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Switzerland

ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Switzerland.

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SWITZERLAND
ENVIRONMENT

1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

The Federal Constitution of the Swiss Confederation sets out the fundament for environmental legislation. Based thereon, the protection of natural resources is provided by a wide range of Federal Acts (*Gesetze*) and complementing ordinances (*Verordnungen*) as well as further regulations on cantonal and communal level. The key Federal Acts are the following:

- Environmental Protection Act (*Umweltschutzgesetz*);
- Waters Protection Act (*Gewässerschutzgesetz*);
- Act on the Reduction of CO2 Emissions (*CO2-Gesetz*);
- Act on the Protection of Nature and Cultural Heritage (*Natur- und Heimatschutzgesetz*);
- Forest Act (*Waldgesetz*);
- Act on Hunting and the Protection of Wild Mammals and Birds (*Jagdgesetz*);
- Fishing Act (*Fischereigesetz*);
- Agriculture Act (*Landwirtschaftsgesetz*);
- Gene Technology Act (*Gentechnikgesetz*);
- Spatial Planning Act (*Raumplanungsgesetz*).

In Switzerland, environmental protection law focuses on the prevention of environmentally harmful activities as well as on the remediation and restoration of environmental harms. In principle, costs incurred in rectifying environmental pollution or damage shall not be borne by the general public but rather by those who are directly responsible for them (so-called polluter pays principle). Several Federal Acts such as the Environmental Protection Act or the Waters Protection Act provide criminal penalties (fines or even imprisonment) for deliberate or negligent infringement of specific duties under the relevant provisions. Both natural persons and legal entities can be sanctioned.

Switzerland's environmental legislation has been harmonised with European Union (EU) regulations to a significant extent in a number of sectors. Further, Switzerland is a party to numerous international environmental agreements.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

Whereas Federal Laws regulate key areas of environmental legislation, enforcement and implementation of these laws are essentially assigned to the cantons.

In some clearly specified cases (e.g. large installations for the thermal production of energy and major hydro-electric power plants), the cantons are required to canvass the opinion of the specialist federal environment authority before reaching a decision. In certain sectors, the Confederation itself is responsible for implementing legislation, in particular concerning the import or export of goods and waste and the issuing of certain licences (e.g. for railways, motorways, cableways and other infrastructure facilities).

In Switzerland, there is no single authority competent for enforcing all environmental regulations; the competence is rather determined by the applicable law. As per the applicable laws and ordinances, this may be a federal, cantonal or communal authority.

The Federal Department of the Environment, Transport, Energy and Communications (DETEC) (*Eidgenössisches Departement für Umwelt, Verkehr, Energie und Kommunikation*) supervises the cantons' implementation of environmental law and thus ensures that environmental legislation is applied equitably throughout Switzerland. The Federal Office for the Environment (*Bundesamt für Umwelt*) as well as six other federal offices report to the DETEC.

3. What is the framework for the

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environmental permitting regime in your jurisdiction?

In principle, a permit is required for all projects that could have environmental repercussions. 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.

Under the Environmental Protection Act, an authority called upon to authorise such project must assess the likely environmental impact in addition to all other legal aspects. In major projects, which could have a considerable impact on the environment, this assessment is based on a so-called environmental impact report (cf. Question 3).

If several provisions apply to a project, all necessary permits must be obtained. The authorities are required to coordinate the issuance of the various permits and the compliance with all environmental rules applicable to a project both procedurally and in substance.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Usually, environmental permits can be transferred if the corresponding permit is not linked to a particular person/entity with specific skills or qualifications or if the competent authority approves the transfer. Submitting the transfer to the approval of the competent authority aims at verifying that the conditions contained in the permit continue to be met.

The process for transferring differs depending on the type of permit. While some may only require filing an application with the competent authority under the applicable law, some others may require more complex procedures in which the authority is entitled to additional requests and investigations.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

Environmental law usually refers to the Federal Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) with regard to legal remedies or appeals. In principle, anyone with a legitimate interest may appeal against an administrative decision. Thus, an appeal is not only open to the person who applied for a permit, but also to third parties, such as organizations, who can demonstrate a certain connection of interest with the decision.

Decisions by the federal administration can usually be appealed directly to the Federal Administrative Court (*Bundesverwaltungsgericht*) without first having to go through an internal administrative appeal procedure. The possible grounds for appeal include unlawfulness, incorrect determination of the facts and the inappropriateness of the decision.

However, if an internal administrative appeal procedure is provided for by applicable law, this must first be gone through and the majority of cases is considered by cantonal or even communal authorities. As a rule, any decision can be challenged within a certain period (usually 30 days) to the next “level of appeal” that is provided by applicable law. The final cantonal level of appeal in general refers to the highest cantonal court. The fully exhausted appeal process ends at the level of the Federal Supreme Court or, where exceptions apply, at the Federal Administrative Court.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

The requirement of an EIA applies to facilities or transport infrastructures that could cause substantial pollution to the environment. The EIA is regulated by the Environmental Protection Act (EPA) and the complementing ordinance, which contains a list of projects that are subject to an EIA. This list is categorised as follows: *(i)* transport, *(ii)* energy, *(iii)* water construction, *(iv)* waste disposal, *(v)* military constructions and installations, *(vi)* sport, tourism and leisure, *(vii)* industry, and *(viii)* other installations.

The aim of an EIA is to determine whether the project complies with all relevant regulations on the protection of the environment. The result of the EIA constitutes a basis for the decision on the approval of the project and possible additional measures or conditions necessary to ensure compliance with the environmental regulation. Consequently, the EIA is an integral part of the relevant approval procedure, which is why it cannot be challenged separately.

In order for the authority to assess the environmental impact, the applicant who wishes to plan, construct or modify an installation that is subject to an EIA, must submit (after a preliminary investigation) an

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environmental impact report. The main elements of this report are *(i)* the existing condition, *(ii)* the project, including proposed measures for the protection of the environment and in the event of disaster, eventually including an outline of the main alternatives, and *(iii)* the foreseeable residual environmental impact.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

The Environmental Protection Act and the Contaminated Sites Ordinance (CSO) address the protection against and remediation of groundwater/soil contamination. Swiss law distinguishes between polluted sites (*belastete Standorte*) and contaminated sites (*sanierungsbedürftige Standorte*). A site is considered polluted if (based on past activities on the site) the soil is likely polluted by waste. If the correspondent site poses a risk to or actually affects groundwater, surface water, soil fertility or air, it is considered contaminated and must be remediated.

Furthermore, it has to be distinguished between the performance of the necessary investigation, monitoring and remediation measures (*Realleistungspflichten*) and the obligation to finance such measure (*Kostentragungspflichten*). While the polluter bears the costs, the holder of the site must carry out respectively tolerate such measures. The holder of the site is the person who exercises actual control over the site, i.e. typically the registered owner, possibly also the leaseholder or the tenant (cf. Question 12.1).

If two or more persons are responsible for the pollution, they bear the costs according to their shares of the responsibility. The public authority concerned bears the share of the costs of any person responsible who cannot be identified or is unable to pay.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

The Contaminated Sites Ordinance provides for a systematic approach regarding the polluted sites. In a first step, the polluted sites must be identified and entered into the public register of polluted sites. Then the polluted sites shall be prioritised based on a preliminary investigation. The sites considered contaminated shall be investigated in detail in order to determine the urgency of remediation. In a final phase, a remediation project for the contaminated site is developed and implemented.

In Switzerland, the obligation to identify potential soil and groundwater contamination is generally addressed to the public authorities. The authorities must identify the polluted sites by evaluating existing information such as maps, registers and reports. They may obtain information from the holders of the sites or from third parties. However, further investigation must in general be carried out (but not necessarily be paid) by the holder of the site (cf. Question 4.1).

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

There is no general duty to report pollution in the Environmental Protection Act. However, specific duties can be found in particular acts (e.g. duty to report a leak of liquids, which may pollute the waters in accordance with the Waters Protection Act). In addition, environmental permits may contain specific obligations in connection with pollution discovered to be migrating to neighbouring land or elsewhere.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

The rules of environmental law do not provide for a general right of action of the landowner against the former owner of the land in this case, except that the landowner may initiate proceedings to have the competent authorities allocate resulting inspection, monitoring and remediation costs. Further, a landowner may have standing to sue a former landowner on the basis of private law provisions (e.g. action for breach of the purchase contract, cf. Question 12.1).

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

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The legal basis for environmentally sound waste management is contained in particular in the Water Protection Act and the Environmental Protection Act. The Environmental Protection Act sets forth three general principles in respect of waste: *(i)* the production of waste shall be avoided wherever possible; *(ii)* waste must be recovered wherever possible; *(iii)* waste must be disposed of in an environmentally compatible way and, insofar as this is possible and reasonable, within Switzerland.

Furthermore, there are various ordinances at the federal level which specify further details (e.g. Ordinance on the Avoidance and the Disposal of Waste (*Verordnung über die Vermeidung und die Entsorgung von Abfällen*), Ordinance on the Movement of Waste (*Verordnung über den Verkehr mit Abfällen*), Ordinance on Beverage Containers (*Verordnung über Getränkeverpackungen*), etc.).

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

As it can be difficult to determine the respective producer of waste, the Environmental Protection Act does not focus on the producer but on the so-called holder of the waste (*Inhaber der Abfälle*). Holder of the waste is the person who has actual control over the product deemed to be waste. Pursuant to the general rule set forth in the Environmental Protection Act, the holder of waste must bear the *costs* of its disposal. If such holder cannot be identified or if it cannot fulfil said obligation due to insolvency, the cantons shall pay the disposal costs.

Further, the *actual disposal* of the waste shall be carried out by the cantons as well if the holder of the waste cannot be identified or if it is insolvent.

Hence, the producer of waste in general does not retain liabilities unless it is the holder of such waste. However, certain implementing ordinances of the Federal Council provide for regulations and rules with regards to certain categories of waste which may deviate from above-mentioned general rule.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

According to the Environmental Protection Act, the Federal Council may require those, who put products into circulation that are suitable for recovery or need special treatment, to accept the return of these products. The obligation to take back waste free of charge currently applies to the following product categories:

- Halogenated solvents;
- Biocidal products;
- Plant protection products;
- Batteries;
- Electrical and electronic equipment.

Further, the Ordinance on Beverage Containers sets forth the following take-back obligations for beverage containers:

- Dealers, manufacturers and importers that supply beverages in **refillable containers** must take back refillable containers of all the products they stock and refund the deposit;
- Dealers, manufacturers and importers who supply beverages in **non-refillable PVC containers** must take back non-refillable PVC containers of all the products they stock, refund the deposit and at their own expense pass the containers on for recycling.;
- Dealers, manufacturers and importers who supply beverages in **non-refillable PET or metal containers** to consumers and who do not ensure the disposal of all containers they supply through financial contributions to a private organisation must take back such non-refillable containers at all points of sale.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

Owners/occupiers of premises have no general duty to remove asbestos-containing materials from buildings. Only if the health of persons is endangered by the release of asbestos fibres, the respective owner/occupier of such premise has a duty to remove.

Failure to do so can result in a so-called liability of the property owner (*Werkeigentümerhaftung*). According to this liability scheme, the owner of a building is liable for any damage caused by defect in its construction or design or by inadequate maintenance. Further, a person who is at risk of suffering damage due to a building or structure belonging to another person has the right to

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request that the owner of the relevant building takes the necessary steps to avert the danger.

Further, an employer has health related duties towards its employees under applicable labour laws including under the so-called EKAS-guidelines that provide for asbestos specific protective measures.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

As Switzerland is not a member of the European Union, European community law is generally not directly applicable in Switzerland. Hence, the EU's REACH (Registration, Authorisation and Restriction of Chemicals) Regulation 1907/2006, which applies to manufacturers of chemicals and manufacturers of products containing chemicals, and the EU's CLP (Classification, Labelling and Packaging) Regulation 1272/2008, which applies to suppliers of substances and mixtures, are not directly applicable in Switzerland.

REACH regulates the handling of chemical substances within the EU. Swiss companies producing in the EU or acting as importers in the EU have to comply with the full REACH obligations for chemical substances over one ton per year. As opposed to this, Swiss companies solely exporting chemical substances to the EU are not per se subject to REACH.

On July 1, 2015, the total revision of the Swiss Chemicals Ordinance (*Chemikalienverordnung*) came into force, which also included certain technical adaptations to the REACH Regulation. However, the introduction of the core element of REACH (registration and authorisation of the chemical) would require amendments at the legislative level. Whether and to what extent REACH principles are to be introduced in Switzerland is still open.

With the enactment of **CLP-Regulation**, the European Union has implemented the so-called "Globally Harmonized System of Classification and Labelling of Chemicals" (**GHS**), an international set of rules for the classification, labelling and packaging of chemicals which needs to be implemented in national law. As already mentioned, the CLP-Regulation is not directly applicable in Switzerland. However, the implementation of the GHS is taking place in a stepwise fashion through amendment of the already existing Chemical Ordinance (*Chemikalienverordnung*). The current Chemicals Ordinance is largely harmonised with the European requirements for the classification, labelling and packaging of chemicals set forth in the CLP-Regulation. Wherever possible, the Chemicals Ordinance refers directly to the relevant articles and annexes of the CLP-Regulation, instead of incorporating their content in full into the Chemicals Ordinance.

In Switzerland, there are a number of other product regulations, e.g. the **Chemical Risk Reduction Ordinance** (*Verordnung zur Reduktion von Risiken beim Umgang mit bestimmten besonders gefährlichen Stoffen, Zubereitungen und Gegenständen*), the **Biocidal Products Ordinance** (*Verordnung über das Inverkehrbringen von und den Umgang mit Biozidprodukten*) and the **Fertiliser Ordinance** (*Verordnung über das Inverkehrbringen von Düngern*)

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

One of the purposes of the **Energy Act** (*Energiegesetz*) is the economical and efficient use of energy. Based on the Energy Act, the Federal Council has issued and enacted the so-called **Ordinance on Energy Efficiency Requirements for Series-Produced Installations, Vehicles and Devices** (*Verordnung über die Anforderungen an die Energieeffizienz serienmässig hergestellter Anlagen, Fahrzeuge und Geräte)*. The purpose of this Ordinance is to reduce the energy consumption of mass-produced installations, vehicles and devices, and to increase their energy efficiency.

The Ordinance provides for various annexes, which refer to different product categories (e.g. mains-operated refrigerators, mains-operated household washing machines, etc.). The annexes specify the energy efficiency requirements for the placing on the market, the conformity assessment procedure and the labelling for the respective product category. The Federal Office of Energy (FOE) shall check in an appropriate manner and to an appropriate extent, whether the mass-produced installations, vehicles and devices as well as their mass-produced components that are placed or supplied on the market comply with the provisions of this Ordinance. For this purpose, the FOE carries out random checks and controls. If the inspection shows that provisions of this Ordinance have been violated, the FOE shall take appropriate measures. Among other things, it may prohibit the placing on the market and the supply of an installation, a vehicle or device or a component thereof, or it may order the rectification of the infringement, the recall, the seizure and the confiscation of an installation, a vehicle or a device or a component thereof.

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Eventually, persons may be held criminally liable if they affix labels, signs, symbols or inscriptions to products not covered by this Ordinance, which may lead to confusion with the labelling regulated by this Ordinance and its annexes.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

The key laws on this topic are the Federal Act on the Reduction of CO2 Emissions (CO2-Act) and the respective CO2-Ordinance whereas the latter sets forth further details to the CO2-Act. Switzerland ratified the Paris Agreement on climate change on October 6, 2017. In the course of the ratification, the Swiss parliament revised the CO2-Act. In summer 2021, the revision of the CO2-Act was rejected in the referendum. On September 16, 2022, the Federal Council submitted the draft amendment of the CO2-Act to the Federal parliament for approval (cf. Question 16).

With the revised CO2-Act, the Federal Council aims to halve Switzerland's greenhouse gas emissions by 2030 compared to 1990.

The current CO2-Act defines technical measures to reduce CO2-emissions from passenger cars, vans and light trucks. According to these provisions, an individual target is calculated for each importer or manufacturer of vehicles. If the average CO2-emissions of an importer's or manufacturer's passenger car fleet exceed this individual target, the importer or manufacturer in question must pay the federal government a legally defined amount. Further, the CO2-Act obliges the cantons to ensure the reduction of CO2-emissions from buildings. The CO2-Act contains furthermore provisions regarding emissions trading and emissions trading schemes respectively. Eventually, the CO2-Act stipulates that the federal government levies a CO2 tax on the production, extraction and import of fuels. One third of the revenue from the CO2 tax is used for measures to reduce CO2-emissions from buildings in the long term.

18. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

In 2019, the Federal Council decided that, by 2050, Switzerland should not emit more greenhouse gases than can be absorbed naturally or by technical means (so-called "net zero target). In January 2021, the Federal Council adopted the "Long-Term Climate Strategy for Switzerland" in fulfilment of the obligations under the Paris Agreement. The Long-Term Climate Strategy formulates ten basic strategic principles that will shape Swiss climate policy in the coming years. It shows that Switzerland can reduce its greenhouse gas emissions in transport, buildings and industry by almost 90% by 2050.

The CO2-Act, which is currently under revision, is a key requisite for achieving the long-term climate goal. The law aims at putting back Switzerland on track for the climate target of minus 50% greenhouse gas emissions by 2030 and shall set the course for the net zero target.

19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms? 9.3 To what extent does your jurisdiction regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms? Who are the regulators in relation to greenwashing allegations?

In Switzerland, the admissibility of such "sustainability terms" is not regulated in a separate federal act or ordinance. Rather, depending on the product or service, different regulatory requirements may be applicable and, consequently, different regulators are responsible for the enforcement of such requirements. In the context of collective investment schemes, for example, the Swiss Financial Market Supervisory Authority FINMA clarified the information that must be included in the documentation if funds are described as sustainable (so-called "greenwashing" prevention) whereas the FINMA is also the authority responsible for the enforcement of these regulations.

In general, the Federal Act against Unfair Competition (*Bundesgesetz gegen den unlauteren Wettbewerb*) must always be observed for competition-relevant information.

In principle, said Act stipulates that information conveyed to the customer must be correct and true on the one hand and must not be misleading or deceptive on the other. Anyone who provides incorrect or misleading information about himself, his products or his business name or favours third parties in competition

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correspondingly is acting unfairly.

Such unfair competition can be accused by competitors or consumer protection associations. The Act against Unfair Competition provides for criminal sanctions of up to three years imprisonment. Therefore, terms such as “green”, “sustainable” or similar shall only be used, if the accuracy of this information can be proven by independent studies or other documents.

For the use of ecolabels, which are typically protected under trademark law, the individual terms of use must be complied with.

20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

The Swiss Cartel Act (*Kartellgesetz*) and the respective ordinances do not address environmental topics explicitly and the Swiss Competition Commission (**ComCo**) has so far not provided any general guidance with respect to the assessment of climate change issues under Swiss competition law. Therefore, the general competition law rules have to be applied to environmental and climate change related topics.

The Cartel Act is applicable to companies under private and public law, which are part of or enter into agreements affecting competition (*Wettbewerbsabreden*), exercise market power or participate in mergers. An agreement is considered an agreement affecting competition within the meaning of Swiss antitrust law if the participating companies consciously and intentionally cooperate with each other with the purpose or effect of restricting competition. This must be determined on a case-by-case basis.

Generally speaking, agreements between companies, whose sole purpose is to comply with applicable laws, are not deemed unlawful. In other words, companies can mutually oblige each other to respect the legal environmental requirements. Further, it does not qualify as an agreement affecting competition if two or more companies jointly establish an environmental or sustainability label, provided it is a non-exclusive label accessible on a non-discriminatory basis for all interested parties and does not contain any price-related elements.

If an agreement qualifies as an agreement affecting competition and does not eliminate competition, it must be further examined whether (*i*) the restriction of competition is significant and, if so, (*ii*) whether there is an economic efficiency ground that could justify the restriction of competition. With regards to the latter, the Swiss Cartel Act sets forth that agreements affecting competition are deemed to be justified if, amongst others, they are necessary in order to exploit resources more rationally, which makes the Cartel Act open for environmental considerations. However, ComCo’s practice so far required that projects promote the more rational exploitation of resources directly in order to be justified on grounds of economic efficiency. Therefore, projects that serve environmental protection goals have to be reviewed under Swiss competition law on a case-by-case basis.

21. Have there been any notable court judgments in relation to climate change litigation over the past three years?

Preliminarily, it seems worth mentioning that Switzerland does not have a litigious culture. In the vast majority of cases, disputes are resolved out of court. However, there are four noteworthy court judgments / court proceedings:

1. In the course of the emissions-rigging scandal of the German car manufacturer Volkswagen, a consumer group filed *(i)* a collective action against Volkswagen and the Swiss importer AMAG, seeking to establish and confirm that Volkswagen and AMAG had misled buyers and violated Swiss law, and *(ii)* claims for damages linked to aforementioned emissions-rigging. The commercial court of Zurich refused to hear the collective action due to lack of legal protection interest of the consumer group and dismissed the claims for damages due to the lack of legitimation of the consumer group to raise such claims. The Federal Supreme Court has confirmed these judgments.
2. In 2018, a dozen climate activists invaded a Swiss bank branch to draw attention to the dangers of climate change and namely the bank’s investments in fossil fuels. The bank in question filed criminal charges against the climate activists for trespassing. The court of first instance acquitted the climate activists of this charge. The court acknowledged that the climate activists had committed trespass with their action. However, according to the court, this was the only effective way to get the bank to react and to get the necessary attention from the media and the public. Therefore, the court considered the climate activists’ action necessary and reasonable, and their actions were therefore justified. This ruling caused great astonishment in Switzerland as well as abroad. However, the

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Federal Supreme Court subsequently denied a justifiable state of emergency (*rechtfertigender Notstand*) and convicted the climate activists of trespassing.

3. In 2016, the so-called Climate Seniors (*Klimaseniorinnen*) approached the federal government and requested increased climate protection to protect their fundamental rights to life and health. They were not heard, and the Federal Administrative Court and the Federal Supreme Court subsequently rejected their complaints. As a result, the Climate Seniors filed a complaint against Switzerland with the European Court of Human Rights in November 2020, claiming that the federal government was not taking enough action against global warming and was thus not protection older women adequately from the consequences of the climate crisis. The climate complaint is currently still pending. The Swiss climate complaint is one of the first of its kind at the Court. The Court's response to the question of whether states are violating human rights through inadequate climate protection is seen as a landmark case.
4. In recent years, various climate protests have taken place in Switzerland, on the occasion of which streets were blocked. In the course of these protests, many activists were arrested and several court proceedings took place. So far, most of the activists were charged guilty. However, a first-instance judge in Zurich caused a stir in 2022 by acquitting a woman who participated in a climate protest and by announcing that he will consistently acquit climate activists in the future if those activists demonstrate peacefully and without violence for one of the most pressing issues of the presence. The Supreme Court of the Canton of Zurich, however, has so far always charged climate activists in such court proceedings, namely for coercion (*Nötigung*) and for interference with operations that serve the general public (*Störung von Betrieben, die der Allgemeinheit dienen*).

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

The Swiss CO2-Act is currently being revised (cf. question 16 for more details). Further, there are numerous legislative changes and reforms in the relation to climate change ongoing at cantonal and communal level.

23. Has the energy crisis/global events resulted in any impact on environmental regulations and/or change in approach to environmental and climate change policy?

To prevent an electricity shortage in winter, the Federal Council has decided on and implemented various measures, such as the hydropower reserve, the construction of a reserve power plant in the canton of Aargau, the increase of capacities in the transmission grid, a "rescue parachute" for system-relevant electricity companies, the temporary reduction of the residual water levy and the implementation of an energy-saving campaign.

Further to these factual measures, the energy crisis/global events impact Switzerland's environmental and climate change policy in various ways.

In September 2022, the Swiss parliament has approved the Federal Act on Climate Protection Targets, Innovation and Strengthening Energy Security (*Bundesgesetz über die Ziele im Klimaschutz, die Innovation und die Stärkung der Energiesicherheit*), which aims at, among others, reducing the greenhouse gas emissions in order for Switzerland to achieve its net zero target by 2050. This Act has been set up and drafted as an indirect counterproposal to an initiative launched in 2019 regarding the protection of glaciers. Hence, this Act did not emerge directly from the energy crisis/global events. However, the Federal Council has recognized the urgency to reduce dependencies on fossil energies in view of current global events and therefore welcomes parliament's proposal in the aforementioned Act to launch a special program for the replacement of heating systems. The deadline for the referendum expires on January 19, 2023. If no referendum is raised, the Federal Council will determine as per when the Act will enter into force.

On September 7, 2022, the Federal Council has approved the Ordinance on the Establishment of a Hydropower Reserve (*Verordnung zur Errichtung einer Wasserkraftreserve*). This reserve shall strengthen Switzerland's energy supply for the critical phase towards the end of winter and can be called up specifically to generate electricity when needed. The ordinance has entered into force as per October 1, 2022, and is timely limited until mid-2025.

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On December 16, 2022, the Federal Council has adopted an amendment to the Ordinance on Air Pollution Control (*Luftreinhalte-Verordnung*). This shall allow the cantons to set milder emission limits in exceptional cases and under strict conditions.

On December 21, 2022, the Federal Council has approved the Ordinance on the Operation of Reserve Power Plants and Emergency Power Groups in the Event of an Imminent or Existing Shortage (*Verordnung über den Betrieb von Reservekraftwerken und Notstromgruppen bei einer unmittelbar drohenden oder bereits bestehenden Mangellage*). It will enter into force by mid-February 2023 at the latest and regulates the use of the hydropower reserve and a supplementary reserve consisting of reserve power plants and emergency power groups to strengthen the power supply in Switzerland. In order for the plants of the supplementary reserve to be able to run between February and May 2023, exceptional provisions for air pollution control and noise protection are required. These are regulated partly in the present ordinance and partly in the respective operating licenses (*Betriebsbewilligungen*).

24. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

The Swiss Code of Obligations provides for general liability rules that constitute the legal basis for all liabilities. They apply when no other provision or no *lex specialis* is applicable. According to the general rule, whoever acts in breach of a legal duty or in violation of the law has to compensate the damage caused by the faulty act.

With regard to pollution or damage resulting from a building or land property, the owner of the corresponding real estate can be held liable either on the law of private nuisance (Art. 679 and Art. 684 Swiss Civil Code) or on the so-called building owner's liability concerning defective works (Art. 58 Swiss Code of Obligations).

The Environmental Protection Act as *lex specialis* deals with the responsibility of polluters. Accordingly, 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. Relieve of liability is only possible in case of force majeure or if a third party or the insured party itself is responsible.

If the damage is caused by the company, it can be held fully liable in accordance with the polluter pays principle. The shareholders can only be directly liable to the extent that the company's veil is lifted, which only happens in exceptional cases. The directors of the company as well as members of its executive management are personally liable to the company only for damages resulting from a breach of their duties. A third party or a parent company may be held liable as a de facto corporate body of the company (*faktische Organschaft*). The typical situation of a de facto corporate body would be that a parent company (through representatives) uses its decision-making powers over the subsidiary, which therefore refrains from taking any actions that would be required under environmental law. This may lead to a corporate liability of the parent company vis-à-vis the subsidiary, its shareholders and/or creditors. Third parties such as banks, which are not involved in the decision-making process of the company and merely maintain a business relationship that is not causal to the damage/pollution (e.g. lending money), cannot be held liable for such damage/pollution.

25. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

In case of a share deal, the target entity remains site holder and thus responsible for any pre-acquisition environmental liabilities. Therefore, the buyer acquires environmental risks indirectly. Share purchase agreements may provide for representations and warranties, as well as for indemnification obligations with respect to environmental matters.

In case of an asset deal, pre-acquisition environmental liabilities stay with the polluter. In this case, the seller may retain his environmental liability based on the polluter pays principle. However, the buyer becomes a so-called "disturber by status" (*Zustandsstörer*) and assumes the obligation to perform necessary investigation, monitoring and remediation measures (*Realleistungspflicht*). Under certain circumstances, the buyer must bear between 10% and 30% of the damage costs, whereas the polluter must cover the residual costs. The buyer generally requests warranties and

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indemnifications to cover such risks or an adequate reduction of the purchase price. The allocation of environmental risks and liabilities is usually negotiated in great detail between buyer and seller.

26. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

In general, both seller and buyer have certain duties of care and disclosure at a pre-contractual stage. The parties are obliged to inform each other about facts, which are presumably important for the other party. If the seller does not disclose facts substantially relevant under environmental law, this may entitle the buyer to assert warranty claims or claims for damages.

The environmental aspects to be considered in real estate transactions depend on the specific activities the target company is carrying out or has carried out. In all transactions, information provided by the public registers (cf. Question 29) as well as other property-related documents are reviewed in order to identify major risks. For larger transactions it is customary practice that a technical and legal environmental due diligence is carried out. Typically a technical due diligence consists of a soil pollution, soil quality and building pollution analyses and includes also the estimated remediation costs. In the case of a target company with (potentially) large environmental impact, the focus on environmental due diligence is expanded accordingly.

27. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

In Switzerland, environmental insurance such as pollution legal liability is usually a supplement to common business liability insurance. The scope of coverage is linked to obligations based on environmental liability laws and therefore depends on the type of the company's field of activity.

Other types of environmental insurance, e.g. clean-up cost insurance to cover remediation costs of a polluted site, are also available.

In recent years, the use of a warranty & indemnity insurance (W&I insurance) to cover warranties of the seller in real estate transactions has become more popular in the real estate practice. However, the standard exclusion in the policies typically regard environmental issues of the real estate, in particular information and issues that are known will not be covered. The W&I-insurer typically has access to the date room and reviews the due diligence reports of the purchaser prior to issuing the policy.

28. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

At this point, reference can be made to the already mentioned public register of polluted sites, that is accessible online and to everyone.

Another tool used throughout Switzerland is the cadastre of public law restrictions on land ownership. The information provided by this cadastre includes building zones, design plans, polluted sites or groundwater protection zones. The cadastre is constantly evolving. Six more topics and new functionalities are to be added in the course of 2023, such as forest reserves and project planning zones for high-voltage installations. This information is also available online and to everyone.

29. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

Governmental agencies maintain publicly available registers (cf. Question 29).

Moreover, the Ordinance on the Register relating to Pollutant Release and the Transfer of Waste and of Pollutants in Waste Water (*Verordnung zum Register über die Freisetzung von Schadstoffen sowie den Transfer von Abfällen und von Schadstoffen in Abwasser*) shall guarantee public access to information on pollutants released into the water, the air or the soil by listed installations and plants. Reporting happens on a yearly basis.

The Environmental Protection Act provides for further disclosure of information about environmental protection and levels of environmental pollution (e.g. publishing studies on environmental pollution or on the success of environmental measures), whereby overriding private and public interests in confidentiality as well as

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manufacturing and business secrecy are reserved in every case. When it comes to private data and therefore private interests, the information requested will not be disclosed offhand.

The Freedom of Information Act (*Öffentlichkeitsgesetz*) seeks to promote transparency with regard to the activities of the Federal Administration. To this end, it contributes to informing the public by ensuring access to official documents. Any person has (in principle) the right to inspect (environmental) information in official documents and to request information from public bodies at federal level about the content of these documents. Private entities who have been entrusted with governmental duties may also be subject to the obligation of disclosure. In the case of cantonal authorities, the right to inspect is governed by cantonal law. The applicant does not need to prove a specific legal interest. However, access to the requested information can be denied for several reasons (e.g. in order to protect public interests such as security aspects).

30. What impact, if any, has COVID-19 had in relation to environmental regulations and enforcement in your jurisdiction?

The Ordinance on Relief in Environmental Law in Connection with Covid-19 (*Verordnung über Erleichterungen im Umweltrecht im Zusammenhang mit Covid-19*) provided for temporary deviations from environmental law provisions, e.g. for the exemption from the incentive tax on disinfectants. It was effective from June 15, 2020 through March 31, 2022.

31. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

In Switzerland, the most important reforms in environmental law refer to the CO2-Act as well as the Responsible Business Initiative and its indirect counter-proposal respectively.

The voters rejected the revision of the CO2-Act, which should have entered into force in 2022 in order to replace the current act. In particular, the planned increase or expansion of levies was controversial. In order to ensure the seamless continuation of important climate protection instruments despite the failed revision, the parliament decided to extend the reduction target in the current CO2-Act until the end of 2024. As no referendum was raised, the corresponding provisions entered into force retroactively as of January 1, 2022.

On September 16, 2022, the Federal Council has submitted the Federal parliament a draft amendment of the CO2-Act for its approval. The current revision aims at implementing new measures as of 2025 in order to halve greenhouse gas emissions by 2030 and to achieve the 2030 climate target. Together with this draft amendment, the Federal Council has submitted to the Federal parliament for its approval drafts of five federal resolutions (*Bundesbeschlüsse*) regarding the promotion of (*i*) electric propulsion technologies, (*ii*) renewable energy, (*iii*) renewable aviation fuels, (*iv*) cross-border passenger rail transport and (*v*) charging infrastructure for electric vehicles.

The Responsible Business Initiative was submitted in 2016 and called for increased accountability for Swiss based multinational companies to ensure that their business activities respect and comply with human rights and internationally recognised environmental standards. After the Responsible Business Initiative failed in the referendum of November 2021, the indirect counter-proposal entered into force as of January 1, 2022. Following the conclusion of the consultation process, the Federal Council approved the corresponding ordinance on the specification of the new due diligence requirements in the areas of child labour as well as minerals and metals from conflict zones, which are part of the legislative amendments. They will apply for the first time to the 2023 financial year.

On November 23, 2022 the Federal Council adopted the Ordinance on Climate Reporting for Large Swiss Companies (*Verordnung zur verbindlichen Klimaberichterstattung grosser Unternehmen*), which will enter into force on January 1, 2024. According to this ordinance, public companies, banks and insurance companies with more than 500 employees and a balance sheet of at least 20 million Swiss francs or sales of more than 40 million Swiss over the course of two consecutive years are required to report publicly on climate topics. In particular, aforementioned companies are required to include certain climate disclosures in their publicly available report on non-financial matters. In order to comply with the requirements of the ordinance, the climate disclosures must rely on the Recommendations of the Task Force on Climate-related Financial Disclosures (**TCFD**) and further include a climate transition plan as well as quantitative CO2 targets and – where relevant – targets for other greenhouse gases. These climate disclosures must allow a qualitative and quantitative overall assessment of the effectiveness of the measures taken in connection with climate issues.

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Further, the Swiss parliament has issued a draft for a Federal Act on Climate Protection Targets, Innovation and Strengthening Energy Security (cf. Question 10).

Eventually, the second stage of the revision of the Spatial Planning Act (**SPA 2**) is currently being discussed in parliament. The SPA 2 concerns construction outside the building zones and *inter alia* aims to stabilise the number of buildings in the non-building zones. Further numerous efforts to optimise environmental law are underway at cantonal and communal level.

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