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ENVIRONMENT

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Panama

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ENVIRONMENTAL REGULATORY FRAMEWORK

1. What are the key pieces of environmental legislation and the regulatory authorities in your jurisdiction?

Environmental legislation

The main environmental regulatory legislation is set out in Law No. 41 of 1 July 1998 (Law No. 41), which comprises the General Environmental Law and creates the National Environment Authority (*Autoridad Nacional del Ambiente*) (ANAM) (see box, *The regulatory authorities*).

Other important environmental legislation includes:

- Executive Decree No. 123 of 14 August 2009, modified by Executive Decree No. 155 of 2011, which regulates environmental assessment or impact studies (see *Question 11*).
- Executive Decree No. 57 of 10 August 2004, which regulates environmental audit as well as the environmental adaptation and management programme (*Programa de Adecuación y Manejo Ambiental*) (PAMA).
- The Criminal Code concerning crimes against the environment.

Regulatory authorities

The key regulatory authorities in Panama that oversee environmental issues are:

- ANAM.
- The Ministry of Health (*Ministerio de Salud*).
- The local municipalities (*Municipios*).
- The Special District Attorney on crimes against the environment and competent courts.
- General Directorate of Standards and Industrial Technology of the Ministry of Commerce and Industry.

REGULATORY ENFORCEMENT

2. To what extent are environmental requirements enforced by regulators in your jurisdiction?

ANAM has several duties, including:

- Developing national environmental and natural resource policies.

- Issuing rules and resolutions for the implementation of those policies.
- Evaluating environmental impact studies.
- Imposing sanctions and fines.

ANAM may:

- Impose fines of up to US\$10 million (as at 1 October 2012, US\$1 was about EURO.8) depending on the seriousness of the breach and how many were committed by the same violator.
- Order the violator to pay the cost of clean-up, mitigation or compensation for the environmental damage. This is independent of any civil liabilities the violator may have.

ANAM had imposed fines of about US\$3.9 million (ANAM's *Finance Division report of July 2012*).

Further, the Criminal Code establishes offences sanctioned by up to eight years' imprisonment. Criminal sanctions (for example, imprisonment) are not as common as administrative fines imposed by ANAM and civil claims filed by NGOs and affected parties against polluting parties.

ENVIRONMENTAL NGOS

3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active in your jurisdiction?

There are several environmental NGOs, which vary in size, scope, funding and influence. They are actively involved in, among other activities:

- National debate and discussions with the government concerning environmental legislation.
- Participating in public hearings concerning the environmental assessment of projects.
- Drafting relevant texts and policies.
- Filing complaints before ANAM and the Special District Attorney Office on environmental crimes.
- Assisting individuals and organisations in the preparation of legal and constitutional actions before the Supreme Court.



ENVIRONMENTAL PERMITS

4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

Integrated/separate permitting regime

There is no integrated permitting regime. However, there is a general environmental impact study or assessment regime which is mainly regulated through Executive Decree 123 of 14 August 2009, modified by Executive Decree No. 155 of 2011 (see *Question 11*).

Only one environmental impact study (EIS) or assessment approved by ANAM is generally required per project. However, certain activities require particular permits in addition to the approved EIS (see *below*, *Single/separate permits*).

Regulated activities

In addition to the EIS and permits for certain activities, projects of regulated activities (for example, energy, mining, hydrocarbons, ports, and so on) require a concession from the state or a permit issued through the relevant regulatory authority (see *box*, *The regulatory authorities*).

When a project or activity is to be developed in indigenous territories, compensation arrangements and programmes must be implemented to ensure that the benefits of the project are shared with the indigenous communities.

Single/separate permits

The following activities among others, require particular permits before their execution:

- The use or discharge of water.
- Collection, transportation, treatment and final disposal of solid waste, which is both dangerous and not dangerous. This includes international waste.
- Collection, transportation, treatment and final disposal of liquid waste, both dangerous and not dangerous.
- Cremation of corpses.
- Cremation of solid waste, both dangerous and not dangerous.
- Treatment of sewage and potable water.
- Operation of treatment systems or sites for the final disposal of waste from oil or synthetic lubricants using chemical compounds or chemically modified petroleum components and their used containers.

5. What is the framework for the integrated permitting regime?

Permits and regulator

There is no integrated environmental permitting regime (see *Question 4*). There is a general EIS approval regime for projects

which are mainly regulated through Executive Decree 123 of 14 August 2009, modified by Executive Decree No. 155 of 2011 (see *Question 11*).

EISs are approved by ANAM. The general regime is set out below.

Length of permit

A resolution by ANAM approving an EIS is valid for two years. During this time, the execution of the project must begin, otherwise a new filing must be made.

Restrictions on transfer

There is no transfer restriction of an EIS duly approved by ANAM. This is provided the project owner notifies a transfer or any amendment to ANAM who must approve it through a resolution.

Penalties

See *Question 11*.

WATER POLLUTION

6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?

Regulation

There is no single regime regulating water pollution, but there are several aimed at preventing water pollution. The relevant legislation and regulations include:

- Law Decree No. 35 of 22 September 1966, on water use.
- Executive Decree No. 75 of 4 June 2008, on the quality standards for inland recreational waters.
- Resolution AG-0026-2002 of 30 January 2002, which establishes a schedule of compliance for the characterisation and alignment of technical regulations DGNTI-COPANIT 35-2000 and DGNTI-COPANIT 39-2000 for waste water discharge.
- Resolution AG-0466 of 20 September 2002, which establishes the requirements for permit or authorisation requests for discharge of waste water or sewage.
- Law No. 36 of 17 May 1996, which establishes controls to prevent land, air and water pollution caused by lead and fuels.
- Criminal Code.

Permits and regulator

All activities that vary the regime, nature or quality of water, or that alter its channels, require a prior authorisation from ANAM. This is done through issuing a resolution which approves an EIS for the activity.

In addition to the EIS, the owner of the project must obtain the right to use water or sewage discharge, through either a:

- Permit.
- Temporary concession (three to five years).
- Permanent concession.



Prohibited activities

Prohibited activities include:

- The variation of the regime, nature or quality of water, or the alteration of its channels, without the authorisation of ANAM.
- The pollution of water in violation of the limits established by law.
- The discharge of substances that:
 - affect or may affect human health;
 - damage the environment;
 - can damage the quality of life of the population.

Clean-up/compensation

In addition to any criminal or civil liability that may apply, ANAM can order clean-up, mitigation and compensation costs to the polluter.

Penalties

Individuals that breach the environmental regulation concerning water pollution are subject to administrative, civil and criminal liability.

Administrative liability. ANAM can impose fines of up to US\$10 million.

Criminal liability. Individuals that destroy, pollute or degrade natural resources, in breach of environmental regulations, may incur a penalty of up to eight years' imprisonment.

AIR POLLUTION

7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

Permits and regulator

The regulatory authorities that govern air pollution caused by stationary sources, for example, industrial factories are:

- ANAM.
- The Ministry of Health.
- The Ministry of Commerce and Industry (General Directorate of Standards and Industrial Technology).

The relevant legislation and regulations on air pollution are:

- Executive Decree No. 38 of June 3 2009, which establishes environmental regulations for gas emissions of vehicles.
- Executive Decree No. 5 of February 4 2009, which establishes environmental regulations for gas emissions of stationary sources.
- Law No. 36 of May 17 1996, which establishes controls to avoid the land, air and water pollution caused by lead and fuels.
- Criminal Code.

Prohibited activities

The prohibited activities are:

- The sale of fuel containing lead (except for aviation).
- Compliance with the limits established for emissions for vehicles.
- The use of lubricating oils used as fuel in boilers, furnaces and other combustion equipment without proper authorisation.
- Air pollution above the established limits.
- Air pollution resulting from criminal activity or crimes against the environment.

Clean-up/compensation

In addition to any civil or criminal liability that may apply, ANAM can order the polluter to pay the cost of clean-up, mitigation and compensation of environmental damage.

Penalties

In addition to administrative, civil and criminal liability, ANAM sanctions infringements of secondary source gas emissions regulations through:

- Written warnings.
- Fines from US\$500 to US\$100,000.
- The temporary or definite suspension of the company's activity.

The Authority on Transit and Land Transportation (ATTT) establishes fines for the non-compliance of regulations for gas emissions of vehicles.

CLIMATE CHANGE, RENEWABLE ENERGY AND ENERGY EFFICIENCY

8. Are there any national targets for reducing greenhouse gas emissions increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)?

Executive Decree No. 36 of 1 March 2007 approved the national policy on cleaner production and Executive Decree No. 35 of 26 February 2007 approved the national policy on climate change.

In addition, Panama has recently approved a law establishing an incentive regime for the construction and exploitation of wind centrals for energy production as well as a special regime to promote gas-fired generation.

9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented?

Parties to UNFCCC/Kyoto Protocol

Panama is a party to the:

- United Nations Framework Convention on Climate Change (UNFCCC), which was ratified by the Legislative Assembly of Panama through Law No. 10 of 12 April 1995.



- Kyoto Protocol United Nations Framework Convention on Climate Change (Kyoto Protocol), which was ratified by the Legislative Assembly of Panama through Law No. 88 of 30 November 1998.

Implementation

To implement the requirements under the UNFCCC and the Kyoto Protocol, the following actions, among others have been taken:

- The creation of the National Energy Secretariat.
- The approval of Law No. 45 of 4 August 2004, modified by Law No. 57 of 2009, which establishes an incentive regime to encourage systems of hydroelectric generation as well as other new, renewable and clean sources.
- The approval of the national policy on climate change, through Executive Decree No. 35 of 26 February 2007, which adopts the principles, objectives, subprograms and action lines of the national policy on climate change.
- The approval of the national policy on cleaner production, through Executive Decree No. 36 of 1 March 2007.
- The creation of the National Climate Change Committee of Panama (CONACCP) through Executive Decree No. 1 of 9 January 2009. This aims to support ANAM in implementing and monitoring the national climate change policy and ensures the inter-agency co-ordination systems are implemented, which will join efforts to tackle climate change.
- ANAM established through Resolution No. AG, 0583-2002, the national programme on climate change, under which four sub-programmes were created for the national implementation of the Kyoto Protocol and UNFCCC which are:
 - mitigation;
 - vulnerability and adaptation;
 - fulfilment;
 - awareness.
- The approval of Law No. 44 of 5 April 2011 which establishes an incentive regime for the construction and exploitation of wind centrals for energy production and the approval of Law No. 41 of 2 August 2012 on the use of natural gas in energy generation.

10. What, if any, emissions/carbon trading schemes operate in your jurisdiction?

Law No. 45 of 4 August 2004, modified by Law No. 57 of 2009, and regulated by Executive Decree No. 45 of 10 June 2009, regulates the emission and trading of carbon reduction certificates (CRCs). CRCs certify the greenhouse gas emissions reduction or displacement benefits referred to in the UNFCCC and the Kyoto Protocol, duly certified by entities authorised and trained to monitor and verify them.

The Department of Revenue of the Ministry of Economy and Finance is responsible for the sale of CRCs.

ENVIRONMENTAL IMPACT ASSESSMENTS

11. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

Scope

The EIS system is mainly regulated through Executive Decree No. 123 of 14 August 2009, modified by Executive Decree No. 155 of 2011, which establishes the requirement to submit an EIS to ANAM for approval. Approval is required for every new project, work and activity, or amendments to these relating to any of the following sectors:

- Agriculture, hunting and forestry.
- Fishing.
- Food and drink processing.
- Mining.
- Textiles and leather manufacturing.
- Wood and paper manufacturing.
- Recycling.
- Energy.
- Construction.
- Services.
- Tourism.
- Waste disposal.

There are three categories of EIS and, depending on their category, the study will include public hearings and surveys to inform the community. An environmental management plan is prepared, which includes:

- Actions required to prevent, mitigate, monitor, correct and compensate potential negative environmental effects or impacts, or that seek to emphasise the positive impacts caused during the development of a specific project, work or activity.
- Monitoring and contingency plans.

Permits and regulator

See *Question 4, Regulated activities*.

Penalties

ANAM can stop any activity, work or project that has been initiated without a resolution from ANAM approving the EIS for the activity, work or project.

The following penalties are imposed on the developer of the project, work or activity which does not comply with its EIS commitments:

- Written warning.
- Fines of up to US\$10 million.
- Temporary or permanent suspension of the project, work or activity.



In addition to criminal and civil liability, ANAM can order the payment of costs for clean-up, mitigation and compensation for environmental damage.

WASTE

12. What is the regulatory regime for waste?

Permits and regulator

The main regulators on the issue of waste are the:

- Authority of Urban and Residential Cleanliness (*Autoridad de Aseo Urbano y Domiciliario*).
- Ministry of Health.

The main legislation on waste is Law No. 51 of 29 September 2010, modified by Law No. 39 of 2011 and regulated by Executive Decree No. 1445 of 2011, which creates the Authority of Urban and Residential Cleanliness (*Autoridad de Aseo Urbano y Domiciliario*).

The following activities, among others, are considered to relate to high public risk and therefore require a sanitary permit issued by the Ministry of Health before their execution (*Executive Decree No. 40 of 26 January 2010*):

- Collection, transportation, treatment and final disposal of solid waste, both dangerous and not dangerous. This applies to international waste.
- Collection, transportation, treatment and final disposal of liquid waste, both dangerous and not dangerous.
- Cremation of corpses.
- Cremation of solid waste, both dangerous and not dangerous.
- Treatment of sewage and drinkable water.

Companies operating treatment systems or sites for the final disposal of waste from oil or synthetic lubricants using chemical compounds or chemically modified petroleum components must use containers which have all of the following (*Law No. 6 of 11 January 2007, modified by Law No. 52 of 2008*):

- An operation permit issued by the Ministry of Health.
- A recycling permit issued by the Energy Secretariat.
- An approved EIS.

Prohibited activities

The following activities concerning solid waste disposal are prohibited (*Article 22, Law No. 51 of 29 September of 2010*):

- The deposit of solid waste on roads, easements, streams, creeks, parks, gardens, and so on.
- The placement of construction materials or construction waste into sewers, drains, roads or easements.
- The placement of household or commercial waste in inappropriate bags or containers, or containers without bags.
- The placement of toxic, hazardous or flammable materials in containers for household or commercial waste.

- The operation or installation of landfills not authorised by the Authority of Urban and Residential Cleanliness.

The following legislation contains prohibitions on specific waste:

- Executive Decree No. 111 of 23 June 1999 regulates the management regulation for solid waste from hospitals. It establishes a list of prohibited activities concerning waste in hospitals. These include, among others:
 - the storage of waste in areas for patients, corridors and stairways;
 - the outdoor storage of bags with waste; and
 - transporting waste through gravity pipelines.
- Law No. 6 of 11 January 2007 prohibits the disposal waste from oil or synthetic lubricants using chemical compounds or chemically modified petroleum components, or their used containers, in:
 - tanks or containers of municipal or domestic waste;
 - land or water;
 - septic systems;
 - sewerage;
 - any other place where they can contaminate the environment or the people.
- Law No. 8 of 7 June 1991 prohibits the importation of toxic or contaminating waste (for example, radioactive substances) to Panama.
- Executive Decree No. 255 of 18 December 1998, modified by Executive Decree No. 38 of 2009 prohibits the deposit of waste related to activities that use lead compounds on roads, easements, streams, creeks, parks, gardens, and any other place not authorised by the Ministry of Health.

Operator criteria

The collection of waste and operation of landfills is a public service. For a private entity to operate this service, a concession from the state (through one of its municipalities) obtained at a public bidding is required. To obtain this concession, the private entity must meet the financial requirements of the bid, which usually includes posting warranty bonds and, in some cases, insurance. Further, the private entity is supervised by the relevant local authority (municipality), with the capacity to exert the sovereign right to terminate (and indemnify) the concession.

Special rules for certain waste

There are special rules for certain types of waste, for example:

- The transportation of dangerous hospital waste (*Resolution No. 8 of 9 June 2008*).
- The management of solid waste from hospitals (*Executive Decree No. 111 of 23 June 1999*).
- The management of oil-related waste (*Law No. 6 of 11 January 2007*).
- The management of waste related to activities that use lead compounds (*Executive Decree No. 255 of 18 December 1998*).



Penalties

In addition to civil and criminal liabilities, the violation of waste regulations will generally be punished with fines.

Further, there are penalties for violating regulations on specific types of waste, for example:

- Health facilities violating regulations for the management of solid waste from hospitals are punished and can risk losing their operating permit.
- Every person violating the prohibition to import toxic or contaminating waste (for example, radioactive substances) to Panama is punished with one to three years of prison and a fine ranging from US\$5,000 to US\$30,000.

ASBESTOS

13. What is the regulatory regime for asbestos in buildings?

The relevant ordinance concerning asbestos is Resolution No. 50 of 23 June 1999 issued by the Ministry of Health. It enacts the health regulations for handling, storing, and transporting asbestos in Panama.

Prohibited activities

The following activities are prohibited:

- The use of crocidolite asbestos, also known as blue asbestos.
- The use of any type of asbestos in operations using projection methods.

Main obligations

The main obligations for every natural person or legal entity, either public or private, that manipulates, transports or stores asbestos or products containing asbestos are:

- Preventing the risk of asbestos dust exposure to employees in the workplace.
- Preventing employees from suffering negative health effects caused by asbestos dust exposure.
- Complying with regulations concerning the handling, storing and transporting of asbestos.
- Complying with regulations concerning the workplace, cleaning of the workplace and the handling and disposal of asbestos.

The health authorities are mainly responsible for ensuring the fulfillment of obligations imposed on natural persons and legal entities mentioned above.

Permits and regulator

The Ministry of Health is the main regulator for asbestos. Although there are no special laws or regulations governing the issuance of permits, there is a duty to observe the existing administrative restrictions (*see above, Main obligations*).

Penalties

The following penalties apply:

- Individuals that support or execute activities that are detrimental to the health of employees and which violate the asbestos regulations are fined from US\$5 to a maximum of US\$50 for each day that the breach continues. This applies after the remedy of the breach has been ordered in writing by the Ministry of Health.
- Where a damage or deterioration of facilities, machinery, equipment or tools, constitutes a risk to life and/or health of employees, the Ministry of Health can order the immediate suspension of the activity.
- The Ministry of Health can order the temporary or definitive closing of the worksite, if, after imposing the first or second daily fine, the party continues to be in breach of the relevant obligation.

CONTAMINATED LAND

14. What is the regulatory regime for contaminated land?

Regulator and legislation

ANAM is the regulator generally responsible for matters concerning contaminated land. However, there are other state entities that co-operate with ANAM on these issues, for example, the Ministry of Health and the local municipalities.

The most relevant legislation on contaminated land is Executive Decree No. 2 of 14 January 2009, which establishes the Environmental Quality Standard for Lands of various uses. This Executive Decree regulates, among others, the following issues:

- Reports on preliminary situations and land characterisation.
- General reference levels and microbiological activity indicator.
- Maximum permissible limits of land contamination.
- Contaminated land.
- Land clean-up.
- Final report on land clean-up.
- Procedure for sampling, preservation and analysis of contaminated land.
- Entities responsible for the environmental supervision control and audit.
- Roles and responsibilities of owners of activities, works or projects.
- Practitioners suitable for soil sampling and the preparation of the preliminary report and land characterisation.
- Infringements and sanctions.

Investigation and clean-up

Parties executing the activities listed in Appendix I of Executive Decree No. 2 of 14 January 2009 (Appendix I) (*see below*) are



required to submit to ANAM a preliminary land situation report that must include a chemical analysis on the pH and organic matter, and a microbiological analysis of dehydrogenate activity.

The activities listed in Appendix I include:

- Agriculture, hunting and forestry.
- Fishing.
- Mining and quarrying.
- Manufacturing industries.
- Electricity, gas and water.
- Construction.
- Wholesale and retail business, vehicles repair, and the sale of personal and household goods.
- Hotels and restaurants.
- Transport, storage and communications.
- Health and social services.
- Other community service, social and personal activities.

Penalties

Non-compliance with the following legal obligations results in a fine. The amount of the fine is established by the administrative order:

- Failing to file in a timely manner the:
 - preliminary ground situation report;
 - land characterisation report (if required); or
 - land clean-up plan (if required).
- Failing to start clean-up actions one year after approval.
- Reporting false information of the land.

The amount of the fine is doubled if the offence is repeated.

If the owner does not begin soil remediation following one year of the clean-up plan approval, the activity can be suspended by ANAM.

ANAM can also order the cessation of the polluting activity.

In addition to administrative liability, there is civil and criminal liability (*Article 395, Criminal Code*). The liable party is the one that causes environmental damage in breach of the law.

15. Who is liable for the clean-up of contaminated land? Can this be excluded?

Liable party

The main party liable for cleaning up contaminated land is the person that committed or caused the contaminating activity.

Owner/occupier liability

It is generally the person carrying out the contaminating activity that must execute the work for clean-up (*Article 108, Law No. 41 of 1 July 1998* and *Article 28, Executive Decree No. 2 of 14 January 2009*).

Previous owner/occupier liability

The main party liable for cleaning up contaminated land is the person that committed or caused the contaminating activity. Therefore, previous owners or occupiers can be liable for contamination they have caused during their past occupancy (*Article 50 of Executive Decree No. 2 of 14 January 2009, Articles 76 and 108 of Law No. 41 of 1 July 1998* and *Article 395, Criminal Code*).

Limitation of liability

Liability can be limited between contracting parties through:

- Indemnity agreements.
- Escrow deposits.
- Insurance and general releases.
- Representations in favour of the new owner/occupier.

However, these are purely remedies and do not prevent third parties or administrative authorities from initiating actions against the owning or occupying party, or the party that tries to reduce or mitigate liability.

16. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability?

Lender liability

It is not common for a lender to incur liability. A lender exercising its antichresis (right of management of the asset) or step-in rights could (occasionally) be liable for failing to adequately manage the existing environmental hazards that resulted in contamination.

Minimising liability

See *Question 15, Limitation of liability*.

17. Can an individual bring legal action against a polluter, owner or occupier?

Individuals affected by contamination or pollution caused by the actions of a contaminating party can file a civil action against the party before a civil court.

Individuals can also take the role of claimants in administrative and criminal proceedings.

ENVIRONMENTAL LIABILITY AND ASSET/SHARE TRANSFERS

18. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

Asset sale

As a general rule, the buyer cannot inherit pre-acquisition liability. This is because the party liable for pollution or contamination is generally the party that caused it.



THE REGULATORY AUTHORITIES

National Environment Authority (*Autoridad Nacional del Ambiente*) (ANAM)

Main activities. ANAM's main activities include:

- Formulation of a national environmental policy and a policy concerning the use of natural resources through the state's development plans.
- Direction, supervision, implementation and the execution of environmental policies, strategies and government programmes, together with other state agencies and private organisations.
- Issuance of environmental regulations.
- Preparation of draft environmental legislation.
- Imposing sanctions and fines in accordance with this law, regulations and supplementary provisions.

W www.anam.gob.pa

Ministry of Health (*Ministerio de Salud*)

Main activities. Preparing, controlling and assessing plans and programmes concerning health.

W www.minsa.gob.pa

General Directorate of Standards and Industrial Technology, Ministry of Commerce and Industry (*Dirección General de Normas y Tecnología Industrial del Ministerio de Comercio e Industrias*)

Main activities. Ensuring the technical regulations are based on legitimate objectives, such as national security, prevention of deceptive or misleading practices, the protection of human health or safety, the protection of the life or health of animals, plants or the environment.

W www.mici.gob.pa

Local municipal authorities (*Municipios*)

Main activities. Co-ordinating activities and preparing, controlling and assessing plans and programmes concerning environmental issues.

W www.municipio.gob.pa (Municipality of Panama).

However, administrative authorities may still initiate investigations or choose to prosecute the current owner, who, as a defence, could raise the exception of not being the damage-causing party and could also request the joinder of the damage-causing party to any prosecution.

In private dealings, parties can alleviate their liability (see *Question 15, Limitation of liability*).

Share sale

Corporations have separate personalities and liabilities from those of shareholders. There is no express rule establishing the liability of shareholders for the contaminating activities of their corporation. However, individuals directly involved in a contaminating activity (for example, directors or managers directly involved) can share liability with the company for contamination caused by their actions.

19. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

Asset sale

The main party liable for cleaning up contaminated land is the person that carried out the contaminating activity. However, in private dealings, parties can alleviate their liability (see *Question 15, Limitation of liability*), therefore causing a buyer to inherit liability, through:

- Indemnity agreements.

- Escrow deposits.
- Insurance and general releases.
- Representations in favour of the new owner/occupier.

However, these are purely remedies and do not prevent third parties or administrative authorities from initiating actions against the owning or occupying party, or the party that tries to minimise liability.

Share sale

See *Question 18, Share sale*.

20. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?

Asset sale

As a general principle applicable to contracts and obligations regarding dealing in good faith, a seller must disclose material environmental information to the buyer in an asset or share sale transaction. This includes the existence of a hazard or a hazard that is reasonably suspected to exist. Non-disclosure of this information could be considered as a hidden vice, gross negligence or misrepresentation and could lead to termination of the sale agreement.

Share sale

The same information must be disclosed as on an asset sale, see above, *Asset sale*.



21. Is environmental due diligence common in an asset sale/a share sale?

Scope

Environmental due diligence is common in an asset or share sale when the sale is connected to industrial activities or activities that normally represent health or environmental hazards (for example, former military bases, refineries, chemical industries, former landfills for development projects and hospitals). In addition, there is an increasing trend towards performing environmental due diligence in other areas that do not directly relate to these hazards.

The areas that are usually covered by due diligence are:

- Soil conditions.
- Emissions.
- Waste management.
- Water and sewage.
- Infrastructure.

Types of assessment

The type of assessment depends on the nature of the project, and can include an environmental audit.

Environmental consultants

Environmental consultants are generally used for these assessments. There is a list of licensed consultants that have been registered with ANAM.

22. Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale?

Asset sale

Environmental warranties and indemnities are usually given when the asset is connected to industrial activities or activities that represent health or environmental hazards.

Share sale

Environmental warranties and indemnities are usually given when the sale is connected to industrial activities or activities that represent health or environmental hazards.

These warranties usually cover:

- Fines that can be offset.
- The duty to defend the other party in cases of administrative, civil or criminal claims.

23. Are there usually limits on environmental warranties and indemnities?

Environmental warranties and indemnities can be capped up to the sale price or a multiple thereof, gross negligence or fraud excluded. However, this is a matter for negotiation between the parties.

ONLINE RESOURCES

W www.anam.gob.pa

Description. Official Spanish website of ANAM, which includes an environmental legislation section. It may not be as up-to-date as the official website of the National Assembly of Panama regarding legislation, but it has the advantage of collecting only environmental related legislation. No English-language translations are available.

W www.asamblea.gob.pa/main

Description. Official Spanish website of the National Assembly of Panama, which includes a user-friendly legislation database that is up-to-date.

W www.organojudicial.gob.pa

Description. Official Spanish website of the judiciary, which includes a user-friendly case law database. However, this database is not always updated and only contains a restricted number of decisions from higher courts.

REPORTING AND AUDITING

24. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?

Public registers

ANAM keeps a register of environmental information (including confidential and public information). Some of this information can be accessed on their website, www.anam.gob.pa.

However, there is also environmental information provided by law that is kept as private and confidential by ANAM.

Third party procedures

Third parties can access environmental records containing public information by delivering a request note to ANAM or any other relevant authority.

If the request is denied, the requesting party can initiate a *habeas data* court action (that is, an action to obtain public information that has been denied by a public entity).

25. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

Environmental auditing

The promoters of the project, work or activity subject to EIS or PAMA must carry out environmental auditing to prepare and send to ANAM the respective reports and findings of compliance with the environmental management plan.



Reporting requirements

The promoters of the project, work or activity must carry out environmental auditing to prepare and send to ANAM the respective reports and findings of compliance with the Environmental Management Plan. It must include the frequency and detail set out in the resolution approving the EIS and/or the law. This includes obligatory audits in cases of any incident or accident that can cause environmental damage. These reports must be made by certified environmental auditors.

26. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

Companies must report information to ANAM and the public about environmental incidents (such as water pollution and soil contamination).

27. What access powers do environmental regulators have to access a company?

ANAM and other relevant authorities can monitor, inspect and control compliance with an approved EIS and/or with a PAMA.

ENVIRONMENTAL INSURANCE

28. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?

Types of insurance and risk

Insurance covering civil liability for pollution damage can be obtained in Panama. However, insurance companies operating in Panama usually only cover environmental risks up to a certain amount, after which they share the risk with a foreign reinsurance company.

Obtaining insurance

Environmental insurance is not usually included in civil liability insurance policies and the company must ask to have this risk covered.

ENVIRONMENTAL TAX

29. What are the main environmental taxes in your jurisdiction?

There are no environmental taxes. However, there are applicable environmental fees (use of water for energy projects, waste collection, and so on).

Panama applies incentives such as incentive regimes (tax benefits) to encourage hydroelectric generation systems and other new, renewable and clean sources rather than taxing activities with negative environmental effects. The most recent incentive is the law promoting gas-fired energy generation.

REFORM

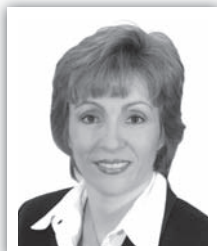
30. What proposals are there for significant reform (changes) of environmental law in your jurisdiction?

A series of draft Bills and Bills concerning environmental law have been presented to the National Assembly for analysis up to August 2012, for their approval or dismissal. It is uncertain whether or when these reforms are likely to come into force. The main Bills and draft Bills being discussed at the National Assembly are:

- Draft Bill No. 13, which creates the Los Manglares Eco-Park in the District of David, Province of Chiriquí.
- Bill 502, which establishes general guidelines for a National Policy for the rational and efficient use of energy (UREE) in the national territory.
- Bill 397, which modifies Law No. 1 of 1994, which establishes reforestation regulation.
- Bill 221, which makes environmental education compulsory in all schools in Panama.
- Bill 227, which amends Law No. 41 of 1998 (General Environmental Law).
- Bill 093, which dictates environmental protection standards for handling used tyres.
- Bill 089, which modifies Article 125 of the General Environmental Law.
- Bill 079, which dictates prohibitions related to hospital waste.
- Bill 067, which establishes the regulatory framework for an integrated management of water resources in Panama.
- Bill 047, which establishes the social environmental responsibility of the livestock industry.
- Bill 038, which prohibits the use of non-biodegradable plastic bags.



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Recent transactions

- Successful representation of Grupo Comex's affiliates in an anti-dumping investigation.
- Dismissal of a class action filed against relevant oil companies.
- Judicial representation of Daiichi Chuo Kisen Kaisha before the maritime courts of Panama in the detention of the M/V Diamond Ocean.

Qualified. Panama, 2008

Areas of practice. Administrative; commercial and civil litigation.

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Recent transactions

- Successful settlement of a dispute over termination of a regional licence and distribution agreement of products of a well-known sportswear brand.
- Starr International Company US\$1 billion lawsuit against AIG.
- US\$30 million acquisition of Colon Oil and Colon Port Terminal.