

# The Polluter Pays Principle

AVOID HOTEL LIABILITY, FINANCIAL LOSSES AND EVEN PRISON!

WITH THE INTRODUCTION OF NEW EU ENVIRONMENTAL LAW AND THE FACT THAT MANY HOSPITALITY BUSINESSES ARE UNPREPARED AND, IN GENERAL, GROSSLY UNDERINSURED AGAINST THE CONSEQUENCES OF THEIR LIABILITY RISKS, INSURANCE EXPERT GEORGE KOUTINAS EMPHASIZES THE NECESSITY OF INSURANCE IN LIGHT OF THIS NEW LAW.





Every business activity assumes some degree of risk and implies a certain amount of liability, which can be criminal or civil. Before understanding environmental liability, it is important to define the basic concepts of criminal vs. civil liability.

Criminal liability is when the state prosecutes an offence such as theft, conscious violation of the law, etc. with the consequences of being fined or imprisoned.

Civil liability, on the other hand, gives a third party the right to sue for damages or obtain a ruling against the offender or organization. Such offences include negligence, for example in the work place or against the environment.

While third party damage or injury may require large amounts of financial compensation, consequences of civil liability according to the prevailing international practice can be mitigated by the appropriate insurance policy.

A new set of EU laws concerning the environment will soon be enforced in Greece, which is under pressure of legal action by the European Court system to implement these EU directives within Greek Legislation. (See news article in page 8 of this issue).

The hospitality industry, however, is not prepared for these new laws as a very large proportion of Greek hotel businesses are severely underinsured against risk and events related to their liabilities. This can render them legally liable to indemnify to the point where they can lose their business or even end up in prison. To begin with, it is important to highlight the following assumptions about hotel businesses who:

- employ many individuals and are responsible for their health and safety while on their premises,
- host a wide variety of guests with different social and economic backgrounds,
- are directly connected to the natural and social environment of a certain area in which they are located, and
- are directly connected with the general socio-economic environment of the country in which they are established.

In this respect, all activities involved

The table below represents the liabilities which every hotel business assumes, the consequences resulting from those liabilities and the type of insurance policy which protects the hotelier from financial disaster related with any eventual claim raised against his business.

LIABILITY AGAINST	CONSEQUENCES	INSURANCE POLICY
Employees	- Bodily Injuries / Death - Consequential Losses	EMPLOYER'S LIABILITY
Third Parties, Clients	- Bodily Injuries /Death - Property Damages - Consequential Financial Loss	THIRD PARTY LIABILITY
Environment	- Soil Pollution - Water Pollution - Damage to Flora & Fauna	ENVIRONMENTAL LIABILITY
Stockholders, Public Authorities	- Financial Losses	DIRECTORS & OFFICERS LIABILITY



## EU laws concerning the environment will soon be enforced in Greece, which is under pressure of legal action by the European Court system to implement these EU directives

in the operation of a hospitality business assume a certain degree of risk and liability. In practice, liability beyond the legal sense is considered a risk, and by international standards is insurable. In other words civil liability is financially controllable by using the proper insurance policies available in today's market place. Since the turn of the century, globalization and the interdependence of world economies have become the norm. As a consequence, competition has become more intense and demand for more quality services has

increased, along with the need to protect the consumers, a rise in financial claims (founded or unfounded) and an increased concern for the environment. The protection of workers, customers, consumers and environment represent serious concerns as they pertain to liability claims. This is why it is crucial for businesses to insure themselves completely against legal action, which can be taken against them, a protective measure that still has not become common practice in the Greek marketplace.





### Understanding Environmental Liability

The undeniable ecological burden on the planet and pressure from various environmental organizations have magnified the significance of environmental responsibility and its importance to the quality of life. These developments constitute the basis of the European Directive 2004/35/[EC] on Environmental Liability, which is set to become part of the Greek law very soon. The new legal framework for the protection of environment is not just a recommendation for prevention but a warning to all potential polluters that their actions will face austere punitive measures, based on the European Union's "Polluter Pays Principle" (The "3P's" concept). The penalty is not a simple administrative procedure anymore such as disciplinary fines, but also the obligation to completely restore any environmental damage caused. This may incur complicated and costly procedures, as well as massive expenses that are usually associated with harming the environment. This new legislation directly affects the Hotel Industry whose activities can have a significant environmental impact. Specifically, during the peak tourist season, hotels discharge significant amounts of solid and

liquid waste, and in the case where special permission is granted can consume, pump, recycle or discharge huge quantities of water.

Considering the very competitive nature of the hotel trade, especially during times of financial uncertainty and lower industry forecasts, hotels can become the targets of ill intentioned competitors, as well as social or environmental organizations. The main characteristics of the new EU Directive 2004/35/EC which require serious consideration from hospitality and foodservice industries are:

- Explicit definition of the basic environmental parameters that should be respected and protected: Ground water, surface water and underground water as well as wild flora and fauna.
- Extending the responsibility for the environment not only to businesses that use hazardous or dangerous products in their manufacturing and trading processes, but also to other business sectors considered "less risky" such as hotels and businesses involved in foodservice.
- The severity for hoteliers of the European Directive for Environmental Liability as the polluter has the responsibility to assume the cost of prevention of

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environmental damage, as well as clean up and restoration of the environment to its previous state

- The need to guarantee the existence of adequate financial coverage to face any possible liabilities associated with environmental damage. Sufficient Environmental Liability Insurance seems to be the unique and the only practical way to deal with the financial requirements associated with any possible damage to the environment, encountered either accidental or gradually.

A particularly important point of this new EU directive regarding environmental liability, which should be seriously considered, is the associated legal issue according to which "anyone who intentionally



or by severe negligence pollutes will be criminally liable"! In other words, he or she will be prosecuted and can face a possible jail term. Needless to say, such "charges" against executives representing a hotel enterprise would be devastating for the reputation and the position not only of the person itself but also of the hotel in the industry.

### The role of insurance and the Greek reality

From a statistical point of view, the possibility of an environmental liability occurrence is small but catastrophic to a hotelier if it does occur. This categorizes Environmental Liability as a specialized and complicated insurable risk. However, taking into account that insurance is one of the most reliable financial mechanisms worldwide, there are also solutions that cover this type of risk. Today's world requires the awareness of progressive business people to coordinate with a competent insurance professional regarding risks and liabilities, particularly during periods of economic crisis we face today.

International practice clearly confirms that insurance constitutes a very useful tool to guarantee healthy economic growth of any enterprise in a wider political and social system.

In Greece, the concept of insurance has not been utilized to its fullest extent, resulting in serious lack of security. Provisions for insurance are usually limited to the classic types of insurance namely "fire and allied perils". Coverage such as "consequential financial loss/loss of profit" is very often absent or downgraded. Moreover, it is not uncommon for "third party liability" insurance to be minimized or neglected altogether. However, the importance of "third party liability" insurance is undeniable, considering that most hotel guests enjoy a high social and economic status and are willing to pay premium rates to stay in hotels for a short period of time.

Judging from the abnormally low levels of liability insurance coverage purchased in Greece, compared to the other member states of the European Union, executives especially in the upper levels of



management should be especially concerned.

While there are companies, which through innovation and complex strategic planning adopt many contemporary methods of quality control or environmental management systems according to ISO standards, for a majority of businesses the lack of governmental legislation coupled with objective controls seem to be lacking when it comes to liability insurance.

It is essential that insurance of risks and liabilities connected with the business activity constitutes "capital" which inevitably becomes part of business assets. Insurance is not simply another expense but an objective asset which allows

business initiative that increases competitiveness for further economic growth and progress. Greek businesses that want to survive and progress in a modern competitive environment will have to approach the issue of risk management seriously. They will require qualitative and more comprehensive insurance services and products to meet their real insurance needs. With the backing of the European and international community, solutions that meet global challenges and newly introduced laws are easily available. We can use today's rapid exchange of information and globalization to overcome the challenges in line with international standards.



### About George Koutinas...

George Koutinas received his diplomas in engineering from the Athens Polytechnic School and the ENSPM, post-graduate School in Paris. After long-standing experience as Engineer in the Public Power Corporation in Greece, Koutinas is recognized as an expert in the insurance business since 1992. He initially worked as Underwriter in an international

insurance group and then as Insurance Expert focusing on insurance of business risks, professional indemnity and construction risks. Today, Koutinas provides modern businesses with ideal solutions for Comprehensive Liability Insurance and for Environmental Liability Insurance. It is worth noting that Koutinas was a member of the Experts' Group of BIPAR (European Federation of Insurance Intermediaries) that worked on the "white bible" of the European Directive 2004/35/EC for Environmental Liability. He is the President & Managing Director of "G. KOUTINAS S.A. - Insurance & Reinsurance Brokers", Binding Authority of Lloyd's.

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