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Environmental Risk Management – A Significant Challenge in the Industrial and Business Sectors in Israel

Environmental regulation in Israel has undergone considerable development. Stakeholders operating in the country would do well to identify and pre-emptively manage the risks involved.

Environmental regulation in the State of Israel has undergone a process of considerable development. Therefore, stakeholders operating in the Israeli industrial and business sphere would do well to identify the extent of their legal exposure due to the environmental risks involved in their activities, and to manage those risks pre-emptively and wisely.

Environmental regulation is an evolving and dynamic field as compared with other areas of regulation. It first developed in Israel in the 1970s, when legal systems for managing natural and environmental resources began to emerge. In the beginning, environmental regulation included rules for command and control, which were subdivided by the various sources of pollution. The complexity of environmental risks, which is characterised by being both multidisciplinary and lacking clear boundaries (affecting air, water, and soil simultaneously, and without territorial demarcation), as well as having parallel and cumulative impacts (i.e., pollutants can be introduced from different sources), over time required changes to the classic environmental regulation. In fact, as in other developed countries, one can now discern a trend in the development of Israel's environmental regulation. There are three

main characteristics that exemplify this trend: The first, increased consideration of public health hazards and the public's interest in managing natural and environmental resources; the second, dialogue with stakeholders on policy development, implementation, and evaluation; and the third, a focus on economic efficiency, risk assessment, and achieving the desired result.

Environmental regulation in the State of Israel has undergone a process of considerable development since the enactment of the Abatement of Nuisances Act 1961-5721, which is a prototype of classic environmental regulation.

Two notable factors can be pointed out that have influenced the development of environmental regulation in recent years:

The first factor is the impact of industrialisation, privatisation, and globalisation processes. These have not skipped over Israel, and their impacts include environmental pollution and harm to natural and environmental resources. All of these have necessitated adapting environmental regulation to fit the existing reality.

The second factor is increased public awareness of environmental protection both in Israel and globally, and the establishment of an environmental

movement that is active in the public sphere. Environmental organisations such as Adam Teva VeDin and the Society for the Protection of Nature in Israel have been given rights of standing and thus the ability to privately enforce environmental law. They operate using legal and public tools and, through their work, bring about the enactment of modern environmental laws as well as the formulation of precedents in the field of environmental law.

An examination of these factors and an analysis of developments indicate an improvement in environmental regulation and its expansion into various environmental areas. At the same time, it is possible to point to the growth of case law. This is also reflected in rulings by the Supreme Court, which, in its decisions, has anchored important administrative and interpretive principles for the protection of the environment.

However, the work is still in progress, and over the coming year we have other important regulatory initiatives that are in the process of formulation. Among these legislative initiatives, is the initiative to enact the **Industrial Chemicals Registration Act 2020-5781** (similar to its American counterpart – the Toxic Substances Control Act (TSCA)). This is a new bill whose purpose is to establish a chemical registration mechanism in Israel, as part of Israel's undertakings upon joining the OECD. The bill, published by the Ministry of Environmental Protection, includes mechanisms for establishing existing chemical inventories, and for assessing and regulating the risks posed by various chemicals.

Israel's admission into the OECD has also led it to further incorporate the economic approach into its environmental regulation. Thus, for example, Israeli environmental legislation has begun to adopt economic tools to advance environmental goals. These include fees and emission levies in the Clean Air Act 2008-5768, a deposit mechanism in the Beverage Container Deposit Act 1999-5759, a fee for maritime disposal as part of the Preventing Maritime Pollution from Terrestrial Sources (Marine Pollution Prevention Levy) Regulations (Marine Pollution Prevention Levy) Regulations 2011-5771, economic enforcement mechanisms in the Environmental Protection (The Polluter Pays) (Legislative Amendments) Act 2008-5768, and establishing reporting and registration duties for



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the purpose of environmental risk information transparency as part of the Environmental Protection (Environmental Pollution and Transfer – Reporting and Registration Duties) Act 2012-5772.

Israel's Ministry of Environmental Protection adopted an official approach based on economic enforcement against environmental polluters. This

approach is grounded, among other things, on the imposition of substantial financial sanctions, which avoid the need to resort to lengthy and expensive criminal enforcement proceedings. The main advantage of relying on economic enforcement measures is their being both effective and deterrent.

In addition, we are witnessing a significant increase in the number of class action lawsuits in environmental protection areas (atmospheric pollution, water source pollution, and ground pollution). These are large-scale lawsuits, the management of which involves considerable inputs from defendants perceived as polluters by the lead plaintiffs.

Thus, for instance, the Ministry of Environmental Protection has recently taken the unusual step of filling a huge lawsuit for financial compensation, to the tune of hundreds of millions of New Israeli Shekels, against an infrastructure entity (the

compensation for damages caused to nature and the public which are not capable of being restored. This legal action was settled in the setting of a mediation agreement, as part of which the defendant paid significant compensation (100 million NIS), and even acted to carry out the restoration work at its own expense. This is the highest compensation awarded in a class action lawsuit in Israel in the field of environmental law, and one of the highest compromises in class action lawsuits in general in recent years.

In conclusion, this article outlines trends in the development of environmental regulation in Israel, in parallel with the formation of environmental awareness in Israel and the accelerated development processes that the State of Israel has been undergoing since its establishment. The dynamic growth in the scope of environmental regulation in recent years stems in part from the understanding that accelerated development comes at a cost – namely, environmental pollution and depletion of the country's natural resources. Therefore, stakeholders operating in the Israeli business sphere would do well to identify the extent of their legal exposure due to the environmental risks involved in their activities, and to manage those risks preemptively and wisely. This will help stakeholders avoid the significant and unpleasant costs involved in dealing with the supervisory and enforcement mechanisms of modern environmental regulation. ■

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Eilat – Ashkelon Pine-Line Co.) on account of an ecological disaster caused by an oil leak in the Evrona Nature Reserve in the Arava. This legal action joined several class actions filed due to the event. The compensation components demanded by the Ministry of Environmental Protection included the costs of rehabilitating the damage to the land, ecosystems, and water sources, as well as

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