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IRELAND

LAW AND PRACTICE:

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

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Matheson was established in 1825 in Dublin and with offices in Cork, London, New York, Palo Alto and San Francisco, more than 670 people work across its six offices, including 86 partners and tax principals, and over 440 legal and tax professionals. Matheson services the legal needs of internationally focused companies and financial institutions doing

business in and from Ireland. The firm's clients include over half of the world's 50 largest banks, six of the world's ten largest asset managers, seven of the top ten global technology brands and it has advised the majority of the Fortune 100.

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1. Regulatory Framework

1.1 Key Policies, Principles and Laws Governing Environmental Protection

Irish environmental policies are largely driven by environmental policies at European level. The European Commission's Directorate-General for Environment is responsible for EU policy in this area. The Commission proposes policies and legislation that protects natural habitats, keeps air and water clean, ensures proper waste disposal, improves knowledge about toxic chemicals, and helps businesses move towards a sustainable economy. These policies are reflected in Irish legislation and are adopted and applied locally by the Department of Communications, Climate Action and Environment, other relevant departments, and by environmental regulators, such as the Environmental Protection Agency (the "EPA"), local authorities and Irish Water.

Irish environmental legislation generally seeks to implement the European fundamental principles for environmental protection, including:

- the "polluter pays" principle, which seeks to impose the cost of remedying pollution on the person responsible for causing or permitting the pollution to occur;
- the "precautionary principle", which aims at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk;
- the principle of the "sustainable development" based on a high level of protection and improvement of the quality of the environment.

There is a significant volume of Irish legislation relating to the protection of the environment and dealing with pollution, some of which were implemented to transpose European directives into Irish law. Some key Irish legislation governing environmental protection includes:

- the Environmental Protection Agency Acts 1992 to 2011;
- the Waste Management Acts 1996 to 2011;
- the Air Pollution Acts 1987 and 2011;
- the Local Government (Water Pollution) Acts 1977 to 2007;
- the Water Services Acts 2007 to 2017;
- the European Communities (Environmental Liability) Regulations 2008 to 2015; and
- the Chemicals Act (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2015.

Common law also plays a role in environmental protection and various common law actions may be used to limit, prevent or secure compensation for environmental damage. Liability at common law for environmental damage could, for example, arise under the torts of negligence and/or nuisance.

1.2 Notable Developments, Regulatory Changes, Government/Regulatory Investigations

In 2017 there were approximately 22 prosecutions taken by the EPA, with the total fines amounting to EUR374,000. The main prosecutions related to breach of emissions limit values, causing nuisance/impairment of the environment, incident notification, infrastructural issues, documentation and records, bunding and waste management.

A notable development in the last three years in terms of regulatory investigations includes the investigation by the EPA into an operator of a landfill facility in Co. Kildare, Jenzoph Ltd, which resulted in the prosecution and conviction of the company for certain offences, including holding or disposing of waste in a manner that caused environmental pollution in the form of nuisance through odours and by accumulating a large mound of waste in a waste facility in a manner that caused, or was likely to cause, environmental pollution. Jenzoph Ltd was fined a total of EUR20,000,000, which is the largest fine imposed to date for an environmental prosecution in Ireland.

In 2017 there were 316 compliance investigations open. A compliance investigation is open by the EPA, where it deems that further information and/or action is required in relation to a compliance-related issue at a licensed site.

1.3 Developments in Environmental Policy and Law

Environmental law and policy is a constantly evolving area. A number of recent developments in Ireland have been driven by European policies on the environment and/or European case law, in particular in relation to the Environmental Impact Assessment Directive and the Habitats and Birds Directives. For example, the recent European Court of Justice case of *People Over Wind v Coillte C-323/17* has clarified that in carrying out screening for Appropriate Assessment (“AA”) as required under the Habitats and Birds Directives, account may not be taken of “measures intended

to avoid or reduce the harmful effects of the envisaged project on the site concerned”. In that case, the requirement for AA had been screened out by reference to (i) the distance between the proposed development and European sites, and (ii) “the protective measures that have been built into the works design of the project.” Reliance on the protective measures at screening stage was found to be impermissible. The 2014 Environmental Impact Assessment Directive has also led to a number of legislative changes in Ireland in order to transpose its requirements.

The case of *Merriman v Fingal County Council [2017]* is also an interesting development in that obiter comments of the High Court established, for the first time, a constitutional right to the environment pursuant to the Irish Constitution. The High Court recognised the “personal constitutional right to an environment that is consistent with the human dignity and well-being of citizens at large and upon which those duties and responsibilities will be constructed.” It remains to be seen how this new right will be interpreted and applied.

1.4 Environmental NGOs or Other Environmental Organisations/Groups

Environmental NGOs and other environmental organisations/groups play an active role in environmental protection in Ireland, including through campaigns to raise awareness and to educate the public and through campaigning and lobbying to change environmental policy. NGOs also frequently challenge, by way of judicial review through the courts, decisions of public bodies on environmental grounds.

2. Enforcement

2.1 Key Regulatory Authorities and Bodies

Environmental legislation is principally administered and enforced by the Department of Communications, Climate Action and Environment, by the EPA (through the Office of Environmental Enforcement), by local authorities at regional level and by Irish Water. The Health and Safety Authority is the competent authority for implementation of the Chemicals Act (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2015.

2.2 Investigative and Access Powers

Environmental regulators have extensive investigative powers under environmental legislation. The EPA has an express power to investigate the causes and circumstances surrounding any environmental pollution incident and to investigate breaches of environmental permits.

The EPA has extensive rights of access to a company’s premises, documents and employees for the purposes of carrying out an investigation in the event of a suspected environmental incident. They can take photographs, carry out tests,

take samples, inspect plants and vehicles, and require such information as they consider necessary for the purposes of exercising any powers conferred on them under the relevant legislation. Failure to co-operate on the part of the person or entity under investigation is an offence.

2.3 Approach to Enforcement

Environmental law is principally enforced by the EPA, through the Office of Environmental Enforcement (“OEE”), together with the local authorities.

The OEE’s Enforcement Policy sets out the policy framework applied by the OEE to enforcing environmental legislation. Underlying the enforcement policy of the OEE are the principles of proportionality (in the application of environmental law and in securing compliance), consistency of approach, transparency (about how the OEE operates), targeting of enforcement action and implementation of the “polluter pays” principle.

In line with its policy, the OEE will only pursue a prosecution after full consideration of the event giving rise to environmental concerns. This consideration will include the following factors in deciding whether or not to prosecute:

- the environmental and other effects of the offence;
- the foreseeability of the offence or the circumstances leading to it;
- the intent of the offender, individually and/or corporately;
- the history of offending, the attitude of the offender and the level of co-operation provided to investigating authorities; and
- where appropriate, other factors that may arise.

The above factors are not exhaustive, and those that apply will depend on the particular circumstances. The OEE will decide how important each factor is in each case and make an overall assessment. The OEE will normally prosecute in the following circumstances:

- incidents or breaches which have significant consequences for the environment or which have the potential for such consequences;
- carrying out activities without a relevant licence from the EPA;
- excessive or persistent breaches of regulatory requirements;
- the use of unauthorised waste disposal/recovery facilities;
- failure to comply with statutory notices;
- failure to supply information without reasonable excuse, or knowingly or recklessly supplying false or misleading information; and
- obstruction of OEE staff in carrying out their legitimate functions by the use of threatening behaviour, obstruction, or assault.

A prosecution will not be commenced or continued by the OEE unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction.

The OEE encourages local authorities to adopt a similar approach to prosecution in relation to enforcement of environmental legislation.

3. Environmental Impact Assessment and Permits

3.1 Requirement for an Environmental Permit

Environmental permits are generally required where a person intends to discharge emissions into the environment in the course of their business or activities and/or to carry out certain waste-related activities.

Industrial Emissions or Integrated Pollution Control Licences are required for certain specified industrial and agricultural activities under the Environmental Protection Agency Acts 1992 to 2011. Examples of categories of industry which may come within this scope include Minerals and Other Materials, Metals and Food and Drink. Some of the categories are subject to thresholds. A Waste Licence from the EPA is required for certain waste disposal and recovery activities.

Other activities, not requiring an Industrial Emissions, Integrated Pollution Control or Waste Licence, may require a licence or permit from the relevant local authority or from Irish Water. These licences deal with more minor air emissions, discharge of trade effluent to drains and sewers, and smaller waste storage, transfer and recovery operations.

3.2 Requirement for an Environmental Impact Assessment

An Environmental Impact Assessment (“EIA”) is generally required for large-scale activities or projects which are likely to have significant effects on the environment and, if required, an EIA must be carried out before those activities or projects can be granted planning permission and/or other permits.

For certain activities or projects an EIA is mandatory under legislation, generally because of the nature or size of the particular activity or project. However, even where an activity or project is not specified in legislation as requiring an EIA, an EIA will still be required if the particular activity or project is likely to have significant effects on the environment.

3.3 Obtaining Permits and Rights to Appeal

Environmental permits are obtained by applying to the relevant regulatory authority, primarily the EPA, local authorities or Irish Water.

The right to appeal permitting decisions, and the process for doing so, depends on the nature of the permit. For example, in relation to certain licences granted by the EPA, prior to granting such licences, the EPA will issue a proposed determination. Any person or body (including the applicant) can make an objection within 28 days of the proposed determination being issued. Where no valid objection is made within the prescribed period, the EPA will issue its final decision to grant or refuse the licence.

A decision of a local authority to grant or refuse a permit can generally be appealed to the Irish Planning Board (called “An Bórd Pleanála”).

All decisions of public bodies, including the EPA and the Irish Planning Board, may also be challenged through the courts by way of judicial review.

3.4 Integrated Permitting Regimes

Industrial Emissions or Integrated Pollution Control Licences are required to operate certain specified industrial and agricultural activities under the Environmental Protection Agency Acts 1992 to 2011. These licences are single licences which control all emissions to the environment associated with the relevant activity.

Other activities, not requiring an Industrial Emissions or Integrated Pollution Control Licence, may require multiple permits from the relevant local authority and/or from Irish Water dealing with more minor air emissions and discharges of trade effluent to drains and sewers.

3.5 Transferring Environmental Permits

Certain environmental permits from the EPA may be transferred with the prior consent of the EPA. A joint application process must be followed by the proposed transferor and transferee and the EPA will not consent to a transfer unless it is satisfied as to both the technical and financial competence of the proposed transferee.

For other permits (eg, air pollution licence or trade effluent discharge licence) a proposed transferee may be required to apply for a separate licence in its own name.

3.6 Time Limits and Onerous Conditions

Environmental permits are not generally time-limited. However, they may be subject to periodic review and amendment by the regulatory authority. The EPA can also revoke or suspend a permit following such review and in certain other circumstances.

Conditions are frequently attached to environmental permits, some of which are standard across the permits. However, the nature of any other conditions that may be included will depend on various factors, including the nature of the

activity being carried out. The EPA has the power to impose such conditions as it considers appropriate.

3.7 Penalties/Sanctions for Breach

A breach of an environmental permit is a criminal offence punishable by a fine and/or imprisonment. For minor offences, a maximum fine of EUR4,000 per offence may be imposed. For more serious offences, a maximum fine of EUR15,000,000 per offence can be imposed and/or up to ten years' imprisonment.

As noted above, the EPA can also revoke or suspend a permit in certain circumstances. The EPA can also seek an injunction against an activity that is being carried out in contravention of its permit or the law. The EPA and local authorities can also issue warning letters and statutory notices requiring a licensee to take steps to ensure that compliance is restored.

4. Environmental Liability

4.1 Key Types of Liability

Ireland's environmental legislation is aimed at dealing with pollution and implementing the “polluter pays” principle.

The identity of the “polluter” is frequently defined by reference to the person who causes or permits pollution to occur, or by the person operating or controlling the activity which causes the pollution (whether or not that person is the relevant licence/permit holder). The concept of control is not clearly defined and is determined on the basis of the facts of the particular corporate and/or contractual structure and of the day-to-day operations.

Polluters may incur civil and/or criminal liability. If guilty of a criminal offence, fines and/or terms of imprisonment may be imposed in addition to liability for clean-up costs and any compensation costs. In terms of civil liability under Irish environmental legislation, clean-up and compensation costs can extend to all steps necessary for clean-up and can include items such as re-stocking waters with fish and even to compensating consequential/indirect loss.

5. Environmental Incidents and Damage

5.1 Liability for Historic Environmental Incidents or Damage

Typically, in line with the “polluter pays” principle, it is the entity that caused or permitted the environmental incident or damage that is liable for the clean-up. However, current landowners can also be liable for historic environmental incidents or damage (even if they did not cause the issue) if, for example, the pollution or contamination may migrate

off the site or they are currently in control of holding waste on the land.

Where a development is proposed on contaminated land, remediation of the site may be imposed as a condition of the planning permission.

5.2 Types of Liability for Environmental Incidents or Damage

As noted above, polluters may incur civil and/or criminal liability.

Available defences in civil or criminal proceedings will depend on the particular circumstances. For example, it may be a defence if it can be shown that the activity that caused the pollution was carried out in accordance with the terms of the licence or permit and/or that the individual was either not responsible for causing the breach and/or that they used reasonable care to prevent the pollution.

6. Corporate Liability

6.1 Liability of a Corporate Entity

There are no particular rules that apply to corporate entities as environmental laws apply equally to individuals and corporate entities.

6.2 Shareholder or Parent Company Liability

A number of environmental statutes provide that shareholders who “act to manage the affairs of the company” may incur criminal liability. There is no guidance from Irish case law on what is meant by managing the affairs of the company in this context. However, it is arguable that “managing the affairs” requires some degree of control over the affairs of the company.

There are a number of ways in which a parent company could become directly liable for environmental issues. For example:

- Many Irish environmental statutes impose liability on a polluter who “permits” or “allows” pollution to occur. Depending on the knowledge and control by the parent company of the relevant activities, the parent company could be directly liable under these concepts.
- If the parent company or an individual within the parent company acts in a way that means it can be said to be the “holder of waste”, liability may be imposed.
- There is an English case (*Chandler v Cape*), which may be persuasive in Ireland if the issue came before the Irish courts. That case imposed liability on a parent company based on factors including the similarity of the parent and subsidiary businesses and whether the parent knew, or ought to have known, that the subsidiary’s system of work was unsafe.

- A parent company who has provided a guarantee in respect of the environmental obligation of the subsidiary may also incur liability on foot of the guarantee in the event that the subsidiary causes environmental damage.

7. Personal Liability

7.1 Liability of Directors or Other Officers

Almost all modern Irish environmental legislation includes a “standard provision” providing that liability may be imposed on directors, managers and other officers for environmental offences committed by a company if it can be shown that the offence was committed with their consent or connivance, or was attributable to their neglect.

In many cases, Irish environmental legislation also applies not only to persons who are specifically appointed as directors, managers, etc, but also to those who “purport to act” in any such capacity, therefore applying to persons who hold themselves out as occupying those roles in the offending company.

Conviction of a criminal offence may result in fines and/or a term of imprisonment.

7.2 Insuring Against Liability

It is possible for individuals to insure against environmental liability for clean-up costs, for example. However, due to public policy considerations, it is not generally permissible to insure against criminal sanctions, although the costs of defending criminal prosecutions may be covered.

8. Lender Liability

8.1 Financial Institution/Lender Liability

Lenders may be liable for environmental damage or breaches of environmental law in the same way as any other corporate entity (see section 7 on **Corporate Liability**). In addition, if a lender takes control of contaminated land/waste or enters contaminated land as mortgagee in possession, or appoints a receiver or liquidator, the lender may be liable.

8.2 Lender Protection

Environmental due diligence should be carried out before entering into any financial transaction in order to identify potential environmental liabilities. Lenders should also be aware of the risks of becoming closely involved in the day-to-day operations of a client’s business and of assuming liability on that basis. Security documentation should include obligations on the part of the borrower to comply with environmental legislation and to notify the lender in the event of any environmental issue arising. Before enforcing security, an updated position as to the extent of any environmental issues should be determined so that an informed decision

can be made on whether it is worthwhile enforcing security and/or if any clean-up will be required.

9. Civil Liability

9.1 Civil Claims for Compensation

Civil liability can arise where there is a claim for damages based on a civil wrong/tort; for example, for breach of statutory duty, negligence, trespass or nuisance. A claim for damages would include a claim for any loss, costs and expenses, including the cost of remediation. Under Irish environmental legislation, civil liability for the costs of clean-up measures can be imposed by environmental regulators on the “polluter” and/or the “holder of waste”.

9.2 Exemplary or Punitive Damages

There is very limited provision for exemplary or punitive damages in Ireland and there have been few awards of these types of damages.

9.3 Class or Group Actions

While some forms of class actions do exist in Ireland, the circumstances in which they may be used are extremely limited.

9.4 Landmark Cases

In March 2011 in *EPA v Neiphin Trading Ltd and Others*, the Irish High Court reversed the ten-year practice of imposing personal liability on company officers to pay for environmental clean-up of the company’s waste on the “polluter pays” principle. In this case the court refused to impose personal liability using the “polluter pays” principle.

The Court held that a previous case, *Wicklow County Council v Fenton and Others* case to be wrongly decided in a rare departure from the principle that the High Court will be bound by previous decisions. This case concerned an unauthorised landfill in Kerdiffstown, Naas which was in fact on an EPA licensed site. The EPA issued injunctive proceedings under the Waste Management Acts, seeking remediation of the site against the corporate licensee (Neiphin), landowner (Jenszoph) and parent company (Dean Waste), and also joined their relevant directors. The companies were all in financial difficulty and subsequently went into either liquidation or receivership. The directors brought a preliminary application arguing that the court had no jurisdiction to make fall-back orders and that Fenton was wrongly decided. The High Court agreed.

The court held that the Irish waste legislation does not expressly provide for the making of fall-back orders and as such does not properly transpose and give effect to the “polluter pays” principle as required by the Waste Framework Directive. However, he considered that he could not interpret the Waste Management Acts in such a way as to give

effect to the directive without doing so in a way that was *contra legem*, ie that did violence to the language of the statute and established principles of company law and limited liability. Express provision in the legislation was required. This judgment was not appealed.

10. Contractual

10.1 Transferring or Apportioning Liability

It is possible to transfer or apportion civil environmental liabilities in commercial transactions through the use of indemnities and/or warranties. However, due to public policy considerations, it is generally not considered permissible to rely on indemnities to cover criminal sanctions. Any contractual arrangements between parties cannot generally affect the position of, or bind, third parties, including regulators.

10.2 Environmental Insurance

Environmental insurance can be obtained in Ireland, such as Environmental Impairment Liability Insurance, which typically provides protection in respect of expenses incurred as a result of a pollution incident. The specific types of risks covered will depend on the terms of the particular policy.

11. Contaminated Land

11.1 Key Laws Governing Contaminated Land

There is no dedicated legislative regime governing contaminated land in Ireland. However, generally contaminated land issues are dealt with in the context of waste management or in the context of planning and development of a site. The EPA and local authorities generally regulate contaminated land under general environmental and planning legislation. The general approach taken by regulators to remediation requirements is to either impose conditions on the granting of planning permission to first remediate the site, or alternatively, where appropriate, to direct the “holder” of waste to clean-up the site under the Management Acts 1996 to 2011. The EPA also has powers to carry out remediation works and then seek to recover the costs of the same from the polluter.

11.2 Definition of Contaminated Land

EPA guidance documentation defines contaminated land as “any land or groundwater impacted by contamination”. According to the EPA guidance, a contaminant is a substance that is in, on or under the land and that has the potential to adversely affect health or to cause pollution of the wider environment. However, there is no specific legislative definition or classification of contaminated land and this guidance documentation is not legally binding.

11.3 Legal Requirements for Remediation

In Ireland, there is no specific legislation which addresses remediation of contaminated land. However, under certain environmental legislation the EPA may direct a polluter to remediate a site. Where the polluter fails to comply with such direction, the EPA may itself complete the remediation works and then seek to recover the costs incurred from the company or individual responsible for the pollution. As a condition of obtaining planning permission to develop a site, a requirement to first remediate any contamination on the site may be imposed.

11.4 Liability for Remediating Contaminated Land

The party who caused or permitted the contamination, or the person currently in control of the contamination, is generally liable for the clean-up of contaminated land.

While there is no specific limitation of liability in respect of remediation of contaminated land, the courts will consider the appropriate allocation of responsibility for the clean-up. Parties may also seek to put environmental insurance in place in order to reduce their liability for clean-up costs. While indemnities can also be used to further distribute or limit civil liability for remediation of contaminated land, as a matter of public policy it is not possible to indemnify against criminal liability if, for example, an offence was committed by causing or permitting the contamination.

11.5 Apportioning Liability

Multiple parties may be responsible for the remediation of contaminated land and can be jointly and severally liable. Thus, even owners or occupiers of land who did not cause the contamination can be liable for clean-up, particularly if the polluter (or land owner) is not financially able to cover the costs of the remediation.

11.6 Ability to Seek Recourse from a Former Owner

If a party has been held liable for the remediation of contaminated land but another party was also (or partly) responsible then they may be able to seek recourse against that other party depending on the circumstances and any contractual or other considerations.

11.7 Ability to Transfer Liability to a Purchaser

The principle of *caveat emptor* (let the buyer beware) applies and, where a property is sold, generally liability will transfer to the purchaser (subject to any contractual indemnities/warranties). However the EPA or other regulating authority can still pursue the previous owner for offences committed when they were the owner.

12. Climate Change and Emissions Trading

12.1 Key Policies, Principles and Laws Relating to Climate Change

The Climate Action and Low Carbon Development Act was devised in December 2015 and provides for the establishment of a national framework with the aim of achieving a low carbon, climate-resilient and environmentally sustainable economy by 2050 through mitigation plans and national adaptation frameworks.

12.2 Targets to Reduce Greenhouse Gas Emissions

Ireland has committed to reduce the amount of greenhouse gas emissions by 20% by 2020. This has been implemented through various statutes, including the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010, as amended by the Energy (Miscellaneous Provisions) Act 2012, the Electricity Regulation (Amendment) (Carbon Revenue Levy) Act 2010 and the Natural Gas Tax Regulations 2010.

12.3 Energy Efficiency

Ireland has a target of a 20% improvement in energy efficiency by 2020.

12.4 Emissions Trading Schemes

Ireland is part of the EU Emissions Trading Scheme (“ETS”), which covers various types of high emission stationary installations, such as oil refineries, power stations and combustion plants. The aim of the ETS is to help EU Member States achieve their commitments to limit or reduce greenhouse gas emissions in a cost-effective way.

13. Asbestos

13.1 Key Policies, Principles and Laws Relating to Asbestos

The Safety Health and Welfare at Work (Exposure to Asbestos) Regulations 2006 to 2010 contain the key laws relating to asbestos in Ireland.

The main requirement is that, if an employee is likely to be exposed to asbestos, an employer is required to assess the risk to its employees’ health and safety. Employers must also take all necessary steps to identify presumed asbestos-containing material at a premises or a place of work.

13.2 Responsibilities of the Landowner or Occupier

In Ireland, the law relating to asbestos does not specifically target landowners/occupiers but focuses on the duties of employers to employees, as noted above. However, landowners/occupiers may incur civil liability for loss or injury caused by asbestos at their premises or may be liable under legislation if, for example, damage to the environment was

caused by the release of asbestos (eg, under the Air Pollution Acts).

13.3 Asbestos Litigation

There has been very little asbestos-related litigation in Ireland. Asbestos litigation in Ireland has mainly focused on claims for damages arising from a fear of contracting a disease due to asbestos exposure, rather than actual exposure to asbestos. However, the courts in these cases have stated that proof of damage is an essential component to establishing liability.

13.4 Establishing a Claim for Damages

To succeed in a claim a plaintiff must suffer from a physical injury or recognisable psychiatric illness as a result of the exposure to the asbestos.

The Irish courts will not allow for damages in cases brought by plaintiffs for “fear of a disease” where the plaintiff claims a psychiatric injury resulting from an irrational fear of contracting the disease.

13.5 Significant Cases on Asbestos Liability

In the case of *B v C* the Irish courts confirmed that actual damage from exposure to asbestos was an essential component in an award of damages in negligence. The courts cited this position from the UK case of *Rothwell v Chemical & Insulating Co Ltd*.

14. Waste

14.1 Key Laws and Regulatory Controls Governing Waste

The Waste Management Acts 1996 to 2011 and the Waste Management Regulations made under those Acts are the key laws in relation to the control of waste. A licence from the EPA is required to carry out certain waste-related activities.

14.2 Retention of Liability After Disposal by a Third Party

The Waste Management Acts place a duty on a waste producer to only transfer waste to a person authorised to undertake the collection, recovery and disposal of the class of waste in question. Provided the producer complies with this obligation, the producer will not retain any residual liability.

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

The producer of waste can be required to design, take back, recover, recycle or dispose of goods of certain streams of waste. Examples of these streams include batteries, end-of-life vehicles, tyres and WEEE packaging.

15. Environmental Disclosure and Information

15.1 Requirement to Self-Report Environmental Incidents or Damage

Environmental legislation requires parties to report pollution to an environmental regulator when it is migrating off-site or that there is a risk that it may do so. Operators of facilities which are licensed by the EPA also generally have notification requirements under the terms of the relevant licences. The Environmental Liability Regulations also oblige operators to notify the EPA where there is an imminent threat of environmental damage.

15.2 Public Access to Environmental Information

Ireland is a signatory to the Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), which contains extensive provisions providing for a right of access to environmental information.

Public authorities are also required to provide environmental information to the public under the European Communities (Access to Information on the Environment) Regulations 2014, which contain detailed provisions providing for access to environmental information held by public authorities. A public authority does have the discretion to refuse to provide information in certain circumstances. Public authority has been defined in these regulations as:

- (a) government or other public administration, including public advisory bodies, at national, regional or local level;
- (b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and
- (c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within paragraph (a) or (b).

15.3 Disclose Environmental Information in Their Annual Reports

The European Union (Disclosure of Non-financial and Diversity Information by certain large undertakings and groups) Regulations 2017 require large companies to include non-financial statements in the directors’ containing information on environmental matters “to the extent necessary for an understanding of the development, performance, position and impact of its activity”.

16. Transactions

16.1 Environmental Due Diligence on M&A, Finance and Property Transactions

Environmental due diligence is typically conducted on M&A, finance and property transaction in Ireland. Depending on the nature of the target business or asset, environmental due diligence can be extensive on both the legal and technical side.

16.2 Environmental Liability for Historic Environmental Damage

In a share sale, all of the assets and liabilities transfer to the new owner as it steps into the shoes of the vendor. As a result, the buyer may be liable for all historic environmental damage or breaches of environmental law for which the vendor would have been liable.

In an asset purchase, only the asset transfers so the liability for any environmental issues is limited to those that relate specifically to the asset that has been transferred. As the new legal owner of that asset, the buyer takes control of any environmental issue and may therefore be vulnerable to enforcement action.

16.3 Retention of Environmental Liability by Seller

A seller will not retain environmental liability for historic environmental damage in a share purchase as all assets and liabilities will transfer to the new owner.

However, in an asset purchase the seller may still be liable for historic environmental damage or breaches of environmental law. As in an asset purchase, only the asset will transfer, so the seller will retain liability on any asset that has not been transferred.

16.4 Environmental Due Diligence by a Purchaser of Shares/Assets

The nature and extent of any environmental due diligence carried out by a purchaser varies depending on the nature of the business or asset being purchased and potential liabilities associated with that business or asset. Typically a vendor will, at a minimum, raise pre-contract enquiries and requisitions on title to try to identify any environmental issues.

16.5 Requirement for Seller to Disclose Environmental Information to the Purchaser

A seller is not required under any statutory provisions to disclose any environmental problems to a purchaser. However, a purchaser will typically raise pre-contract enquiries and requisitions on title to try to identify any environmental issues.

16.6 Environmental Warranties, Indemnities or Similar Provisions

On both asset and share sales, environmental warranties usually cover issues such as compliance with all necessary licences to operate, not having caused environmental damage/stored hazardous substances, there being no environmental investigations or litigation pending and there being no circumstances in which any licences may be revoked.

16.7 Insolvency Rules

The dissolution of a company which holds a polluting licence could result in the environmental liability being borne by the state. More frequently, directors and officers of a dissolved company may face both criminal liability and possibly civil liability for environmental matters in certain circumstances. Environmental indemnities are generally only given for significant known issues so that the nature of any indemnities given depends on the circumstances.

17. Taxes

17.1 Green Taxes

According to the Department of Finance strategy paper Energy and Environmental Taxes, taxation is a key tool towards achieving Ireland's target reduction in emissions. It also noted that recent taxation developments, such as the introduction of a carbon tax and linking vehicle registration tax and motor tax to CO₂ emissions, have contributed to reduced levels of emissions.

The main environmental taxes in Ireland include taxes on: light oils (petrol), heavy oils (diesel, MGO, etc), liquefied petroleum gas, carbon, electricity and vehicle registration.

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