persons. In Finland, as in many other countries, the "polluter pays" principle is the main rule, which means that a corporate entity can also be liable for environmental damages and breaches of environmental law.

Moreover, Finland recognises the criminal liability of a legal person involved in an environmental crime. The corporate criminal liability applies irrespective of the liability of natural persons, and a corporate fine may be imposed even if a natural person offender cannot be identified or shall not be punished. The amount of a corporate fine ranges from EUR850 to EUR850,000, and the court has wide discretion as to how to calculate the amount of the fine. The fine shall be imposed in proportion to the harmfulness and dangerousness of the offence and the size/financial standing of the liable corporation. In recent case law, the imposition of forfeiture orders, which require the surrender of proceeds derived from criminal activity, has grown in significance, potentially surpassing the impact of corporate fines as a deterrent.

Furthermore, the obligations of the Environmental Act regarding environmental permits and the sanctions relating to possible non-compliance apply especially to corporate entities (please see **4.5 Consequences of Breaching Permits/Approvals**).

7.2 Environmental Taxes

The most relevant environmental taxes in Finland are:

- excise duty on liquid fuels;
- excise duty on electricity and certain fuels;
- excise duty on beverage containers;
- waste tax;
- car registration tax;
- annual vehicle tax; and
- environmental liability contribution (from 1 January 2025).

Further information is provided in **19.1 Green Taxes**.

7.3 Incentives, Exemptions and Penalties

There are no specific incentives or exemptions for good environmental citizenship in Finnish legislation. With respect to environmental taxes that can to some extent be considered as incentives, see **19.1. Green Taxes**. Penalties for breaches against environmental laws are covered in **3.2 Breaching Protections**, **4.5 Consequences of Breaching Permits/Approvals** and **7.1 Liability for Environmental Damage or Breaches of Environmental Law**.

7.4 Shareholder or Parent Company Liability

According to the Finnish Limited Liability Companies Act (No 624/2006, *osakeyhtiölaki*), a limited liability company is a legal entity separate from its shareholders and, therefore, the shareholders are not liable for the company's debts, obligations or liabilities (including, but not limited to, environmental damage or breaches). The same applies to parent companies. Thus, shareholders and parent companies are not liable for environmental damages or breaches of environmental law.

However, Finnish jurisprudence has shared the view that, in certain exceptional circumstances, a shareholder could be liable for the company's obligations without the explicit support of the law. This kind of limited liability without the legal support refers to the principle of piercing the corporate veil. Although piercing the corporate veil has been considered possible in Finnish jurisprudence, the Supreme Court has expressly applied it only once (KKO 2015:17).

7.5 ESG Requirements

In Finland, environmental, social and governmental requirements are regulated by several different laws. There is therefore no specific CSR law in Finland, which further means that the reporting, monitoring and enforcement of obligations vary depending on the subject matter and the specific legislation applicable. For example, laws safeguarding the social component of CSR especially address the rights of a company's employees and its customers – ie, consumers. These laws create obligations and responsibilities for companies to actively ensure the safety of employees and consumers and are monitored by specific authorities.

Finland, as part of the European Union, has also implemented EU regulation on ESG requirements. For example, the Corporate Sustainable Reporting Directive has been implemented in Finland through an amendment to the Finnish Accounting Act. If the criteria for applying the law are met, the law requires a company to prepare a report, which must include information on the company's environmental, social and governmental practices.

7.6 Environmental Audits

There are no binding requirements regarding environmental audits in Finland. However, the Act on Voluntary Participation in an Environmental Management and Auditing System (No 121/11.2.2011, *laki vapaaehtoisesta osallistumisesta ympäristöasioiden hallinta- ja auditointijärjestelmään*) implements the elements necessary for the corresponding regulation of the European Parliament and Council. The Act defines the terms related to voluntary auditing by the EMAS scheme and regulates the authorities responsible for supervising the auditing.

8. Personal Liability

8.1 Directors and Other Officers

In Finland, it is possible for directors and other officers to be held personally liable for environmental damage or breaches of environmental legislation committed by the company.

In legal practice, liability is primarily imposed on the person or persons within a company who are responsible for ensuring compliance with the relevant provisions, such as the CEO, board member, director or another employee of the company. Secondly, the liability is imposed on the company, and the company may be issued with a corporate fine. The Supreme Court has in its recent precedent (case KKO:2023:71) given weight to the facts related to the employee's actual position in the association/company and whether the employee had been in a position to ensure that the permit regulations were fulfilled and whether the employee had used all means available to avoid the breaching of the permit regulations. Please also see **6.3 Types of Liability and Key Defences**.

8.2 Insuring Against Liability

Insurance companies provide cover against directors' and officers' indemnification liability, pursuant to the Limited Liability Companies Act (No 624/2006, *osakeyhtiölaki*), according to which, members of management may become personally liable for loss or damage caused wilfully or through gross negligence or by breaching said Act or the company's articles of association. However, such an insurance does not usually cover environmental damages referred to in the Act on Compensation for Environmental Damage (No 737/1994, *laki ympäristövahinkojen korvaamisesta*) and does not cover criminal penalties.

9. Insurance

9.1 Environmental Insurance

Statutory environmental damage insurance is required by law if the company's operations involve a material risk of environmental damage or cause harm to the environment such as those that require a chemical permit, water permit or environmental permit. The insurance covers so-called secondary environmental liability, namely environmental damage where the responsible entity is either unknown or unable to provide compensation. The statutory insurance does not protect the operator.

The statutory environmental insurance system will, as of 1 January 2025, be replaced by the Environmental Damages Fund, which is a specific fund maintained by the government. The funds to the Environmental Damages Fund are collected as tax-like environmental liability contributions from operators whose activities may pose a risk of environmental pollution. Please also see **19.1 Green Taxes**.

It is possible for the operator to take out voluntary environmental insurance. A regular liability insurance may cover compensation for environmental damage caused by sudden and unexpected events to another party. However, there are also specific environmental insurance products available which may also cover long-term damage or damages caused to the insured party itself (eg, property damage or remediation costs) and interruption of business caused by environmental damage.

10. Lender Liability

10.1 Financial Institutions/Lender Liability

In practice, lender liability is theoretically possible under the Act on Compensation for Environmental Damage (No 737/1994, *laki ympäristövahinkojen korvaamisesta*), which concerns tort law liability. In addition to the party causing environmental damage, liability for compensation also lies with a party who is comparable to the person carrying out the activity. In establishing whether a lender is comparable to the person/entity carrying out the activity, consideration is given to the following factors:

- the competence of the lender and control over the person/entity carrying out the activity;
- the lender's financial relationship with the person/entity carrying out the activity; and
- the profit the lender seeks from the activity.

There are no precedents on the aforementioned question; in some cases, the court would make a case-by-case assessment of the role and actions of the lender before establishing potential liability.

10.2 Lender Protection

In practice, liability for environmental damages resulting from breaches of environmental law does not extend to lenders. Under normal circumstances, the likelihood of financial institutions or lenders being held liable is considered low. In order to protect themselves from the liability risk, lenders should not be involved in the running of the operations or using their control over the actual operations in a way that would make their role comparable to that of the actual operator.

11. Civil Liability

11.1 Civil Claims

Under the Act on Compensation for Environmental Damage (No 737/1994, *laki ympäristövahinkojen korvaamisesta*), compensation shall be paid for a loss defined as environmental damage that is caused by activities carried out in a certain area and resulting from:

- pollution of the water, air or soil;
- noise, vibration, radiation, light, heat or smell; or
- other similar nuisance.

The Act does not apply to contractual liability for compensation. Please also see **20.1 Resolving Disputes**.

11.2 Exemplary or Punitive Damages

Finnish law does not recognise any exemplary or punitive damages. Therefore, it is not possible to award compensation beyond the damage actually caused.

11.3 Class or Group Actions

Class or group actions are not possible for environmental-related civil claims in Finland.

11.4 Landmark Cases

In Supreme Court case KKO 2015:21, the claimant claimed compensation according to the Act on Compensation for Environmental Damage based on a neighbouring restaurant's noise that caused the claimant, who was a hotel owner, to lose profit from two hotel rooms.

When considering if the Act on Compensation for Environmental Damage was applicable, it was crucial to determine whether the damage was caused by a loss defined in the Act as environmental damage, or by activities carried out in

a certain area and resulting from noise or similar nuisance. The Supreme Court decided that, even though the Act on Compensation for Environmental Damage is applied as a general law, in some cases the preceding Neighbouring Act (No 26/1920, *laki eräistä naapuruussuhteista*) could be applicable. The compensation was therefore considered according to Sections 17, 18 and 19 of the Neighbouring Act. The claimant has the obligation to tolerate nuisance, if not deemed unreasonable, with consideration being given, for example, to local circumstances, the situation resulting in the occurrence of the nuisance, and the regularity of the nuisance elsewhere in similar circumstances.

The nuisance caused was undisputable; however, the question was whether such actions were unreasonable. The Supreme Court decided that the noise was unreasonable as intended in the legislation but decided to mediate the compensation amount due to the hotel owner's own contribution to the damages.

12. Contractual Agreements

12.1 Transferring or Apportioning Liability

Indemnities and other contractual agreements can be used to transfer or apportion liability for incidental damage or breaches of law; however, such contractual agreements are only binding inter partes. Indemnities and other contractual agreements are not binding on regulators or other authorities or the parties suffering damage (if not contracting parties themselves).

12.2 Environmental Insurance

Please see **9.1 Environmental Insurance**.

13. Contaminated Land

13.1 Key Laws Governing Contaminated Land

The provisions governing remediation of contaminated land depend on when the contamination was caused:

- The Environmental Protection Act (No 527/2014, *ympäristönsuojelulaki* and its predecessor) applies to soil pollution caused after 1994.
- The repealed Waste Management Act (No 673/1978, *jätehuoltolaki*) applies to soil pollution caused by an activity that took place on or after 1 April 1979 but before 1994.
- Soil pollution caused by an activity that has completely ceased operating before 1 April 1979 is governed by inconclusive case law.

Under the Environmental Protection Act, the operator has a general obligation to prevent pollution and a specific prohibition not to cause any pollution of soil. If the activities cause or may directly result in environmental pollution, the operator must take the appropriate action without delay in order to prevent pollution, or, if pollution has already resulted, to reduce it to a minimum.

The operator whose operations have caused the pollution of soil has an obligation to restore the polluted soil. Indicative concentration thresholds for several hazardous substances in soil and guidance for the risk assessment regarding remediation are established in the Government Decree on Contaminated Soil (No 214/2007, *valtioneuvoston asetus maaperän pilaantuneisuuden ja puhdistustarpeen arvioinnista*).

13.2 Clearing Contaminated Land

Party Responsible for Contaminated Land

The Finnish regulation regarding liability for contaminated land is based on the overriding polluter pays principle, according to which the operator carrying out polluting activity shall restore the contaminated land to a condition that will not cause harm to health or the environment, nor present a hazard to the environment.

However, if the polluter cannot be established or reached, or cannot be forced to fulfil its remediation duty, and if the contamination occurred with the consent of the occupier (owner or tenant, as applicable) or the occupier knew, or should have known, the state of the area when it was acquired, the occupier must restore the soil insofar as this is not clearly unreasonable. Where the polluter or the occupier of the polluted area cannot be required to remedy the contaminated soil, the municipality must establish the need for, and conduct, soil remediation.

Possibility to Transfer Liability to a Purchaser

Public liability for the remediation of contaminated soil enforced by the authorities under the Environmental Protection Act (or earlier legislation) cannot be transferred to a purchaser. Therefore, the authority may direct its orders towards whoever has contributed to the contamination, under the aforementioned legislation.

However, the parties may transfer the liability inter partes, from a seller to a purchaser by an agreement, and a liable party may attempt to secure recourse from another party through contractual indemnity. Nevertheless, these civil agreements are valid only between the parties and do not bind the authorities or third parties.

13.3 Determining Liability

The Finnish environmental liability legislation rests upon the polluter pays principle. The Environmental Protection Act does not include any specific provisions on the division of the liability if more than one party has contributed to the contamination. However, pursuant to the Supreme Administrative Court's precedent on the issue (KHO 2005:11), if several operators are suspected to have caused soil contamination, the parties are considered jointly and equally responsible for conducting the contamination studies and bearing the related costs if the parties cannot clearly verify their contribution to the contamination.

Furthermore, if the soil is considered contaminated and several operators have been operating in the area, in case law, the parties have been responsible for only their share of the contamination. If the parties' share of the contamination cannot be separated from one another, the parties are considered jointly and severally liable.

13.4 Proceedings Against Polluters

In accordance with the Act on Compensation for Environmental Damage (No 737/1994, *laki ympäristövahinkojen korvaamisesta*), compensation shall be paid for damage resulting from pollution or other similar nuisance to those affected by the pollution. However, this compensation shall be paid only if toleration of the nuisance is deemed unreasonable. While considering the nature of the nuisance, consideration shall be given, for example, to local circumstances, the situation resulting in the occurrence of the nuisance, and the regularity of the nuisance elsewhere in similar circumstances. The obligation to tolerate the nuisance shall not, however, apply to loss inflicted deliberately or criminally, nor to bodily injury or material loss of greater than minor significance.

In criminal cases involving an infringement of public interest, the ELY Centre is the claimant. In connection with proceedings of criminal cases subject to public prosecution, private persons may also file claims for compensation.

Please also see **20. Disputes**.

13.5 Rights and Obligations Applicable to Waste Operators

Waste operators must comply with the obligations regulated by the Waste Act (No 646/2011, *jätelaki*). One fundamental principle is the order of priority, according to which the following priority order shall be complied with when handling waste: reuse, recycling, and other ways of recovery and disposal.

A waste holder shall know the properties of the waste relevant to organising waste management. The waste holder shall, if necessary, disclose this information to other waste management operators. Waste may not be abandoned or treated in an uncontrolled manner. Waste management may not endanger or harm health, the environment, general safety or public or private interests.

All professional waste collectors are obligated to register in the waste management register or apply for an environmental permit. A waste operator shall monitor and control its waste management to ensure that the activity fulfils the applicable legal requirements and that the information necessary for the supervision of the activity may be submitted to the supervisory authority.

If a waste operator does not comply with the aforementioned obligations, the supervisory authority may prohibit it from continuing or repeating the conduct, order it to fulfil its obligations, order it to restore the environment or to eliminate the harm, or order temporary measures concerning the waste. The party that acted in violation of regulations is responsible for any costs incurred due to the temporary measures. The supervisory authority shall, unless it is clearly unnecessary, reinforce an order it has issued by a notice of a conditional fine.

Administrative fines may be imposed on a party that fails to submit a notification for registration in the waste management register or neglects other reporting duties. Several different types of breaches against the waste legislation are punishable as criminal offences either under the Waste Act or the Criminal Code (No 39/1889, *rikoslaki*).

13.6 Investigating Environmental Accidents

The general rule is that when there is a suspicion that the soil has been contaminated, the polluter is responsible for inspecting the state of the soil and the need for remediation. Regardless of the outcome of the inspection, the findings shall be reported to the supervisory authority (ELY Centre). If the polluter has not conducted the necessary inspection, the ELY Centre can order the polluter to conduct the required studies and investigations. Based on the conducted study, the ELY Centre shall render its decision regarding the need for remediation.

In addition, under the Environmental Protection Act (No 527/2014, *ympäristönsuojelulaki*) and Waste Act, the supervisory authorities are obliged to report a matter to the police for preliminary investigation if they suspect that a crime has been committed. However, notification is not required if the act is considered minor under the circumstances and it is determined that public interest does not necessitate pressing charges.

However, supervisory authorities are increasingly likely to report matters to the police for preliminary investigation.

14. Climate Change and Emissions Trading

14.1 Key Policies, Principles and Laws

The key legislation in connection with climate change and emissions trading is:

- the Climate Act (No 423/2022, *ilmastolaki*); and
- the Emissions Trading Act (No 311/2011, *päästökauppalaki*).

14.2 Targets to Reduce Greenhouse Gas Emissions

Carbon Neutrality

The Climate Act's primary goal is to ensure a significant reduction in greenhouse gas emissions and an increase in the removals by greenhouse gas sinks, with the target of achieving carbon neutrality by 2035. This means that Finland aims to reach a point where its greenhouse gas emissions are equal to the removals. The Act also aims to ensure that greenhouse gas emissions from the effort sharing and emissions trading sectors decrease by at least 60% by 2030 and by at least 80% by 2040 compared to 1990 levels. The Act applies to the government authorities in the preparation of climate policies and in ensuring their implementation. It does not impose direct obligations on operators.

Coal Ban

The Act Banning the Use of Coal for Energy (No 416/2019, *laki hiilen energiakäytön kieltämisestä*) prohibits the use of coal as fuel for the production of electricity or heat from 1 May 2029. The Act is supported by the Government Decree on Investment Aid for Projects Replacing Coal for Energy Use in 2020-2025 (No 129/2020, *valtioneuvoston asetus hiilen energiakäyttöä korvaavien hankkeiden investointituesta vuosina 2020–2025*), which aims to promote the voluntary, accelerated phasing out of coal. The aim of the legislation is to ensure that power plants or heating investments or replacement investments that rely on coal energy are no longer viable.

Emissions Trading Act

Finland has its own emission trading system, which is based on the Emission Trading Act. The purpose of the Act is to promote the reduction of greenhouse gas emissions cost-effectively and economically.

15. Asbestos

15.1 Key Policies, Principles and Laws Relating to Asbestos

In Finland, the use of asbestos became licensed in 1988 and was banned in 1993 (in the EU in 2005). The use of crocidolite was banned in 1976.

In general, if it does not cause health or environmental hazards, there is no direct obligation to remove asbestos that is lawfully contained in products or structures.

Asbestos removal work can only be carried out by private persons or legal persons such as limited companies, co-operatives and public entities that have been authorised to do so. The licensing authority, the occupational safety and health authority of the Regional State Administrative Agency, is responsible for handling permits, promoting occupational safety and the proper supervision of the register of licensed asbestos removal workers.

16. Waste

16.1 Key Laws and Regulatory Controls

Finland's waste legislation follows primarily the development of the EU's waste legislation and policy.

The key legislation governing waste and waste management in Finland is the Waste Act (No 646/2011, jätelaki) and the Environment Protection Act (No 527/2014, *ympäristönsuojelulaki*), which implement EU's Waste Framework Directive (2008/98/EC). In addition, there are several lower-level national provisions, such as the Government Decree on Waste (No 978/2021, *valtioneuvoston asetus jätteistä*), Government Decree on Waste Incineration (No 151/2013, *valtioneuvoston asetus jätteen polttamisesta*) and Government Decree on Landfills (No 331/2013, *valtioneuvoston asetus kaatopaikoista*).

Waste legislation provides regulations for all waste, excluding certain special types of waste, such as nuclear and radioactive waste. Under Finnish law, an environmental permit is required for the institutional or commercial treatment of waste (including storing or disposing of waste).

16.2 Retention of Environmental Liability

According to the Waste Act, the waste holder's liability for the organisation of waste management ceases and is transferred to the new holder when the waste is handed over to a person who has the right to receive such waste based on the registration in the waste management register or to a person who has received such waste based on an environmental permit in accordance with the Environmental Protection Act or based on the registration in the environmental protection database under the same Act.

Waste may also be delivered to a recipient who does not require approval, an environmental permit or registration as referred to above, if they have sufficient expertise and economic and technical capacity to handle waste management.

The waste holder's liability for the organisation of waste management ceases and is transferred to the new holder when the waste is handed over to the recipient referred to above. The responsibility is not transferred to the driver who carries the waste.

The waste driver must dispose of the waste at the location indicated by the waste holder or the authority. If the waste is not accepted, the driver must return the waste to the holder, who must collect the waste.

16.3 Requirements to Design, Take Back, Recover, Recycle or Dispose of Goods

Finland has implemented an extended producer responsibility scheme for certain types of waste. Duties to collect and recycle or dispose of waste apply to producers of:

- electronic and electrical appliances;
- batteries and accumulators;
- tires from motor vehicles,
- other vehicles and equipment;
- cars, vans and comparable vehicles;
- printing paper and paper for manufacturing other paper products;
- packaging;
- cups for beverages made of single-use plastics, including their covers and lids;
- air balloons made of single-use plastics;
- tobacco products with filters made of single-use plastics; and
- fishing gear made of single-use plastics.

17. Environmental Disclosure and Information

17.1 Self-Reporting Requirements

Under the Environmental Protection Act, if an exceptional situation causes emissions or generates waste, or if there is an immediate threat of such an event, an operator or a holder of the waste must notify the relevant authority immediately. Further, permit holders, registered operators or related holders of waste have an obligation to notify the relevant authority if they are not able to comply with the permit or relevant governmental decrees due to an exceptional situation. If waste or some other substance that may cause contamination has entered the soil or groundwater, the polluter shall notify the supervisory authority immediately. If there is reason to suspect that the soil or groundwater has been contaminated, the party responsible for treatment (whose operations have caused the contamination) shall establish the level of contamination of the area and the need for treatment. The report shall be delivered to the state supervisory authority.

17.2 Public Environmental Information

Documents prepared by or delivered to an authority are publicly available under the Act on the Openness of Government Activities (No 621/1999, *julkisuuslaki*), and everyone has a right of access to a publicly available document. Public authorities keep registers of environmental information regarding, for example, environmental permits, so information may be requested from the relevant authorities such as the Regional State Administrative Agencies and the ELY Centres. To some extent, environmental permits and the relevant application materials are also available through a public web service. However, there are some limitations to the publicity of documents/information – eg, corporate secrets, such as the amount of waste of a recycling company, are considered classified.

Furthermore, the Finnish environmental administration maintains a public soil condition database for the management of site-specific data related to land contamination, called MATTI. Property-specific reports from the database may be requested from the regional ELY Centres.

17.3 Corporate Disclosure Requirement

Pursuant to the Accounting Act (No 1336/1997, *kirjanpitolaki*), large and public companies as well as public-interest entities have an obligation to include information on environmental impacts in their annual management report. Public-interest entities must also prepare an annual statement of non-financial information, which must include information on how the company manages environmental matters. Please also see **17.4 Green Finance**.

Moreover, environmental permit holders have an obligation to prepare regular reports to the supervisory authority. The details for reporting are included in the permit. Registered operators may have an obligation to prepare regular reports in accordance with the relevant governmental decree.

17.4 Green Finance

Green finance-related regulation applicable in Finland mainly derives from EU legislation and comprises, inter alia, the Taxonomy Regulation, the Sustainable Finance Disclosure Regulation (SFDR) and the Corporate Sustainability Reporting Directive (CSRD).

While the Taxonomy Regulation and SFDR are directly applicable regulations in Finland, the European Commission mandates that Member States implement the CSRD into national legis-

lation by 6 July 2024. According to the Finnish government's proposal, national implementation of the CSRD primarily results in amendments to the Finnish Accounting Act (1336/1997) and the Finnish Auditing Act (1141/2015). While the Finnish Financial Supervisory Authority is responsible for supervising the Finnish financial markets, insights from the government's proposal and stakeholder feedback suggest the Finnish Audit Board will adopt a supervisory role in relation to amendments made to the Accounting Act and the Auditing Act. This is not yet finally determined. Currently, the Finnish Financial Supervisory Authority monitors that entities supervised by it take into consideration in their operations sustainability risks as well as other risks. Information given to customers and investors on sustainability factors must be appropriate.

Generally, green finance plays a fundamental role in the achievement of Finland's energy and climate targets. In 2021, the Finnish government introduced its Sustainable Growth Programme for Finland, highlighting a green transition as a core pillar. This pillar seeks to support the economy's structural adjustment and establish a foundation for a carbon-neutral welfare society. This naturally has increased and will continue to increase the interest, appetite and need for sustainable investments and green finance arrangements in Finland.

18. Transactions

18.1 Environmental Due Diligence

Environmental due diligence is an established part of due diligence in M&A, finance and property transactions. The need and scope of environmental due diligence are dependent on the target – ie, the anticipated environmental risks associated with the target – and are, therefore, assessed on a case-by-case basis. Environmental due diligence is typically conducted in transactions involving the amendment or termination of business with potential impacts on the environment or natural resources, such as transactions concerning industrial companies, mines, power plants or old industrial sites. Furthermore, environmental due diligence is typically conducted as part of a property transaction to determine the possible history of the site, contamination or other environmental damages related to the property in question, and the need and liability for environmental remediation.

In recent years, there has been a constant rise in demand for environmental due diligence, resulting from growing awareness of the risk of high costs related to environmental liability and possible need for remediation.

18.2 Disclosure of Environmental Information

The seller of real estate is obliged to provide the new owner or tenant with information on the activity carried out on the property, and on any waste or substances that may cause contamination in the soil or groundwater. Furthermore, the seller must provide the purchaser with the conducted surveys and information regarding possible remediation action on the property. Failure to do so may result in the annulment of the real estate deed of sale, a reduction in price or compensation for damages. The seller may be held liable for the prior contamination of real estate if they fail to disclose the information at the point of sale.

As warranties are used to secure the purchaser, it is in the seller's interest to disclose the relevant environmental information in a regular due diligence process and thereby avoid contractual liability for breaching a warranty.

19. Taxes

19.1 Green Taxes

Energy taxes, taxes on road transport and so-called special environmental taxes and fiscal levies are considered as green or environmental taxes. Green taxes and environmental taxes are collected for fiscal reasons, but they also have environmental objectives. The accrual of environmental taxes and environmental charges constitutes approximately 6% (in 2021) of cumulative total revenue in Finland. There has been a slight decline in accrual in recent years caused mainly by the decrease in road transport taxes. Households paid ca 52%, transport and service sector ca 27%, industry ca 5%, and the energy supply sector ca 7% of environmental taxes in 2021.

Most significant environmental taxes (73% accrual of all environmental taxes) are EU-harmonised energy taxes, predominantly consisting of excise taxes on liquid fuels and electricity and certain other fuels. The focus has been shifted to carbon dioxide tax, with the aim of taking the average emissions resulting from the fuel during its lifecycle into consideration.

Both registration-based car tax and annual vehicle tax take environmental factors into consideration, with CO_2 emissions affecting the level of tax. The accrual of car tax has fallen mainly because of lower CO_2 emissions and electrification of vehicles.

Waste tax has encouraged waste recovery and decreased the amount of waste ending up in landfills. There is a possibility that the government will expand the waste tax base further.

The excise duty on beverage containers has encouraged the use of recyclable containers.

The Environmental Damage Fund will take effect on 1 January 2025. The funds are part of the secondary environmental liability systems, and they are collected as tax-like environmental liability contributions from operators whose activities may posed a risk of environmental pollution.

20. Disputes

20.1 Resolving Disputes

According to the Environmental Protection Act (No 527/2014, *ympäristönsuojelulaki*), the permit authority shall, when granting an environmental permit, order compensation for any damage from water pollution caused by the activity. One can also submit an application to the permit authority to claim compensation for damage not foreseen when the permit was granted. When an application is submitted to a permit authority, the matter cannot be simultaneously handled in a district court as an action.

Other environmental damages are resolved in district courts as civil cases. According to the Act on Compensation for Environmental Damage (No 737/1994, *laki ympäristövahinkojen korvaamisesta*) compensation shall be paid if it is shown that there is a probable causal link between the activities and the loss. Compensation shall be paid only if tolerating the nuisance is considered unreasonable.

21. Reform

21.1 Legal and Regulatory Reforms

Within the Finnish environmental legal framework, the development over the past few years that has been most alarming to operators has been the lack of predictability of the environmental permit process and strong emphasis

given to the so-called precautionary principle in the administrative courts' recent case law. As a result, during appeal proceedings, several new investment projects' environmental permits have been revoked by administrative courts. The basis for these revocations was the uncertainty surrounding the long-term water impacts of the projects, which were deemed too ambiguous to satisfy the conditions necessary for permit approval (eg, the Supreme Administrative Court's decisions KHO 2019:166, KHO 2022:38 and KHO nr 19/22.4.2022).

Understandably, this has caused some concern among industrial operators and investors concerning the predictability of the Finnish investment environment. In its government programme, the newly elected Finnish Government addressed these concerns by stating that the government is planning legislative amendments that will reduce the number of uncertainties in the permit process and interpretation practices of the environmental permitting authorities. The Finnish government has announced its plans to review the precautionary principle and the impacts of its interpretation on permit conditions and the approval of permits. The outcome of this review, including any potential amendments or concrete proposals, is yet to be determined.

In addition, the Supreme Administrative Court of Finland has recently acknowledged a distinction in the environmental permit process and the application of the precautionary principle between existing operations and new projects. In its recent precedent ruling (KHO 2023:97), the Supreme Administrative Court ruled that as far as the precautionary principle is concerned, industrial operation, in this case a gold mine, with an over 15-year operation period, should not be assessed in the same way as a greenfield operation with respect to the uncertainties related to the long-term impacts of the operation.

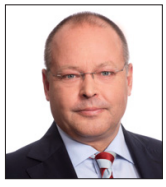
To restore predictability and stability in the environmental permitting process, and ensure the investments required for Finland and the EU's green transition, it is important that the role of the precautionary principle is clarified in relation to the permit process for industrial operations. Hopefully, the aforementioned precedent of the Supreme Administrative Court will have a positive impact on the predictability of the environmental permit process, both by the competent environmental permit authorities and in administrative court appeal proceedings.

Trends and Developments

Contributed by:
Kari Marttinen, Tarja Pirinen, Outi Iso-Markku and Fiiu Linninen
HPP Attorneys Ltd

HPP Attorneys Ltd was established in 1975. HPP is Finland's leading legal services provider in environmental law, land use, mining and construction. HPP has one of the largest dedicated environmental teams in Finland, with eight skilled and experienced lawyers specialising in all aspects of environmental law. The team assists a diverse array of clients in addressing environmental challenges related to their projects. In areas like green transition, real estate, finance transactions and other M&A activities, where environmental aspects and additional investments are of central importance, HPP is ideally positioned to assess risks and offer solutions that incorporate environmental law concerns. The firm's clients include leading operators in the forestry, metals, chemicals, mining, battery, energy, food, waste management and logistics sectors.

Authors



Kari Marttinen is a partner at HPP Attorneys Ltd, and heads the firm's environmental group. His areas of expertise include permit procedures, matters pertaining to the application of administrative law, matters pertaining to environmental liability and nature protection, waste management and recycling and infrastructure projects. Kari has particular experience in liability issues related to old industrial areas and complex matters related to permits and complaints in accordance with the Water Act, Environmental Protection Act and Land Use and Building Act, and also in dispute resolution concerning environmental liabilities. He has held the principal responsibility as an attorney in several major projects.

Tarja Pirinen is a partner at HPP Attorneys Ltd, specialising in advising clients on environmental law matters and legal questions related to mining and other industrial and infrastructure projects. Her areas of expertise include environmental and other permit procedures, administrative court procedures and matters pertaining to environmental liabilities and nature protection. Tarja has also extensive experience in mining law and the wide range of environmental and other legal issues relating to mineral exploration and mining operations. She has assisted several domestic and foreign mining companies in their operations in Finland in all phases of the lifecycle of a mining project and has been involved in numerous M&A and finance transactions in the mining sector.

Contributed by: Kari Marttinen, Tarja Pirinen, Outi Iso-Markku and Fiiu Linninen, **HPP Attorneys Ltd**

Outi Iso-Markku is senior counsel at HPP Attorneys Ltd. She has over 10 years' experience in advising clients on issues concerning environmental and water permits, environmental liabilities, environmental impact assessments, nature conservation and land use planning. Her specific areas of expertise also include waste legislation and environmental criminal law. Outi has broad experience in assisting a wide range of industrial clients in environmental administrative court procedures. She also provides daily support to operators developing large and complex industrial projects in sectors such as forestry, energy, batteries, chemicals, mining, infrastructure, and others. She is a member of the Finnish Bar Association's environmental law expert team.

Fiiu Linninen is an associate in the environmental law team at HPP Attorneys Ltd. She advises clients on legal questions related to permitting, land use planning, environmental liabilities and nature conservation. In addition, her areas of expertise include mining law and other legal issues relating to mineral exploration and mining operations. She also has experience in advising clients on environmental and land use matters related to wind farm acquisition and has participated in multiple wind power-related due diligence assignments, representing both domestic and international clients.

HPP Attorneys Ltd

Bulevardi 1 A
FI-00100
Helsinki
Finland

Tel: +358 40 779 7878
Email: kari.marttinen@hpp.fi
Web: www.hpp.fi

HPP ATTORNEYS

Plans of Newly Elected Finnish Government to Streamline and Expedite Permitting Processes

In recent years, the Finnish environmental law regime has undergone several reforms, all aiming to streamline and expedite the lengthy permitting processes for industrial operations. Despite these efforts, finding effective, practical solutions has remained a challenge due, among other things, to the increase in intricate EU-based legislation that requires implementation at a national level, and a shortage of personnel in the competent environmental authorities.

Petteri Orpo's newly elected government has recognised that smooth permitting procedures are prerequisites for attracting investments and especially for transitioning to a clean economy, and as a result the government is proposing several measures to tackle the problem of prolonged and expanding permitting processes.

One of the most important changes to be included in the upcoming environmental legislation and permit reform is the establishment of the new national permit and supervisory authority. According to the government programme, the current permitting authorities and supervisory authorities shall be replaced by a single national licensing and supervision authority. Furthermore, under the proposed regional state administration reform, the new environmental authority shall be responsible for ensuring that the permit applicant has the opportunity to discuss the obligations, submissions and conditions related to the permitting procedure in advance. The aim of the reform is to reduce the number of unnecessary requests for supplementary information by fostering better co-operation between the parties.

In addition, a legislative proposal concerning the integration of various permit application processes is currently being drafted, aiming to streamline and speed up the permit application processes for environmental projects. The proposal would see the implementation of a so-called single-window approach (*yhden luukun periaate*), which allows different applications concerning the same project to be considered in a single permitting process with the aim that the combined permitting procedure will lead to one single official decision and request for review procedure. The aim of the reform is for the permitting procedure as a whole to be implemented in co-operation between the authorities and project operators, not as separate and isolated processes one after the other. In addition, it is planned that binding processing times will be specified for the planning, construction, environmental and water permitting processes required for investments and for the processing of appeals concerning these permits.

The current estimation is that the new national environmental authority shall be established on 1 January 2026, in conjunction with the single-window approach legislation.

Priority for Green Transition Projects

In line with Finland's ambitious climate objectives and the drive to promote clean, domestic energy production, the 2023 environmental legislation reform has introduced a priority system for specific projects that align with the green transition. This prioritisation is in accordance with the "Do No Significant Harm" principle, initially established under EU financial regulation (Regulation (EU) 2020/852).

Under this new legislation, effective from 2023 to 2026, certain project types that contribute to the green transition are eligible for priority status in environmental and water permitting, as well as in administrative court proceedings. While a permit

application granted priority status is processed in the same way and using the same criteria as other permit applications, the aim of this priority treatment is to expedite the processing time, so that the total processing time would be shorter than average. However, it is important to note that the legislation does not stipulate any binding timelines for permit proceedings. Instead, it refers to a targeted processing time of 12 months, without specifying any consequences for failing to meet this target.

It is also worth mentioning, that the state permitting authorities (Regional State Administrative Agencies) already have an internal ten months' target processing time, which makes it even more unclear if any actual advantage is gained by obtaining the priority status.

Projects eligible for priority status are determined by the law, and the exhaustive list includes the following:

- energy production establishments that use renewable energy to produce energy and offshore wind farms and related water resource management projects;
- industrial projects based on renewable energy or electrification that replace the use of fossil fuels or raw materials;
- manufacture and utilisation of hydrogen, except for the manufacture of hydrogen from fossil fuels;
- capture, utilisation and storage of carbon dioxide; and
- battery factories and the manufacture, recovery and reuse of battery materials.

Furthermore, any appeals against permits for these projects, which have been granted priority status, will be treated as urgent in the administrative courts during 2023–2028. In order to implement the reform, additional funding was allocated to the competent state environmental authorities and administrative courts to secure more personnel resources to speed up and support the processing of permits by the authorities and the appeal processes in administrative courts.

The benefits gained from the temporary priority procedure are being assessed by the state administration, and necessary legislative amendments based on the result of this assessment will be proposed. In addition, the Finnish government will consider the need to lay down provisions on the possibility for the ministries to transfer the processing of a project to an extraordinary and accelerated official procedure on a case-by-case basis. This procedure would be designated for projects that are particularly important for Finland's general interest, security of supply or national security.

Scope of Right of Appeal in Relation to Different Permits Under Scrutiny

In recent years, a notable trend has emerged in both EU and national environmental legislation, marked by the increasing prominence of environmental NGOs. This development aligns with the provisions implementing the Aarhus Convention, which recognises the role of NGOs in environmental governance. Under environmental legislation, NGOs are granted the right of appeal if they meet specific criteria: being a registered association or foundation, aiming to promote environmental health, nature protection, or the general well-being of the environment, and operating in areas affected by the environmental impact in question.

Environmental NGOs enjoy and actively use the right of appeal in environmental protection and nature conservation matters, have the right to

participate in public hearings as part of industrial operations' permitting procedures, and are further entitled to actively participate in lobbying. A recent example of expanding NGO competencies is that, since December 2021, registered environmental organisations have gained the right to appeal against building permits for projects undergoing environmental impact assessment procedures. At the European level, proposed revisions of both the Industrial Emissions Directive (2010/75/EU) and the E-PRTR Regulation (166/2006/EU) ensure that the public concerned, and NGOs, are given early and effective opportunities to participate in the granting or updating of permits of industrial operations and access to environmental information, consistent with the Aarhus Convention.

On the other hand, at the national level, the new Finnish government has announced its plans to streamline permitting procedures by eliminating overlapping appeals: the reform aims to limit the right of appeal in planning, construction and environmental permitting processes, allowing a case to be appealed to the administrative court just once.

In early 2018, a restriction of the right of appeal before the Supreme Administrative Court of Finland in environmental law-related cases was introduced in the Finnish legal system through the adoption of the leave to appeal requirement. The objective was to streamline permitting procedures by shortening the time before permits and decisions gain legal force, and reduce the burden placed on the Supreme Administrative Court by allowing it to focus on resolving the most significant matters.

However, the effectiveness of this requirement in reducing the duration of appeal proceedings for large industrial plants is debatable. It appears that in most cases, the leave to appeal is still granted to NGOs, neighbours, and the operators themselves, especially in appeals involving large-scale industrial operations.

The feasibility of the Finnish government's plans to restrict the right of appeal remains uncertain, particularly in the context of the Aarhus Convention. Nonetheless, it seems almost inevitable that appeals against industrial plants' permits will continue. As such, project timelines should realistically account for the time involved in appeal proceedings. Additionally, the possibility of commencing operations despite pending appeals should be explored within the framework of the permit application process.

Ambitious Plans of Finnish Government to Promote Green Transition and Circular Economy

In the field of energy law, a record amount of new electricity generation capacity will be built in Finland over the course of this decade in order to meet Finland's ambitious climate goals and advance the green transition.

The Finnish government is setting an ambitious target for offshore wind capacity in 2035. However, the existing legislation and policies for offshore wind power are currently inadequate in connection with operations in the exclusive economic zone (EEZ).

The Finnish government has recognised the need to create functional and predictable regulation and administrative procedures that guarantee sufficient investment certainty for wind farms located in the EEZ, thereby enhancing the profitability of offshore wind energy. The rules for offshore wind power will be clarified through an ongoing legislative project, which will define the legislation, permitting processes, compensation

and tax matters concerning waters belonging to Finland's EEZ, and these rules will be co-ordinated with existing rules for projects carried out in the territorial waters and land areas.

In addition to offshore wind power, Finland's strategy to accelerate the green transition and boost energy self-sufficiency encompasses a broad array of renewable energy sources. This includes solar, nuclear, and hydropower, alongside energy storage solutions and the production of hydrogen and synthetic methane from renewable sources. Numerous solar power stations are currently being developed in Finland, and the government aims to promote projects, particularly in the built environment and areas previously used for peat production and wastelands, with the aim of avoiding significant use of fields and forest land for solar power production.

However, similar to the situation with EEZ wind power permitting, the environmental legislation for solar power projects is not keeping pace with the rapid development of these projects. The environmental administration's goal is to ensure that the regulatory and permitting processes for solar power parks are uniform, flexible and predictable throughout the country.

Finland's national climate and energy strategy has recognised huge potential for hydrogen projects and P2X projects in Finland, and the Finnish government has set an ambitious target of becoming the European leader in the hydrogen economy and producing a significant amount of hydrogen by 2030. The legislation regarding green hydrogen is still under development and is primarily driven by the EU. The Finnish government aims to support these projects with amendments in the national legislation, by actively taking part in EU legislation development and by supporting investments in hydrogen transport infrastructure.

The transition to a circular economy is also recognised as one of the key measures toward achieving the green transition and Finland's carbon neutrality target by 2035. In recent years, Finland has advanced the sustainable use of natural resources by promoting circular economy solutions through several different policies and legislative measures. In 2021, Finland published its first strategic programme to promote a circular economy, with the aim to transform the economy into one that is based on circular economy principles by 2035.

The Finnish government has announced its plans to amend the waste legislation to increase the use of recycled materials so that use of renewable, bio-based and recycled materials will replace fossil economy solutions and reduce the amount of waste produced and the use of non-renewable raw materials. The first national legislation regulating end-of-waste criteria for concrete aggregate was defined by government decree in 2022, and national end-of-waste criteria for mechanically recycled plastics is in the process of being drafted. Furthermore, an ad hoc working group is currently drafting a legislative proposal, which would streamline the procedural provisions applied to the assessment of end-of-waste and by-product criteria for various materials using a case-by-case approach.

Legislative Proposal Regarding Exemption Procedure from Environmental Objectives of Water Bodies

In the context of recent developments in the Finnish environmental legislative framework, the European Court of Justice's so-called Weser case (C-461/13) has had a profound impact on Finnish case law and environmental legislation,

especially with regard to current legislative proposals. In the Weser ruling, issued in 2015, the European Court of Justice stated that the non-deterioration principle regulated by the Water Framework Directive (2000/60/EC) implies that Member States must not grant permits for projects that might cause deterioration of surface water bodies or impede achieving a good status in these water bodies. The Court clarified that the status of a water body is considered to worsen even if just one quality factor deteriorates by one class, irrespective of the overall level.

Following the Weser ruling it has become clear that an environmental permit cannot be granted for projects that risk the good ecological status of water bodies or that may lead to the deterioration of ecological quality factors. This interpretation has been further cemented by a number of high-profile precedents issued by the Supreme Administrative Court of Finland, where several new investment projects' environmental permits were overturned by the administrative courts on the grounds that when applying the approach adopted in the Weser case, the projects' long-term water impacts were too uncertain for ensuring that the conditions for permit approval were met (see, inter alia, the Supreme Administrative Court's decisions KHO 2019:166, KHO 2022:38 and KHO nr 19/22.4.2022).

As the EU's deadline for achieving the good status of water bodies in 2027 is fast approaching, it has become evident that the national legislation is lacking provisions for an exemption procedure from the environmental objectives for water bodies. A legislative reform clarifying and strengthening the legal status of the Weser approach and the binding nature of the environmental objectives for water bodies, as well as establishing a procedure for granting an exemption, is currently being drafted by the Finnish Ministry of Environment. However, the scope for national discretion in this matter is quite limited, as the grounds for granting an exemption are strictly defined in the Water Framework Directive. Consequently, the new Finnish government has directed national lawmakers to ensure that any national flexibilities permitted by the Water Framework Directive are fully utilised in the implementation process.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com