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# Environment & Climate Change in Switzerland



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## Regulatory framework and policy

### Domestic legislation

#### What is the primary environmental legislation in your jurisdiction?

The general basis of Swiss environmental law is stated in Articles 73 and following of the Federal Constitution of the Swiss Confederation. These provisions define the applicable basic principles, such as:

- sustainable development;
- the protection of the environment;
- spatial planning;
- the protection of natural and cultural heritage; and
- the protection of water, forests, nature, fishing and wildlife.

Based on the constitutional provisions mentioned above, the primary environmental legislation is contained in the Federal Act on the Protection of the Environment and the corresponding implementing ordinances. Further, other important acts relate to specific environmental sectors – for example, the Waters Protection Act, the Chemicals Act, the Act on the Reduction of CO<sub>2</sub> and the Protection of Nature and Cultural Heritage Act. Some of the most important ordinances in this regard are the Ordinance on the Avoidance and Disposal of Waste, the Ordinance on Contaminated Sites and the Ordinance on the Environmental Impact Assessment.

While the federation has comprehensive competence to legislate in environmental matters, the cantons are mainly responsible for implementing, monitoring and controlling environmental law. In addition, there is particular and independent cantonal law – for example, in the area of the protection of nature and cultural heritage.

Swiss environmental legislation is based on the following principles, which apply to any environmental matter:

- The 'sustainable development' principle states that the natural foundations of life must be preserved undiminished for future generations.
- The 'precautionary' principle – and in particular the aspect of the abatement of pollution at its source – states that early preventive measures must be taken at the source in order to limit effects which could become harmful or a nuisance.
- The 'polluter pays' principle states that anyone who causes measures to be taken due to polluting, causing damage to the environment or other negative external effects must bear the costs.

### International agreements

#### Is your jurisdiction a signatory to any international environmental agreements/commitments?

Switzerland has ratified numerous international agreements which pursue the protection of the environment – for example, Switzerland ratified:

- the Montreal Protocol on Substances that Deplete the Ozone Layer in 1988;
- the Kyoto Protocol on emission reduction targets in 2003;
- the Stockholm Convention on Persistent Organic Pollutants in 2003; and
- the Paris Climate Agreement in 2017.

Most of the international agreements on environmental matters do not contain self-executing provisions. Therefore, after ratifying such agreements, Switzerland amends its national legislation in order to comply with the international requirements. For example, after ratifying the Paris Agreement, Switzerland is now in the process of revising the Federal Act on the Reduction of CO<sub>2</sub> Emissions.

### Regulators

#### Which government bodies regulate compliance with environmental legislation and what is the extent of their powers?

At the federal level, the Department of Environment, Transport, Energy and Communication is primarily responsible for environmental matters. It is divided into numerous offices, whereby the Federal Office for the Environment (FOEN) is mainly in charge of environmental issues. In particular, the FOEN prepares implementing ordinances to be

enacted by the government and implements such ordinances through directives, circulars and guides. Besides the FOEN, other federal offices have certain competences in specific areas of environment law – for example, the Federal Office of Civil Aviation.

As the cantons are mainly responsible for implementing, monitoring and controlling environmental law, numerous cantonal and communal offices and authorities are in charge of environmental issues. Each of the 26 cantons designates and organises such offices and authorities. The cantons and communities must ensure that the protection of the environment as a cross-sectional task is implemented in all relevant areas, such as traffic, trade and commerce, construction and housing.

Among other measures, government bodies can:

- conduct inspections;
- demand the disclosure of information regarding environmental issues; and
- revoke environmental permits.

Moreover, government bodies can impose administrative penalties (usually monetary fines) and custodial sentences of up to three years.

## Policy

### How would you describe current government policy on environmental regulation and how does it compare on an international scale?

In terms of compliance, environmental laws and ordinances are generally well observed and implemented by authorities on the federal, cantonal and communal level.

Switzerland not only cares about domestic protection of the environment, it is also involved on the international level. With the efforts to achieve an effective system of international environmental laws and by adapting national legislation to international requirements, Switzerland contributes to protecting the global environment.

## Permits

### Appeal

### Activities subject to permit

### Which activities require an environmental permit and how are they classified for such purposes?

Swiss environmental laws do not provide for a general environmental permit and the Federal Act on the Protection of the Environment does not set out a general catalogue of projects and activities subject to environmental approval.

While certain activities subject to permit are defined in the Federal Act on the Protection of the Environment (eg, the operation of a landfill and the experimental release of pathogenic organisms), other activities subject to permit are defined in specific laws or implementation ordinances (eg, cutting down trees).

### Issuing authority

### Which authority issues permits?

The required permits are issued by the authority in charge of the relevant matter. As per the applicable laws and ordinances, this may be a federal, cantonal or communal authority.

If several authorities are involved (eg, with regard to water protection, landscape protection and spatial planning), by law the authorities must coordinate their involvement and issue their decisions in a coordinated manner.

### Requirements

### What are the procedural and documentary requirements to obtain a permit?

The procedural and documentary requirements to obtain a permit depend on the specific matter and are defined by the applicable laws and ordinances as well as directives, circulars and guides. In practice, it is recommended to contact the authorities in charge at an early stage of the approval process.

### Fees

## Do any permit fees apply?

Pursuant to the Federal Act on the Protection of the Environment, fees are charged for licences, inspections and special services.

On the federal level, the General Fee Ordinance applies. On the cantonal and communal level, the fee ordinance of the concerned canton applies. In Zurich, for example, the fee for a permit relating to environmental matters is calculated based on a time spent basis, whereby the fee may not exceed Sfr25,000.

### Validity period and renewal

## What is the validity period for permits and how can they be renewed?

General principles of administrative law apply to the validity period and the renewal of permits. Therefore, individuals may rely on a decision of the competent authority that defines certain rights and duties of the individual. Consequently, a granted permit may be changed or revoked only on a case-by-case basis and under specific conditions. The renewal of a permit is necessary if:

- the permit has been granted for a limited period;
- it has been revoked by the competent authority; and
- there are changes on the side of the permit holder.

### Transferral

## Can permits be transferred? If so, what procedure applies?

General principles of administrative law apply to the transfer of permits. Thus, as a basic principle, permits are granted to a specific person or company and can therefore not be transferred to third parties without the approval of the competent authority. If a particular permit is granted to a specific object rather than a specific person or company, it remains in place if ownership in the concerned object changes.

### Appeal

## Are permit decisions subject to appeal? If so, what procedure applies?

Permit decisions on environmental matters are subject to appeal pursuant to the specific provisions of the applicable environmental laws and ordinances and pursuant to general principles of administrative law.

The usual appeal period is 20 or 30 days. The applicable procedure depends on the issuing authority. Appeals against decisions of cantonal or communal authorities are governed by cantonal law on the administrative procedure and decided by the higher administration instance and then, if further appealed, by the competent cantonal administrative court. Appeals against decisions of federal authorities are governed by the Federal Administrative Procedure Act and decided by the Federal Administrative Court.

Decisions by the cantonal administrative courts as well as decisions by the Federal Administrative Court may be appealed at the Federal Supreme Court if the prerequisites set out in the Federal Act on the Federal Supreme Court are met.

Both the person requesting a permit and third parties that have a particular interest in the matter are entitled to appeal against the permit decision. Based on the Federal Act on the Protection of the Environment and the Protection of Nature and Cultural Heritage Act, environmental protection organisations that fulfil certain criteria, have a right to appeal as well.

If provided by cantonal law, certain environmental protection organisations acting only on a cantonal level also have a right to appeal before cantonal instances and the Federal Supreme Court.

### Non-compliance

## What are the consequences of violating permit rules and decisions?

Violating permit rules and decisions may lead to administrative sanctions and penalties. Administrative sanctions are, for example, the order to establish lawful conditions or the revocation of a permit. Administrative penalties are usually monetary fines, but can also be custodial sentences.

### Environmental impact assessments

## Projects subject to assessment

### What projects require a preliminary environmental impact assessment?

Environmental impact assessments are mainly governed by the Federal Act on the Protection of the Environment and the Federal Ordinance on the Environmental Impact Assessment.

Pursuant to the Federal Act on the Protection of the Environment, the requirement to conduct a comprehensive environmental impact assessment applies to installations that could cause severe pollution to environmental areas to the extent that it is probable that compliance with ordinances on environmental protection can be secured only through measures specifically applied to the project or site.

The Ordinance on the Environmental Impact Assessment defines the types of installation that are subject to an environmental impact assessment. For instance, this applies to railways, national roadways, harbour constructions in lakes, airports, nuclear installations, stadiums with a capacity of more than 20,000 spectators and gravel and sand pits.

## Scope of assessment

### What environmental factors and risks fall within the scope of the impact assessment report?

The purpose of an environmental impact assessment is to examine whether a construction project or a modification to an existing installation complies with the applicable environmental laws. The scope of such assessment is broad. Therefore, a project must not only comply with the Federal Act on the Protection of the Environment, but also with any other relevant provisions of environmental laws and ordinances, concerning for instance the waters and landscape protection, the protection of nature, the safekeeping of forests as well as fishing and hunting.

Anyone that wishes to plan, construct or modify an installation that is subject to an environmental impact assessment must submit an environmental impact report to the competent authority. The environmental impact report forms the basis of the environmental impact assessment and must include:

- the existing conditions;
  - the project, including proposed measures for the protection of the environment and in the event of disaster, and an outline of the main alternatives evaluated by the applicant, if any; and
  - the foreseeable residual environmental impact.
- The environmental impact report and the environmental impact assessment are prepared and conducted according to the requirements and specifications of the Federal Act on the Protection of the Environment and the Ordinance on the Environmental Impact Assessment.

## Assessor

### Who conducts assessments?

The Federal Office for the Environment (FOEN) is the specialist agency on the federal level, whereas the cantons set up specialist agencies to conduct environmental impact assessments and assess other environmental questions on the cantonal level. The FOEN conducts assessments in approval procedures before federal authorities and the cantonal agencies conduct approval procedures before cantonal and communal authorities. The appendix to the Federal Ordinance on the Environmental Impact Assessment defines whether federal or cantonal authorities are competent.

## Publication

### Are the results of impact assessments publicly available?

The results of an environmental impact assessment are published, usually together with the permit request of the concerned project. In a few limited cases, there is no obligation to publish the permit request of the project. In those cases, the results of environmental impact assessment are published separately.

Anyone may inspect the published report and the results of the environmental impact assessment within 30 days, unless overriding public or private interests require secrecy. Trade and business secrecy must be preserved in all cases.

The right to inspection includes the environmental report itself as well as any other information and document relevant for the decision-making process, such as plans, technical reports and specific files.



## Challenge

### Can the results of an impact assessment be contested? If so, what procedure applies?

An environmental impact report and the result of an environmental impact assessment itself cannot be contested by specific legal remedies. But an appeal is possible against the permit decision for the concerned project. To the extent that an environmental impact report or an environmental impact assessment have been taken into account for the permit decision and led to incorrect or incomplete statements of facts or incorrect legal conclusions, they are covered by an appeal against the permit decision.

Appeals against decisions of cantonal or communal authorities are governed by cantonal law on the administrative procedure and decided by the higher administration instance and then, if further appealed, by the competent cantonal administrative court. Appeals against decisions of federal authorities are governed by the Federal Administrative Procedure Act and decided by the Federal Administrative Court.

Decisions by the cantonal administrative courts as well as decisions by the Federal Administrative Court may be appealed at the Federal Supreme Court if the prerequisites set out in the Federal Act on the Federal Supreme Court are met.

## Soil pollution

### Liability

### What regime governs liability for soil pollution (including the allocation, transfer and limitation of liability)?

Soil pollution is mainly governed by the Federal Act on the Protection of the Environment and the Federal Ordinance on Contaminated Sites.

As a core principle, the 'polluter pays' principle governs liability for soil pollution. In line with the polluter pays principle, the Federal Act on the Protection of the Environment provides for the following rules on the final allocation of investigation, monitoring and remediation costs (regarding possible cost advances see below). Generally, the persons responsible bear the costs of the measures required to investigate, monitor and remediate polluted sites. If two or more persons are responsible, they bear the costs according to their share of the responsibility. The first to bear the costs is the person that caused the measures to be needed through its conduct. Anyone responsible simply as the proprietor of the site does not bear any costs if, by exercising the required care, it could not have had any knowledge of the pollution. The public authority concerned bears the share of the costs of responsible parties that cannot be identified or are unable to pay.

The authority issues a ruling on the allocation of costs if any person responsible so requests or if the authority is carrying out the measures itself. Such a ruling is subject to appeal.

If an investigation of a site entered in the register of contaminated sites or for which an entry is planned reveals that the site is not polluted, the public authority concerned bears the costs of the investigative measures required.

Investigation, monitoring and remediation measures will be carried out by the holder of the polluted site, which is not necessarily the polluter of the concerned site. If the authorities have reason to believe that the pollution of the site was caused by the action of third parties, the authorities may require these to carry out a preliminary investigation, monitoring measures or detailed investigation. 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.

To the extent that the holder of a polluted site or third parties pay for the investigation, monitoring and remediation measures, such payments are considered to be cost advances and may be refunded by the polluter in the final cost allocation pursuant to the 'polluter pays' principle.

If the shares in a company owning a contaminated site and being the polluter are sold, the environmental liability remains with the company pursuant to the polluter pays principle. If a contaminated site is sold by its polluter, pursuant to the polluter pays principle, the seller remains liable for the previous pollution, and the buyer will be liable for future pollution, if any. Nevertheless, the buyer as the new owner of the site can be asked to cover remediation costs for any pollution, including the one caused by the seller, so that it will have to take recourse against the seller based on the polluter pays principle.

Generally, liabilities pursuant to environmental laws cannot be modified or excluded in agreements with the competent authorities. Among private parties, agreements on the allocation of environmental liabilities and related hold harmless obligations are possible and used in share purchase agreements and asset purchase agreements.

Failure to comply with soil pollution regulations may lead to administrative penalties such as monetary fines and custodial sentences.

## Due diligence

### What environmental due diligence measures are recommended before concluding land transactions?

Generally, the scope of recommended due diligence measures strongly depends on the previous use and the planned future use of the concerned land, as well as the age, previous use and planned future use of buildings that are part of the transaction.

Before concluding land transactions, a general inquiry as to the location should take place and the planned use or project should be assessed with regard to potential restrictions from environmental laws, such as traffic restrictions, groundwater protection zones or wildlife protection zones.

Further, the cantonal register of contaminated sites should be consulted. This register is limited to sites whose pollution originates from waste and that are restricted in area – namely, waste disposal sites, industrial sites and accident sites. It is therefore important to also consult any other available public register containing information about the soil and potential contaminations, such as the register of movements of polluted soil and registers showing pollution from traffic, farming and special cultures.

In the case of existing buildings on the concerned land, an examination of the building materials is recommended, especially if the building was constructed at a time when the use of hazardous materials (eg, asbestos) was allowed and common. In this regard, no public registers are available.

To cover risks arising from environmental issues, it is standard practice to include representation and warranty clauses in share or asset purchase agreements.

## Remediation

### What remediation and clean-up measures are typically applied and how can remediation costs be recovered?

The objective of remediation pursuant to the Ordinance on Contaminated Sites is the elimination of impacts that lead to the need for remediation. Remediation measures are the elimination (decontamination) of hazardous substances, the long-term prevention of hazardous substances to further spread and the long-term monitoring of concerned sites.

Remediation costs are allocated based on the polluter pays principle (see above).

## Air pollution

### Regulation

### How are air emissions regulated? What air quality standards and emission limits apply?

Air pollution is mainly governed by the Federal Act on the Protection of the Environment and the Federal Ordinance on Air Pollution Control.

Pursuant to the Federal Act on the Protection of the Environment, air pollution is limited by measures taken at its source (ie, by the limitation of emissions). Irrespective of the existing environmental pollution, as a precautionary measure, emissions are limited as much as technology and operating conditions allow, provided that this is economically acceptable. Emissions are limited more strictly if the effects are found or expected to be harmful or a nuisance, taking account of the existing level of environmental pollution.

Emissions are limited by issuing:

- maximum emission values;
- regulations on construction and equipment;
- traffic or operating regulations;
- regulations on the heat insulation of buildings;
- regulations on thermal and motor fuels; and
- a plan of measures by the competent authorities if several sources cause harmful air pollution to reduce or eliminate these impacts within the set time limit (action plan).

Limits are prescribed by ordinance or, in cases where an ordinance makes no such provision, by rulings based directly on the Federal Act on the Protection of the Environment.

The Ordinance on Air Pollution Control defines the ambient limit values for assessing harmful effects or nuisances, also taking into account the effects of pollution levels on particularly sensitive groups such as children, the sick, the elderly and pregnant women. The ambient limit values for air pollution are set at a level so that, in the light of existing scientific knowledge and experience, ambient air pollution below these levels:

- does not endanger people, animals or plants, their biological communities and habitats;
- does not seriously affect the well-being of the population;
- does not damage buildings; and
- does not harm soil fertility, vegetation or waters.

#### Non-compliance

### What are the consequences of non-compliance with air emissions regulations?

Installations that exceed the permitted emission must be remediated. Before ordering major improvement works, the authorities must request the operator of the installation to submit improvement proposals. The authorities specify the time limit for remediation of the concerned installation. No remediation must be made if the installation is shut down within the time limit set for remediation.

In urgent cases, the authorities must order remediation as a precautionary measure. In an emergency, they may issue operating restrictions or order the shutdown of the installation.

Failure to comply with limitations of emissions may lead to administrative penalties in the form of monetary fines.

## Water pollution

#### Regulation

### What rules govern the discharge of wastewater and the protection of water resources?

Water pollution is mainly governed by the Federal Act on the Protection of the Environment the Federal Act on the Protection of Waters and the Federal Waters Protection Ordinance.

Two core principles of the Waters Protection Act are directly relevant for discharging wastewater and the protection of water resources:

- everyone is obliged to take all the care due in the circumstances to avoid any harmful effects to waters; and
- it is prohibited to introduce into a body of water, either directly or indirectly, any substances which may pollute it.

The infiltration of such substances is also prohibited, as is the storing or spreading of such substances outside a body of water if there is a genuine risk of water pollution.

Further, the Waters Protection Act and the Waters Protection Ordinance contain specific provisions on the disposal or discharge of waste water. Polluted waste water must be treated and may only be discharged or infiltrated into a body of water with the approval of the cantonal authority. Non-polluted waste water must be discharged by infiltration according to the instructions of the cantonal authority. If local conditions do not permit this, such non-polluted water may be discharged into surface waters. In this case, retention measures must be taken if possible so as to ensure a steady discharge in the event of high inflow. The discharge of water is not part of a communal drainage plan and requires a permission of the cantonal authority.

#### Non-compliance

### What are the consequences of non-compliance with water pollution regulations?

Failure to comply with water pollution regulations may lead to administrative penalties such as monetary fines and custodial sentences.

## Waste and hazardous substances

#### Definition

### How is 'waste' defined in your jurisdiction?

Waste is mainly governed by the Federal Act on the Protection of the Environment the Federal Ordinance on the

Avoidance and Disposal of Waste, the Federal Ordinance on the Movement of Waste, the Federal Ordinance on Lists Concerning the Movement of Waste, the Federal Technical Ordinance on Waste and the Federal Ordinance on the Return, the Tacking Back and the Disposal of Electrical and Electronic Devices.

The Federal Act on the Protection of the Environment defines 'waste' as any moveable material disposed of by its holder or the disposal of which is required in the public interest. Pursuant to the Federal Act on the Protection of the Environment, the disposal of waste includes its recovery or deposit in a landfill as well as the stages of collection, transport, storage and treatment. Any physical, chemical or biological modification of the waste is considered to be a treatment.

The relevant regulations distinguish between municipal waste, special waste and other waste. 'Municipal waste' is defined as waste originating from households and waste of comparable composition from enterprises not exceeding a certain size. 'Special waste' is defined as waste whose environmentally compatible disposal requires special measures. Waste that is neither special waste nor municipal waste is defined as 'other waste'. The distinction is relevant for the obligations regarding the disposal of waste.

## Waste handling

### What rules and procedures govern the handling of waste, with particular respect to:

#### (a) Storage?

If the handling of waste could be harmful or a nuisance, precautions must be taken at an early stage. Landfills and other polluted sites must be remediated if they become harmful or a nuisance.

Under the Federal Act on the Protection of the Environment, waste production should be avoided wherever possible. Further, waste must be recovered wherever possible and be disposed of in an environmentally friendly way and, insofar as is possible and reasonable, in Switzerland. Where there is no environmentally safe disposal process for certain production waste, the manufacturer may be required to avoid such production waste entirely.

The Ordinance on the Avoidance and Disposal of Waste regulates the avoidance and the disposal of waste, as well as the construction and operation of waste facilities. According to these regulations, if waste cannot be avoided or recovered, it must always be disposed of in accordance with the legal requirements.

The storage of waste other than in corresponding landfills is not allowed.

#### (b) Transport?

The Federal Act on the Protection of the Environment and the Ordinance on the Movement of Waste govern the domestic movement of special waste and other waste subject to control as well as the cross-border movement of any type of waste. Within Switzerland, the movement of other types than special waste and waste subject to control is not governed by special rules. Waste holders must, prior to the transfer of waste, clarify whether the waste concerned is special waste or other waste subject to control. As to the handling of special waste, such waste:

- must be marked as such for transfer within Switzerland as well as for import, export and transit;
- may be handed over in Switzerland only to companies with authorisation from the canton;
- may be exported only with authorisation from the federal authority and the consent of the transit and import state; and
- may be accepted or imported only by companies with authorisation from the canton.

These authorisations are granted if environmentally compatible disposal is guaranteed.

#### (c) Disposal?

Pursuant to the Federal Act on the Protection of the Environment and the Ordinance on the Avoidance and Disposal of Waste, the disposal of waste is governed by the Technical Ordinance on Waste. The Technical Ordinance on Waste governs the reduction and treatment of waste as well as the building and operation of waste plants. It distinguishes between different types of disposal sites for certain types of waste. Setting up and operating a waste disposal site requires a permit from the cantonal authority.

As to municipal waste, the disposal obligation lies with the cantons but can be transferred to the communities. For other types of waste, the waste holder must dispose its waste to the extent that it cannot be recovered. The specific legal requirements must always be complied with when disposing of waste.

Regardless of the type of waste, the costs for waste disposal are borne by the holder of the concerned waste. If the holder cannot be identified or is insolvent, the canton must cover the costs of disposal.

## (d) Recycling/reuse?

As a core principle of the Federal Act on the Protection of the Environment, waste must be recovered wherever possible. Detailed legislation has been passed to implement this principle – for example, by prohibiting the use of certain materials for packaging in order to facilitate the recycling of packaging materials and by regulating the separate collection of certain types of waste such as paper, cardboard, glass, oil and metals.

### Liability

#### What is the extent of a waste producer's liability after transferral of waste (eg, to a waste disposal agent)?

After transferral of waste, the initial producer and transferor of waste generally is no longer liable for such waste and the related costs, provided that:

- before such transfer, the producer complied with the applicable regulatory requirements such as correctly marking the waste and handing it over only to an authorised company;
- any non-compliance or wrongdoing of the transferee does not fall within the responsibility of the transferor; and
- the transferor complied with the contractual arrangements it might have had with the transferee of the waste.

### Waste recovery

#### Are waste producers bound by any waste recovery obligations?

Given waste production should be avoided wherever possible and that waste must be recovered wherever possible, waste producers must recover waste, even where direct recycling of the concerned materials is not possible. Such waste may still be suitable for recovery in another way. For certain types of waste, the manufacturer may have to take back the products sold after use by its consumers (eg, electric and electronic devices).

### Waste disposal agents

#### How are the business activities of waste disposal agents/landfill operators regulated?

Both the building and operation of waste plants for the treatment of waste, as well as the building and operation of landfills for the final deposit of waste, are subject to authorisation from the canton. Such authorisations may be granted only if the agent or landfill operator establishes that the facility is required and the statutory requirements on its location, size, technical equipment and operation are fulfilled. The waste plants, disposal sites and their operators are monitored by cantonal authorities.

### Hazardous substances

#### What special rules, regulations and safeguards apply to the handling and disposal of hazardous materials?

The handling and disposal of hazardous materials is mainly governed by the Federal Act on the Protection of the Environment the Federal Act on Protection against Dangerous Substances and Preparations, the Federal Ordinance on Protection against Dangerous Substances and Preparations and the Federal Ordinance on the Reduction of Risks relating to the Use of Certain Particularly Dangerous Substances, Preparations and Articles.

Generally, a distributor of hazardous substances must ensure that these substances do not endanger human life and health or the environment when brought on the market. The same applies to anyone handling or implementing such substances. Certain hazardous chemical substances must be listed in the Swiss product register of chemicals.

Special rules govern the sale of hazardous chemicals. Certain hazardous chemicals may not be sold to private users. Others may be sold to private users, but only if the buyers have been informed about the dangers of the concerned substance.

As to the disposal of hazardous substances, anyone that supplies such substances or preparations must accept them when returned by non-commercial users for appropriate disposal.

### Chemical and product regulation

#### Regulation

## What environmental regulations and procedures apply to the production, transportation and sale of chemicals and other products?

The Swiss chemical law is aligned to the chemical law of the European Union. In Switzerland, the rules applying to hazardous substances are contained in the Environmental Protection Act and, in greater detail, in specific acts and ordinances – in particular, in the Chemicals Act and the Ordinance on Chemicals. The Ordinance on Chemicals sets out the general regulations and the applicable procedures to the production, the placing on the market and the sale of chemical substances and preparations. Further, the Chemical Risk Reduction Ordinance, the Ordinance on Good Laboratory Practice and the Chemicals in International Trade Ordinance regulate the handling and trading of chemicals. In addition, the Ordinance on Biocidal Products regulates the placing on the market and handling of biocidal products.

With regard to the national and international transport of chemicals, in particular the following ordinances, agreements and regulations are of relevance:

- the Ordinance on the Carriage of Dangerous Goods by Road;
- the Ordinance on Air Transport;
- the European Agreement concerning the International Carriage of Dangerous Goods by Road;
- the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways;
- the Regulations Concerning the International Carriage of Dangerous Goods by Rail; and
- the Convention on International Civil Aviation (Chicago Convention).

The aim of chemicals legislation is to protect human health and the environment from the harmful effects of chemical products (eg, industrial and household chemicals, biocidal products and plant protection products). To this end, the marketing and use of chemical products are linked to the fulfilment of various requirements, including:

- requirements regarding the presentation and labelling of chemical products;
- information requirements for the sale of particularly hazardous chemical products;
- training requirements for certain industrial applications of chemical products; and
- testing and approval requirements for biocidal products, pesticides and certain industrial and household chemicals.

The central contact and regulation office for trade and industry is the joint registration office of the Federal Office of Public Health, the Federal Office for the Environment and the State Secretariat for Economic Affairs. The Federal Office for Agriculture's licensing office is responsible for the approval of plant protection products.

### Liability

#### Types of liability

### What types of liability can arise for environmental damage (eg, administrative, civil, criminal)?

The main types of liability for environmental damage are:

- civil law liability for unlawful damages and landowner's liability;
- public law liability pursuant to the Federal Act on the Protection of the Environment and other specific laws governing environmental matters; and
- administrative sanctions and penalties.

Civil law liability is governed by the general rules of the Swiss Code of Obligations. Anyone that unlawfully causes loss or damage to another, whether wilfully or negligently must provide compensation.

If environmental damage is caused by the owner of a building or of a plot of land, the landowner's liability pursuant to the Swiss Civil Code may apply.

Further, pursuant to the Federal Act on the Protection of the Environment, 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 becomes reality. Liability pursuant to the Federal Act on the Protection of the Environment is strict liability. Therefore, a polluter is held responsible for the damage regardless of its culpability, with the exception of force majeure and liability of a third party or of the damaged party itself. In general, the 'polluter pays' principle applies to environmental damages. Accordingly, the polluter is held liable for damages and costs caused by its behaviour. The Environment Protection Act includes special liability clauses for other specific

operations, such as the handling of pathogenic or genetically modified organisms.

In addition, a number of special laws governing environmental matters contain provisions on liabilities in specific cases – for example, liability for nuclear damages pursuant to the Nuclear Energy Liability Act and liability pursuant to the Radiation Protection Act.

#### Directors' and officers' liability

### Can directors and officers be held personally liable for company environmental offences? If so, can liability be limited through insurance coverage and/or contractual indemnities?

In the first instance, a company is responsible for the wrongdoings of its corporate bodies. Directors and officers are not subject to civil law liability for environmental misconduct caused by the company itself. However, if a director or officer commits an intentional or negligent breach of their environmentally induced duties, they may become personally liable for any damages or losses arising therefrom.

Insurance for liability towards third parties can be taken out to cover potential damages in the case of liability claims against the company. In addition, directors' and officers' liability insurance may cover the personal liability of directors and officers.

Insurance coverage is subject to requirements, limitations and exclusions. It does usually not extend to damages resulting from wilful intent or gross negligence and cannot prevent criminal liability. Further, it does not cover fines or other claims subject to administrative law.

Personal liability can also be mitigated through contractual indemnification arrangements. However, indemnification is not possible for a wilful and grossly negligent violation of duties.

#### Liability for authorised activity

### Can environmental liability arise even in the course of authorised activities (eg, operations subject to environmental permits)?

Conducting authorised activities does not generally exempt parties from environmental liability. Environmental liability is strict and allows no defence based on authorisations or permits. Consequently, liability for environmental damage is not excluded even if the operator has acted within the scope of the conditions of the permit and in compliance with the applicable environmental law.

#### Defences

### What defences are available to environmental offenders?

Because environmental liability is strict, only limited defences are available to environmental offenders – namely, if the damages are caused by force majeure or gross negligence by a third party or by the damaged party itself.

In the case of general civil law liability, pursuant to the Code of Obligations, the offender may argue that it acted neither wilfully nor negligently.

#### Liability in share sale/asset purchase

### What rules govern the transfer of environmental liability in share sales and asset purchases?

Generally, if the shares in a company with environmental liabilities are sold, the environmental liabilities remain with the company pursuant to the 'polluter pays' principle, meaning that the environmental liability is not affected by the change of ownership. If an asset is sold, pursuant to the polluter pays principle, the seller remains liable for the previous environmental wrongdoing, and the buyer will be liable for future pollution, if any. Nevertheless, as the new owner of the asset, the buyer can be asked to cover remediation costs for any pollution, including the one caused by the seller, so that it will have to take recourse against the seller based on the polluter pays principle.

Further, liabilities pursuant to environmental laws cannot be modified or excluded in agreements with the competent authorities. Among private parties, agreements on the allocation of environmental liabilities and related hold harmless obligations are possible and used in share purchase agreements and asset purchase agreements. The allocation primarily follows the rules of the Code of Obligations on purchase agreements and contractual liabilities, warranties and indemnities.

If a seller does not intentionally hide or withhold information about defects, its responsibility may be generally

excluded or limited to certain points of particular interest. Disclosed or known environmental threats should be covered by an indemnity agreement between the seller and the buyer or be reflected in the purchase price.

## What environmental due diligence measures are recommended before concluding share sales/asset purchases?

Generally, the scope of recommended due diligence measures for share deals and asset deals strongly depends on the type of business of the target as well as the previous use and the planned future use of the concerned real property, the age, previous use and planned future use of buildings that are part of the transaction.

A careful and comprehensive due diligence review is highly important for the seller in order to disclose defects properly and for the buyer to identify potential risks and request appropriate warranties and indemnities. Particular attention should be paid to potentially contaminated soil, because related damages may be discovered only after a long time. Even if the target complies with environmental ordinances, it may be obliged to advance investigation, monitoring and remediation costs. Long-term warranties and indemnities may be appropriate in this context.

### Lender liability

## Can lenders be held liable for environmental offences?

Swiss law does not provide a legal basis to hold a lender liable for environmental offences committed by the borrower. In accordance with the 'polluter pays' principle, if the lender causes environmental damages, it will be liable.

## Reporting and disclosure obligations

### Required reporting

## Under what circumstances must environmental damage be reported to the authorities?

There is no general duty to report environmental damages to the authorities proactively. However, there is, however, a general obligation to provide the authorities with information required to enforce the act and, if necessary, conduct or tolerate investigations under the Federal Act on the Protection of the Environment.

Moreover, operators of installations which, in exceptional circumstances, could seriously damage people or their natural environment must immediately report any extraordinary event on their plant to the competent authority.

Further, the Federal Ordinance on Protection against Major Accidents requires operators of certain dangerous establishments to notify major accidents and submit a detailed report to the enforcement authority within three months of an accident. A major accident is an exceptional event occurring in an establishment, on a transport route or in a pipeline installation which has significant effects:

- outside the operating area;
- on or near the transport route; or
- near the pipeline installation.

### Publication

## Is information on environmental damage/compliance available in a public register?

No general register of environmental damage or compliance exists.

Certain information is available in specific registers that are accessible to the public, such as the cantonal registers of contaminated sites. This register is limited to sites whose pollution originates from waste, and that are restricted in area – namely, waste disposal sites, industrial sites and accident sites – but does not cover hazardous building materials (eg, asbestos). It is therefore important to consult any other available public register containing information about the soil and potential contaminations, such as the register of movements of polluted soil and registers showing pollution from traffic, farming and special cultures.

Further, the cantonal authority may have noted the entry in the register of contaminated sites in the land register. Such annotations are part of the publicly accessible land register information.

### Audits



## Are regular environmental audits required?

Certain installations are subject to a comprehensive environmental impact assessment before taking any decision on their planning, construction or modification (see above).

In addition, a number of special laws governing environmental matters contain provisions on regular audits – for example, the Federal Ordinance on Protection against Major Accidents provides for regular on-site inspections to verify whether the relevant duties are fulfilled. The Federal Ordinance on Pipelines provides for regular, announced or unannounced onsite inspections of all relevant documents, installations and equipment. With regard to air pollution, the authorities monitor compliance with emission limitation requirements and they carry out their own emission measurements and inspections or will have these carried out on their behalf. In the case of installations which may produce significant levels of emissions, the authorities order continuous measurement and recording of emissions or of another operating parameter which permits emission control.

### Disclosure

## What environmental disclosures are required in sales transactions?

Environmental laws do not require a seller to disclose environmental matters to potential buyers in a sales transaction. However, disclosure obligations can arise from the rules of the Code of Obligations on purchase agreements and contractual liabilities, warranties and indemnities.

### Insurance

#### Coverage

## What types of environmental insurance are available and what do they cover?

Common types of environmental insurance are third-party liability insurance and indemnity insurance. In particular, they cover damage caused by soil contamination, water contamination and other environmental damage that may occur to third parties.

## Is environmental insurance mandatory and/or commonly purchased?

There is no general obligation to acquire environmental insurance. In practice, such insurance is commonly purchased, especially by industrial enterprises with environmental risks.

In addition, a few special laws governing environmental matters provide for mandatory insurance – for example, the Nuclear Energy Liability Act and the Federal Act on Pipelines for the Transport of Liquid or Gaseous Fuels.

### Tax

#### Taxes

## What environmental taxes are levied in your jurisdiction?

Several environment-related taxes and duties are levied on the federal and cantonal level.

On the federal level, a key instrument of the current environmental and climate policy is the carbon dioxide (CO<sub>2</sub>) tax. With the goal to achieve CO<sub>2</sub> emission targets, the Federal Act on the Reduction of CO<sub>2</sub> Emissions imposes a levy on fossil fuels, such as heating oil and natural gas. Further, the CO<sub>2</sub> Act obliges distributors of fossil motor fuels and operators of fossil-thermal energy plants to CO<sub>2</sub> compensation.

Based on the Petroleum Tax Act, the Swiss Confederation raises a tax on mineral oil, crude oil, natural gas and products derived from their processing and fuels, as well as a mineral oil surcharge on fuels.

CO<sub>2</sub>-intensive companies can be exempted from the CO<sub>2</sub> tax if they voluntarily commit to reducing their emissions in return. In addition, in case of participation in emissions trading, companies are entitled to a refund of the CO<sub>2</sub> tax.

Other environment-related taxes and duties on the federal level are energy taxes, transportation taxes, emissions levies and disposal fees.

On the cantonal level, environment-related taxes and duties concern motor vehicles, waste, waste water and energy consumption.

### Climate change issues

#### Emissions, renewables and efficiency

## What regulations, targets and/or incentive schemes are in place to:

### (a) Reduce greenhouse gas emissions?

Switzerland plays an active role in reducing greenhouse gases and limiting the global rise in temperature. It ratified the Kyoto Protocols on emission reduction targets in 2003 and made an unconditional commitment under the Copenhagen Accord to further decrease emissions by 2020. Further, Switzerland ratified the Paris Climate Agreement that entered in force in Switzerland in November 2017. It replaces the Kyoto Protocol and provides for carbon dioxide reduction goals after 2020. It aims to respond to the global climate change threat "by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius".

To reach the relevant emissions target, the Swiss emission trading scheme (ETS) was introduced. It applies to companies engaged in specific activities committing them to reduce their CO<sub>2</sub> equivalent emissions. By complying with the prescribed targets, the concerned companies benefit from being exempt from the CO<sub>2</sub> tax. A maximum quantity of emission allowances is defined for each year in advance. This is then allocated to the participating companies, which can then trade their allowances.

The Swiss ETS is separate from the EU ETS, but both Switzerland and the European Union pursue the goal of linking the two systems. For this purpose, Switzerland has undertaken some adjustments to its ETS. The most significant change is the inclusion of aviation emissions into the Swiss ETS. It is currently aspired that the treaty linking the two systems will be ratified before 2020.

A key instrument of the existing environmental and climate policy is the Federal Act on the Reduction of CO<sub>2</sub> Emissions. Together with the Federal Ordinance on the Reduction of CO<sub>2</sub> Emissions, it provides the legal framework for the reduction of domestic greenhouse gas emissions. Among other measures, the CO<sub>2</sub> emission of new passenger cars must be reduced to specific values. The relevant values are adjusted from time to time in order to take into account technological progress.

### (b) Promote renewable energy/energy efficiency?

In May 2017 Swiss voters approved a comprehensive revision of the Federal Energy Act, thereby giving their support to a first series of measures to restructure the country's energy system. The revised law provides for extensive measures to:

- reduce energy consumption;
- increase energy efficiency; and
- promote renewable energy.

Further, the revised law targets the nuclear phase-out. Existing nuclear power plants may continue operation as long as they run safely, but they will not be replaced. The construction of new nuclear power plants will be prohibited.

The revised Energy Act provides a set of measures and incentives to reduce energy consumption and to promote energy efficiency, particularly in buildings, transportation and electrical appliances. The revised law and several revised or new ordinances, replacing the previous Federal Energy Ordinance has come into force in January 2018.

## Biodiversity conservation

### Regulations

### What regulations are in place to protect biodiversity and natural areas?

The Swiss landscape has changed radically over the last 100 years due to the spread of residential housing and the construction of infrastructure. As a result, habitats for plants and animals continue to be endangered and those remaining have been reduced in quality.

The protection and preservation of such habitats is a core objective of the Federal Act on the Protection of Nature and Cultural Heritage, the Federal Act on Hunting and the Federal Act on Fishing. The related federal ordinances as well as cantonal laws and ordinances provide the relevant legal framework.