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The International Comparative Legal Guide to:

Environment & Climate Change Law 2018

15th Edition

A practical cross-border insight into environment and climate change law

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EDITORIAL

Welcome to the fifteenth edition of *The International Comparative Legal Guide to: Environment & Climate Change Law.*

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of environment and climate change laws and regulations.

It is divided into two main sections:

One general chapter. This chapter is entitled: "*The 'Brexatom' Conundrum*".

Country question and answer chapters. These provide a broad overview of common issues in environment and climate change laws and regulations in 24 jurisdictions.

All chapters are written by leading environment and climate change lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Daniel Lawrence and John Blain of Freshfields Bruckhaus Deringer LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in your jurisdiction and which agencies/bodies administer and enforce environmental law?

According to article 73 of the Federal Constitution ("BV"), the Confederation and the Cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population. Pursuant to article 74 BV, the Confederation is responsible for the legislation on the protection of the population and its natural environment against damage or nuisance and it shall ensure that such damage or nuisance is avoided. The Cantons are primarily responsible for the execution of the relevant federal regulations, but they may also enact implementing rules where federal law so provides. The Federal Constitution contains further provisions regarding protection of the water, forests as well as natural and cultural heritage (articles 76, 77 and 78 BV).

There are numerous acts and ordinances implementing the constitutional mandate regarding environmental protection. The following acts are the most important: the Environmental Protection Act ("USG"); the Ordinance on Avoidance and Disposal of Waste ("VVEA"); the Ordinance on Contaminated Sites ("AltlV"); the Chemicals Act ("ChemG"); the Act on Reduction of CO_2 ("CO_2 Act"); as well as the Nuclear Energy Act ("KEG"); and the Ordinance on the Environmental Impact Assessment ("UVPV").

The Swiss environmental policies and the implementation of environmental laws are based on the following main principles:

- The "precautionary principle" (*Vorsorgeprinzip*) states that early preventive measures must be taken in order to limit effects which could become harmful or a nuisance (article 1 para. 2 USG).
- The "polluter pays principle" (*Verursacherprinzip*) states that any person who causes measures to be taken due to endangering, polluting or causing damage to the environment must bear the costs related to avoidance or clean-up (article 2 USG).
- The "principle of abatement of pollution at source" (*Prinzip der Bekämpfung von Umweltbeeinträchtigungen an der Quelle*) that originates from the precautionary principle and states that environmental impacts must be abated at its source.

According to article 74 para. 3 BV, the Cantons are responsible for the implementation of the relevant federal regulations, except where the law provides otherwise and determines that the Confederation is competent for implementation. This principle is replicated in article 36 USG. Accordingly, the Confederation supervises the execution of environmental law by the Cantons and coordinates their activities (article 38 para. 1 and 2 USG). In some areas, the federal government is itself responsible for the enforcement of environmental legislation, such as import and export of waste (article 41 USG). In general, the Federal Council enacts the implementing provisions (article 39 para. 1 USG).

On the federal level, the Federal Office for the Environment ("BAFU") is generally responsible for the execution of environmental law, but there are also some special agencies, which are competent in specific areas such as the Swiss Federal Nuclear Safety Inspectorate ("ENSI"). In addition, each Canton has its own authority responsible for the execution of environmental law.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

Switzerland has a rather strict approach to enforcing environmental law. Apart from authorisations and inspections, the agencies also have the power to impose fines for various violations of environmental law (article 61 USG). Severe violations may even be punished by a custodial sentence of up to three years (article 60 USG). Other sanctions include the order to discontinue illegal activities, the re-establishment of the lawful conditions and the withdrawal of authorisations.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

The authorities are obliged to inform the public adequately about environmental protection and levels of environmental pollution (article 10e para. 1 USG). If it is in the public interest, the authorities may also inform interested persons about the results of inspections and conformity-assessments, after having consulted the persons concerned. Furthermore, any person has the right to inspect environmental information in official documents and information relating to energy regulations that relate to the environment and to request information from the authorities about the content of these documents (article 10g para. 1 USG).

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Environmental permits are common in Swiss law and are required for constructions or the operation of, e.g., landfills or nuclear energy plants, as well as for the placing on the market or handling of specific substances or special waste (e.g., article 30e USG, article 12 *ff.* KEG, article 9*ff.* ChemG).

Usually, a permit is bound to a person/company and therefore not transferable (*personenbezogene Bewilligung*). However, in some cases, permits can be linked to an object (*sachbezogene Bewilligung*). These permits generally remain in place if the ownership of the object changes.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

There is a possibility to challenge the refusal or the provisions of an environmental permit, usually within a period of 30 days. The appeal has to be directed either at the competent Cantonal administrative court (in case of Cantonal authorities implementing the environmental law) or at the Federal Administrative Tribunal (if a federal authority implements the environmental law). It is possible to invoke a false establishment of the facts of the case or a violation of the applicable law. After the administrative court or tribunal has decided, its decision may be appealed before the Federal Supreme Court for violation of federal law.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Before taking any decision on the planning, construction or modification of installations, the competent authority must assess their impact on the environment. The requirement of an environmental impact assessment applies to installations that could cause substantial pollution to environmental areas, to the extent that it is probable that compliance with regulations on environmental protection can only be ensured through measures specific to the project or site (article 10a *ff.* USG). Any person who wishes to plan, construct or modify an installation that is subject to an environmental impact assessment must submit an environmental impact report. Based on this report and on its own investigation, the environmental protection agencies order the necessary measures.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Regulators can impose a fine, and there are criminal sanctions up to a custodial sentence of three years or a monetary penalty. The regulator can also confiscate objects or order the discontinuation of the illegal activities, and the re-establishment of the lawful conditions. As an *ultima ratio*, the regulators can revoke the environmental permits.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

Waste is defined as "any moveable material disposed of by its holder or the disposal of which is required in the public interest" (article 7 para. 6 USG). The disposal of waste includes its recovery or deposit in a landfill, as well as the preliminary stages of collection, transport, storage and treatment (i.e. any physical, chemical or biological modification of the waste) (article 7 para. 6*bis* USG).

The owner or holder of waste has to comply with a number of legal obligations. The owner or holder is whoever has actual control over the waste. This person has the duty to dispose the waste that he holds (article 31c para. 1 in connection with article 31b para. 1 USG) and must bear the cost of its disposal (article 32 para. 1 USG).

Waste whose environmentally compatible disposal requires special measures qualifies as special waste (article 30f USG). Additional obligations for the handling of special waste apply, such as markings as well as licence requirements for import and export.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

As a principle, the production of waste should be avoided wherever possible (article 30 para. 1 USG). The Federal Council may require manufacturers to avoid production waste where there is no known environmentally compatible process for its disposal (article 30a lit. c USG). All other waste may be stored and disposed of only in landfills (article 30e para. 1 USG) and, according to article 30c para. 2 USG, waste must not be burned other than in incineration plants (exceptions apply to the burning of natural forest, field and garden waste).

The disposition of waste on a site requires a permit for setting up and operating a landfill (article 30e para. 2 USG).

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/ disappears)?

The holder of waste is entitled to instruct third parties to dispose of it (article 31c para. 1 USG). In case of such external disposal, the third party qualifies as the holder of waste. If the third party violates its obligations, it becomes liable for the recovery measures (because it qualifies as interrupter). As the polluter has to bear the costs for recovery measures (article 2 and 59 USG), not only the third party as interrupter is responsible for such costs, but in some instances also the initial holder. This is the case if the wrongdoing of the appointed third party falls within the responsibility of the initial holder as well.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

The Federal Council may require certain types of waste to be recovered if this is economically feasible and harms the environment less than other forms of disposal and the manufacture of new products (article 30d para. 1 USG). Such recovery obligations exist, *inter alia*, for disposable packaging consisting of glass, PET, and aluminium, as well as for batteries and electrical devices.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

According to article 59a USG, the operator of an establishment or an installation that represents a special threat to the environment is liable for the loss or damage arising from effects that occur when this threat materialises. There is no requirement of negligence or intent. However, any person who proves that the loss or damage was caused by *force majeure* or by gross negligence on the part of the injured party or of a third party is relieved of liability (article 59a para. 3 USG).

There are also special liability provisions regarding specific activities, such as handling of pathogenic organisms (article 59a*bis* USG) or of genetically modified organisms (article 30 of the Federal Act on Non-Human Gene Technology, "GTG").

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Yes, as the applicable liability provisions of environmental law provide for a strict liability, there is no permit defence. Consequently, the liability is not excluded if the establishment or installation has been operated or the activity has been carried out within the limits of the applicable environmental law and the conditions of the permit.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

According to Swiss company law, which is based on the separation principle, directors or officers are not subject to civil law liability for environmental wrongdoing of the company itself. Furthermore, the company is liable for all activities of its bodies, which are in the interest of the company.

Members of the board, as well as all persons engaged in the business management, are liable both to the company and to the individual shareholders (and to the company's creditors in case of its bankruptcy) for any losses or damage arising from any intentional or negligent breach of their duties. Therefore, if an officer breaches his obligations regarding environmental affairs, he may become personally liable. It is common to have D&O insurance (directors' and officers' liability insurance) covering all damage claims against insured persons. Normally, intent and internal damage claims are excluded from the D&O insurance, as well as personal injury and damage to property.

There is also a criminal law liability of directors and officers, which may not be covered by insurance.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

If an investor acquires all shares of a company (share deal), the target still remains liable for the recovery of pollution and corresponding costs due to the "polluter pays principle". The environmental liability is not affected by the change of ownership.

If a purchaser acquires the assets (asset deal), the purchaser will be liable as the new owner of the land or installation for any forthcoming environmental damage. The liability for previous pollution remains with the seller due to the "polluter pays principle".

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

In Switzerland, there is no concept of lender liability. According to the separation principle, the lender cannot be held liable for environmental wrongdoing and/or remediation costs that the company caused. As long as the lender does not cause pollution, a liability is excluded.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Each Canton is obliged to have a register of polluted sites, which is accessible to the public (article 32c para. 2 USG and article 5 Contaminated Sites Ordinance, "AltlV"). Polluted sites are defined as sites whose pollution originates from waste, and which are restricted areas. They comprise waste disposal sites, industrial sites and accident sites (article 2 para. 1 AltlV). Sites in need of remediation are polluted sites that cause harmful effects or nuisance or where there is a real danger that such effects may arise (article 2 para. 2 AltlV). Contaminated sites are polluted sites in need of remediation (article 2 para. 3 AltlV).

Based on a preliminary investigation, the authorities assess whether the polluted site is in need of monitoring or remediation with regard to groundwater protection, protection of surface waters or prevention of air pollution or pollution of the soil. All other investigated sites are defined as in need of neither monitoring, nor remediation (articles 7 and 8 AltlV).

For polluted sites in need of monitoring, the authorities require a monitoring plan to be drawn up and suitable measures to be taken to detect a real danger of harmful effects or nuisances before these become evident (article 13 para. 1 AltlV). The monitoring measures shall be applied until there is no longer any need for monitoring.

For sites that are in need of remediation (contaminated sites), the authorities require that a detailed investigation be carried out within a reasonable period and that the site is monitored until completion of remediation (article 13 para. 2 AltlV).

The authorities require that for contaminated sites, a remediation project is prepared within a time frame appropriate to the urgency of remediation (article 17 AltlV). Persons required to carry out remediation measures must notify the authorities of the remediation measures carried out and demonstrate that the remediation objectives have been achieved (article 19 AltlV).

The investigation, monitoring and remediation measures shall be carried out by the holder of the polluted site or, if the pollution of the site was caused by the action of third parties, the authorities may require these, with the approval of the holder, to prepare the remediation project and perform the remediation measures (article 20 AltlV).

5.2 How is liability allocated where more than one person is responsible for the contamination?

If the authorities have reason to believe that the pollution of the site was caused by the action of third parties, they may require them to carry out the preliminary investigation, the monitoring measures or the detailed investigation, as well as the remediation measures (article 20 para. 2 and 3 AltlV). Fundamentally, the person responsible for the pollution bears the costs of the measures required to investigate, monitor and remediate polluted sites (article 32d para. 1 USG). If two or more persons are responsible, they bear the costs according to their shares of responsibility (article 32d para. 2 USG). Any of the responsible persons may request a ruling on the allocation of costs from the authority (article 32d para. 4 USG).

5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator, can the regulator come back and require additional works or can a third party challenge the agreement?

The authorities assess the remediation project and on the basis of this assessment, they issue a ruling defining the final objectives of the remediation, the remediation measures, as well as the assessment of results and the time frame to be adhered to and further charges and conditions for the protection of the environment (article 18 AltlV). If the authorities conclude in the evaluation of results that the remediation measures carried out were not successful, they can require additional works (article 19 AltlV).

Challenges by third parties are possible if they took part in the previous proceedings, are particularly affected by the ruling and have a legitimate interest in its cancellation or alteration.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

In accordance with the "polluter pays principle", if two or more persons are responsible for the pollution, they bear the costs according to their shares of responsibility (article 32d para. 2 USG). A private person can demand a ruling regarding costs (article 32d para. 4 USG) and can appeal it if he does not agree with the cost allocation. Usually, the site owner has to bear only 10–20% of the costs, while the rest is allocated to the person who caused the pollution.

For the sale or division of immovable property on which a site is located that is listed in the register of polluted sites, an authorisation by the competent authority is required (article 32d*bis* USG). Such authorisation is granted, *inter alia*, if security is provided for the costs of the expected measures.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?

In case of damage caused by the handling of genetically modified organisms or pathogenic organisms, the responsible person must also reimburse the costs of necessary and appropriate measures that are taken to repair destroyed or damaged environmental components, or to replace them with components of equal value. If the destroyed or damaged environmental components are not the object of a right *in rem* or if the eligible person does not take the measures that the situation calls for, the damages are awarded to the responsible community (article 31 Federal Act on Non-Human Gene Technology and article 59a*bis* para. 9 USG).

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

Everyone is obliged to provide the authorities with the information required to enforce environmental law and to conduct or tolerate the conduct of enquiries (article 46 para. 1 USG). According to article 61 USG, non-compliance with these obligations can be sanctioned with a fine of up to CHF 20,000.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

Operators of installations (i.e. buildings, traffic routes and other fixed facilities, as well as modifications of the terrain and appliances, machines, vehicles, ships and aircraft) that could seriously damage people or their natural environment must immediately report any extraordinary event to the competent agency (article 10 USG).

Based on the Ordinance on Protection against Major Accidents (StFV), operators of certain establishments (e.g. where certain thresholds for substances, preparations or special waste are exceeded, or where certain activities involving genetically modified or pathogenic microorganisms are carried out) have to notify any extraordinary event, which has significant impact on the Cantonal notification body.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

Each Canton is obliged to have a register of polluted sites, which is accessible to the public. Based on a preliminary investigation, the authorities assess whether the polluted site is in need for monitoring or remediation with regard to groundwater protection, protection of surface water or prevention of air pollution or pollution of the soil. All other investigated sites are defined as in need of neither monitoring nor remediation (article 7 and 8 AltlV). The investigation of land for contamination is triggered by the authorities, but according to article 20 AltlV, the holder of the site has to carry out the investigation, monitoring and remediation measures. If the land is qualified as a polluted site and if measures must be taken, the polluter has to pay for the investigation. If the authority determines the land not to be a polluted site, the competent community will bear the costs for the necessary investigation (article 32d para. 5 USG).

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

There is no obligation, based on environmental law, to disclose environmental problems to a potential purchaser. However, if the

seller fails to inform the purchaser about any existing or suspected environmental problems, the purchaser may be able to claim for compensation based on the law of sales contracts. It is also standard practice to include representation and warranty clauses covering such problems in share or asset purchase agreements.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

It is possible for private parties to agree on an environmental indemnity. However, liability under environmental law cannot be modified or excluded by way of such agreement.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

A company may transfer environmental liabilities linked to an asset to a subsidiary or other company by transferring the respective asset. However, it remains liable as a historic polluter. Dissolution of the company is no solution to escaping environmental liabilities, as either these are shifted to the legal successor, or the respective claims have to be fulfilled before dissolution can be completed.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

According to Swiss company law, which is based on the separation principle, shareholders are not subject to civil law liability for environmental wrongdoing of the company itself. Under certain circumstances, a so-called "piercing of the corporate veil" (*Durchgriffshaftung*) is possible if the calling on the separation principle is an abuse of rights.

If a shareholder is engaged in the business's management, he may be liable both to the company and to the other shareholders (and to the company's creditors in case of its bankruptcy) for any losses or damage arising from any intentional or negligent breach of his duties.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

So far, there is no law which protects "whistle-blowers". The federal government is currently preparing a draft provision of the Swiss Code of Obligation, which should regulate whistle-blowing in the context of employment law.

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

So far, there are no class actions or penal or exemplary damages available. However, there are some special rights of appeal and liability provisions worth mentioning in this context.

Environmental organisations are entitled to appeal decisions regarding specific projects (so-called associations' right of appeal, "*Ideelle Verbandsbeschwerde*"). For example, national environmental organisations can appeal projects which need to undergo the environmental impact assessment or the placing on the market of pathogenic organisms (articles 55 and 55f USG). Other associations' rights of appeal relate to decisions based on the Federal Act on the Protection of Nature and Cultural Heritage ("NHG"), and to authorisations for putting into circulation genetically modified organisms intended for lawful use in the environment based on the Federal Act on Non-Human Gene Technology ("GTG").

Also, the Federal Office for the Environment ("BAFU") has a right of appeal under federal and Cantonal laws against rulings by the Cantonal authorities regarding environmental matters, and the municipalities have a right of appeal if they are affected by a ruling and have a legitimate interest in having them reversed or amended (articles 56 and 57 USG).

In case of damage caused by the handling of genetically modified organisms or pathogenic organisms, the responsible person must also reimburse the costs of necessary and appropriate measures that are taken to repair destroyed or damaged environmental components, or to replace them with components of equal value. If the destroyed or damaged environmental components are not the object of a right *in rem* or if the eligible person does not take the measures that the situation calls for, the damages are awarded to the responsible community (article 31 GTG and article 59a*bis* para. 9 USG).

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

Swiss law does not provide exemption from costs such as court fees and liability for such fees for individuals or public interest groups with regard to litigation proceedings. The general principle for judicial proceedings is that the losing party must bear the costs relating to the action and the ones incurred by opposing parties. This rule also applies with regard to associations' right of appeal.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in your jurisdiction and how is the emissions trading market developing there?

The Swiss emissions trading scheme ("ETS") is designed according to the "cap-and-trade" principle. The quantity of emission allowances available is limited. The total quantity of emission allowances is determined in advance, representing the maximum quantity available ("cap"). This cap was 5.63 million tonnes CO_2 for 2013 and has been reduced each year by 1.74% of the initial 2010 quantity. The emission allowances needed for greenhouse gas-efficient operation are allocated free of charge annually to ETS companies and are tradable ("trade"). Companies that exercise specific activities (as defined in annex 6 of the CO_2 Ordinance) are obliged to participate in the Swiss emissions trading scheme. If a company's total emissions in the previous three years are below 25,000 tonnes CO_2 in each year, the company can apply for an exemption from the ETS obligation ("opt-out"). Companies with an installed capacity of between 10 and 20 MW that are engaged in a specific activity (as defined in annex 7 of the CO_2 Ordinance) may voluntarily participate in the ETS ("opt-in").

The ETS is organised to be compatible with the European emission trade system (EU-ETS) so that the two systems can be connected. Linking the Swiss and EU CO_2 emissions markets would be beneficial for both environmental policy and the economy. The technical negotiations were concluded and the agreement was signed in November 2017. The treaty is subject to ratification by both sides and should enter into force no later than 2020.

9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

There is the so-called CO_2 levy on thermal fuels. The CO_2 levy is a key instrument to achieve CO_2 emission targets. This steering levy on fossil combustible fuels, such as heating oil and natural gas, has been levied since 2008. In making fossil fuels more expensive, it creates an incentive to use them more economically and choose more carbon-neutral or low carbon energy sources. Energy-intensive companies can be exempted from the CO_2 levy if they commit to reducing emissions in return. Large energy-intensive companies participate in the emissions trading scheme and are also exempt from the CO_2 levy.

The CO_2 levy is imposed on all fossil thermal fuels (e.g., heating oil, natural gas, but not motor fuels). The levy is imposed when the thermal fuels are used to produce heat, to generate light, in thermal installations for the production of electricity or for the operation of heat-power cogeneration plants. No levy is imposed on wood and biomass because these energy sources are CO_2-neutral. In 2018, the levy amounts to CHF 96.00 per tonne of CO_2. The Federal Council can increase the rate of the levy if the interim target for thermal fuels has not been reached. The CO_2 levy is indicated on invoices for purchases of thermal fuels.

Around two thirds of the revenue from the CO_2 levy is redistributed to the public and the business community through health insurers and the compensation offices. The annual revenue is about CHF 1 billion.

9.3 What is the overall policy approach to climate change regulation in your jurisdiction?

In addition to its participation in worldwide climate programmes (e.g. Paris Agreement), Switzerland pursues an active policy on reducing greenhouse gases and contributes to the international goal of limiting global warming to two degrees. The CO_2 Act is focused on reducing Switzerland's domestic emissions. Measures to reduce greenhouse gas are the CO_2 levy, emissions trading, building standards as well as compensation for CO_2 emissions and the technology fund. With the technology fund, the Confederation promotes innovations that reduce greenhouse gas or the consumption of resources, the use of renewable energies and increase energy efficiency. Due to the Paris Agreement and the linkage of the Swiss-ETS with the EU-ETS, the CO_2 Act is currently under revision in order to implement the new international obligations. The revised CO_2 Act will be discussed by the Federal Parliament in 2018.

In 2011, the Swiss government decided to withdraw from the use of nuclear energy on a step-by-step basis as a reaction to the incident in Fukushima and to strengthen the amount of renewable energy. The existing five nuclear power plants are to be decommissioned when they reach the end of their safe service life, and they will not be replaced by new ones. In this respect, the Federal Council has developed a long-term energy policy ("Energy Strategy 2050") based on the new energy perspectives. Essentially, the Federal Council's new strategy focuses on the consistent exploitation of the existing energy efficiency potentials and on the balanced use of the potentials of hydropower and new renewable energy sources. The respective statute was adopted by the Federal Parliament in September 2016. In May 2017, the new Energy Act was approved in a referendum by the Swiss people, and it entered into force on 1 January 2018.

10 Asbestos

10.1 What is the experience of asbestos litigation in your jurisdiction?

Switzerland does not have an asbestos litigation industry that is in any way comparable to the extent of asbestos litigation taking place in the US. However, there have been a number of proceedings concerning the limitation period of asbestos claims. In 2010, the Federal Supreme Court decided that the limitation period does not start from the occurrence of the loss (e.g. disease) but from the reference date of the infringement (e.g. violation of the employment contract by exposure of the workers to asbestos). According to this case law of the Federal Supreme Court, health damages which occur 10 or more years after working in an asbestos environment cannot be brought before court because the claim becomes time-barred 10 years after the (last) breach of the employment contract. However, the European Court of Human Rights (EGMR) decided in March 2014 that the limitation period of only 10 years violates article 6 section 1 of the European Convention on Human Rights because claims for late damages may become time-barred before they even come into existence. The Federal Supreme Court accepted the decision of the EGMR and adapted its practice. Currently, the statutes of limitation are under revision, but it is not yet clear to what extent the existing limitation periods will be modified.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

So far, the owner of premises are not obliged to remove materials containing asbestos from buildings unless the health of people is threatened due to released fibres. If this is the case, the owner is obliged to renovate, or otherwise the owner becomes liable due to the liability of property owners (article 58 of the Swiss Code of Obligations). Also, if a building is renovated or demolished, the workers have to be protected adequately, which may be costly.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in your jurisdiction?

Environmental insurance policies are very common in Switzerland, particularly for companies in the building industry or handling chemicals. These policies protect against, for example, contamination of the soil or water or other environmental damage that a third party claims against the company.

11.2 What is the environmental insurance claims experience in your jurisdiction?

To our knowledge, there are no known court cases regarding environmental insurance claims in Switzerland.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in your jurisdiction.

On 12 December 2015, Switzerland and 194 other countries passed an agreement concerning the international climate policy at the climate summit COP21 in Paris. This agreement aims to limit the global temperature rise to fewer than two degrees. In October 2017, following the approval by the Federal Parliament, Switzerland has ratified the Paris Agreement.

In December 2017, the Federal Council presented its report on the revision of the CO_2 Act and its report on the Swiss-EU agreement regarding the linkage of both ETS to the Federal Parliament. The revision of the CO_2 Act and the Swiss-EU agreement will be discussed together in the Federal Parliament in 2018.

On 1 August 2016, a partial revision of the USG entered into force. If a substantial amount of biogenic fuels that do not meet certain conditions is placed on the Swiss market, the Federal Council is now allowed to designate such biogenic fuels that may only be placed on the Swiss market if they meet certain ecological or social requirements which are defined by the Federal Council.

On 16 June 2017, the Federal Parliament adopted a revision of the GTG. In essence, the revised GTG extends the moratorium to grow genetically modified organisms ("GMO") for agricultural purposes for another four years. However, the Federal Parliament did not adopt the Federal Council's proposal for a legal framework regarding the coexistence of GMO and non-GMO as well as the creation of growing areas for GMO in which the concentrated growing of GMO would be possible.

On 21 May 2017, the Swiss people approved the revised Energy Act in a popular referendum. The revised Energy Act marks the first step of the implementation of the "Energy Strategy 2050" and has entered into force on 1 January 2018.

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