

A photograph of a nuclear power plant with three large cooling towers and several smokestacks, set against a blue sky with light clouds. The foreground is filled with dense green foliage.

# Q&A on Environmental Law in Czech Republic

**C L I F F O R D**  
**C H A N C E**

# Contents

|   |    |
|---|----|
| Introduction  | 7  |
| Environmental regulatory framework  | 7  |
| 1. What are the key pieces of environmental legislation and the regulatory authorities in your jurisdiction? .....  | 7  |
| Essential pieces of legislation .....   | 7  |
| Regulatory enforcement  | 8  |
| 2. To what extent are environmental requirements enforced by regulators in your jurisdiction?..   | 8  |
| Environmental NGOs  | 8  |
| 3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active in your jurisdiction? .....  | 8  |
| Environmental permits   | 9  |
| 4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits? ..... | 9  |
| Integrated/separate permitting regime.....  | 9  |
| Single/separate permits .....   | 9  |
| 5. What is the framework for the integrated permitting regime?.....   | 9  |
| Permits and regulator .....   | 9  |
| Length of permit .....  | 9  |
| Restrictions on transfer .....  | 9  |
| Penalties .....   | 9  |
| Water pollution   | 10 |
| 6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?.....   | 10 |
| Permits and regulator.....  | 10 |
| Prohibited activities .....   | 10 |

|  |           |
|--|-----------|
| Clean-up/compensation .....  | 10        |
| Penalties .....  | 10        |
| <b>Air pollution</b>   | <b>10</b> |
| 7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)? .....   | 10        |
| Permits and regulator .....  | 10        |
| Prohibited activities .....  | 10        |
| Clean-up/compensation .....  | 10        |
| Penalties .....  | 10        |
| <b>Climate change, renewable energy and energy efficiency</b>  | <b>10</b> |
| 8. Are there any national targets or legal requirements for reducing greenhouse gas emissions, increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)? Is there a national strategy on climate change, renewable energy and/or energy efficiency? ..... | 10        |
| Emissions targets .....  | 11        |
| Renewable energy .....   | 11        |
| Increasing energy efficiency .....   | 11        |
| 9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented? .....  | 11        |
| Parties to UNFCCC/Kyoto Protocol .....   | 11        |
| Implementation .....   | 12        |
| 10. What, if any, emissions/carbon trading schemes operate in your jurisdiction? .....   | 12        |
| Aviation .....   | 12        |
| Phase III .....  | 12        |
| <b>Environmental impact assessments</b>  | <b>12</b> |
| 11. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects? .....   | 12        |
| Scope .....  | 12        |
| Permits and regulator .....  | 13        |
| Penalties .....  | 13        |
| <b>Waste</b>   | <b>13</b> |
| 12. What is the regulatory regime for waste? .....   | 13        |

|   |           |
|---|-----------|
| Permits and regulator .....   | 13        |
| Prohibited activities .....   | 13        |
| Operator criteria .....   | 13        |
| Special rules for certain waste .....   | 13        |
| Electronic devices from private households. ....  | 14        |
| Penalties .....   | 14        |
| <b>Asbestos</b> .....   | <b>14</b> |
| 13. What is the regulatory regime for asbestos in buildings? .....  | 14        |
| Prohibited activities .....   | 14        |
| Main obligations .....  | 14        |
| Permits and regulator .....   | 14        |
| Penalties .....   | 14        |
| <b>Contaminated land</b> .....  | <b>14</b> |
| 14. What is the regulatory regime for contaminated land? .....  | 14        |
| Regulator and legislation .....   | 14        |
| Investigation and clean-up .....  | 14        |
| Penalties .....   | 15        |
| 15. Who is liable for the clean-up of contaminated land? Can this be excluded? .....  | 15        |
| Liable party .....  | 15        |
| Owner/occupier liability .....  | 15        |
| Previous owner/occupier liability .....   | 15        |
| Limitation of liability .....   | 15        |
| 16. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability? ..... | 16        |
| Lender liability .....  | 16        |
| Minimising liability .....  | 16        |
| 17. Can an individual bring legal action against a polluter, owner or occupier? .....   | 16        |
| <b>Environmental liability and asset/share transfers</b> .....  | <b>16</b> |
| 18. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)? .....                          | 16        |
| Asset sale .....  | 16        |
| Share sale .....  | 16        |

|  |           |
|--|-----------|
| 19. In what circumstances can a seller retain environmental liability after an asset sale/a share sale? .....  | 16        |
| Asset sale .....   | 16        |
| Share sale.....  | 17        |
| 20. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale? .....   | 17        |
| Asset sale .....   | 17        |
| Share sale.....  | 17        |
| 21. Is environmental due diligence common in an asset sale/a share sale? .....   | 17        |
| Scope .....  | 17        |
| Types of assessment .....  | 17        |
| 22. Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale? .....  | 17        |
| Asset sale .....   | 17        |
| Share sale.....  | 18        |
| 23. Are there usually limits on environmental warranties and indemnities? .....  | 18        |
| <b>Reporting and auditing</b> .....  | <b>18</b> |
| 24. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers? .....   | 18        |
| Public registers .....   | 18        |
| Third party procedures .....   | 18        |
| 25. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance? .....                                     | 18        |
| Environmental auditing.....  | 18        |
| Reporting requirements.....  | 18        |
| 26. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)? .....   | 18        |
| 27. What access powers do environmental regulators have to access a company? .....   | 18        |
| <b>Environmental insurance</b> .....   | <b>18</b> |
| 28. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice? ..... | 18        |
| Types of insurance and risk .....  | 19        |
| Obtaining insurance .....  | 19        |

|  |    |
|--|----|
| Environmental tax  | 19 |
| 29. What are the main environmental taxes in your jurisdiction? .....  | 19 |
| Tax liability .....  | 19 |
| Tax rates.....   | 19 |
| Reform   | 19 |
| 30. What proposals are there for significant reform (changes) of environmental law in your jurisdiction? ..... | 19 |
| The regulatory authorities   | 19 |
| The Ministry of the Environment ( <i>Ministerstvo životního prostředí</i> ).....                               | 19 |
| The Czech Environmental Inspectorate (Česká inspekce životního prostředí) .....                                | 19 |
| Regional and local councils.....   | 19 |
| Online resources .....   | 20 |
| Appendix: Author details   | 21 |

## Introduction

Using a Q&A format, this article provides a guide to environmental law in the Czech Republic and gives a practical description of a wide range of topics including:

- Emissions to air and water
- Environmental impact assessments
- Waste
- Contaminated land
- Environmental issues in transactions

The article was prepared by of Emil Holub and Jan Bílek of Clifford Chance, Prague. Details of the authors can be found in the Appendix.

It is one of a series of 10 articles produced by Clifford Chance covering Australia, Belgium, Czech Republic, France, Italy, Germany, the Netherlands, Poland, Spain and the United Kingdom (England & Wales). These articles can be found on this link:

<http://www.cliffordchance.com/environment>

This article was first published by Practical Law. The law is stated as at 1 September 2013.

## Environmental regulatory framework

### 1. What are the key pieces of environmental legislation and the regulatory authorities in your jurisdiction?

#### Essential pieces of legislation

Environmental protection is to a significant extent governed by directly applicable or implemented EU legislation. The principal pieces of legislation at the national level are the:

- Civil Code (Act 40/1964 Coll.).
- Act on the Conditions of Transfer of State-owned Property to Other Persons (Act 92/1991 Coll.).
- Act on the Environment (Act 17/1992 Coll.).
- Act on Nature and Landscape Protection (Act 114/1992 Coll.).
- Agricultural Land Protection Act (Act 334/1992 Coll.).
- Forestry Act (Act 289/1995 Coll.).
- Atomic Act (Act 18/1997 Coll.).
- Environmental Information Act (Act 123/1998 Coll.).
- Energy Efficiency Act (Act 406/2000 Coll.).
- Energy Act (Act 458/2000 Coll.).
- Environmental Impact Assessment Act (Act 100/2001 Coll.).
- Waste Act (Act 185/2001 Coll.).
- Water Act (Act 254/2001 Coll.).
- Packaging Act (Act 477/2001 Coll.).
- Integrated Prevention Act (Act 76/2002 Coll.).
- Air Protection Act (Act 201/2012 Coll.).
- Act on Emission Allowances (Act 383/2012 Coll.).
- Renewable Resources Act (Act 165/2012 Coll.).
- Building Code (Act 183/2006 Coll.).
- Act on Labour Safety (Act 309/2006 Coll.).

- Act on Prevention and Remedying of Environmental Damage (Act 167/2008 Coll.) (PRED).
- Criminal Code (Act 40/2009 Coll.).
- Act on Criminal Liability of Legal Entities (Act 418/2011 Coll.).

The main government body responsible for environmental matters is the Ministry of the Environment (Ministerstvo životního prostředí). In certain specific cases, for example, when public health or energy policy is involved, other government bodies (for example, the Ministry of Public Health or the Ministry of Industry and Trade) may be the competent authority. Where the possible environmental impact is confined to a region/district, the regional/district municipality is the competent body.

## Regulatory enforcement

### 2. To what extent are environmental requirements enforced by regulators in your jurisdiction?

The level of enforcement depends on the approach of the responsible local/central authority, but generally speaking, environmental laws are enforced quite strictly. Third party complaints are not necessary for the initiation of administrative proceedings by the regulator.

The Criminal Code provides that any flagrant breach of the legislation listed in Question 1 gives rise to criminal liability.

The possibility of corporate criminal liability was introduced into Czech law with effect from 1 January 2012, and covers, among other things, environment related criminal acts. Both individuals (for example, directors) and companies can be held criminally liable for the same offence. The criminal liability of a legal entity passes to any successor legal entity irrespective of mergers or restructurings.

Since the Act on Criminal Liability of Legal Entities only came into effect in January 2012, there do not appear to be any cases where a company has already been held criminally liable in relation to an environmental issue.

Administrative as well as criminal liability is a liability to public authorities. Civil liability, on the other hand, is regarded as a liability arising between individuals and legal entities.

Unlike criminal liability, the regulation of administrative liability is split between various pieces of legislation, and in most cases the liability for administrative offences committed by legal entities is strict (that is, without any regard to culpability (intention/negligence) or other

subjective aspects). Administrative liability relating to environmental law is unique insofar as damage (harm) to the environment is a broader notion than the concept of damage under civil law and also includes harm that is not financially quantifiable.

In the field of civil liability, environmental matters do not occupy a distinctive place. However, Czech law provides for strict liability in cases where damage (including damage to the environment) results from certain industrial or other specific activities. In general, civil law damages can only be awarded if there is culpability (intention or negligence) on the side of the liable party. However, strict liability is the rule in relation to damage caused by industrial activities or activities that usually generate particular risks for third parties (such as the operation of motor vehicles). Notably, a polluter cannot be relieved of its civil liability for damage to the environment even if it has paid the relevant pollution fees (Supreme Court decision, 25 Cdo 769/2006).

## Environmental NGOs

### 3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active in your jurisdiction?

There are a number of both internationally renowned and local NGOs active in the environmental area. In the authors' experience, they are mostly active in the energy, chemicals and mining sectors.

One of the most notable cases of NGO involvement in recent history is the case of logging in Šumava National Park in July 2012. An NGO brought an action for an injunction against logging. The Supreme Administrative Court ordered that the claim be heard by the lower court (which had previously refused to hear it). Although the Supreme Administrative Court did not indicate whether the NGO's claim was well-founded or not, this decision is likely to establish an important precedent regarding NGOs' capacity to challenge projects with an environmental impact before the courts.

Recent amendments to the Building Code have granted standing to NGOs active in the field of environmental protection to become a party, and exercise certain rights in relation to building permit issue procedures.



## Environmental permits

### 4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

#### Integrated/separate permitting regime

The Integrated Pollution Prevention and Control (IPPC) system introduced by Directive 2008/1/EC concerning integrated pollution prevention and control was transposed into Czech law by the Integrated Prevention Act. Under the integrated permit regime:

- The assessment covers all the regulated environmental impacts of the examined facility.
- The assessment is subject to a single administrative procedure.

An integrated permit regime is mandatory in the case of certain types of facilities listed in Annex 1 to the Integrated Prevention Act, while the operators of other facilities can apply for an integrated permit on an optional basis. The integrated permit regime is mandatory in the following industrial sectors in particular:

- Energy (facilities exceeding 50MW).
- Metallurgy.
- Mining and mineral processing.
- Chemical industry.
- Waste treatment.
- Certain other activities (for example, paper mills, abattoirs).

The integrated permit usually covers:

- Admissible emission threshold levels.
- Tolerable noise/vibration threshold levels.
- Waste treatment.
- Machinery used in facilities.
- Chemical substances used in facilities.

#### Single/separate permits

Activities outside the scope of the Integrated Prevention Act are not subject to the mandatory integrated permit procedure (see above).

### 5. What is the framework for the integrated permitting regime?

#### Permits and regulator

An application for an integrated permit must be made to the territorially competent regional municipality. If the environmental impact of the project in question is not confined to the territory of the Czech Republic, the competent authority is the Ministry of the Environment. The addressee of the application then requests assessments from other authorities concerned on the basis of which it makes its final decision.

The granting of a permit under the integrated permitting regime may entail a lengthy procedure with a number of participants that can possibly challenge it before the final decision is made, including the local and regional municipality in which the facility will be located, and NGOs or similar organisations acting in the public interest.

#### Length of permit

A permit can be granted for a definite or indefinite period of time, depending on, among other things, the projected lifespan of the facility. A permit granted for an indefinite period of time remains subject to periodic revision and can be suspended in the case of serious compliance failures. Any such suspension can be made subject to court review.

#### Restrictions on transfer

The rights arising from an integrated permit cannot be assigned and the relevant duties cannot be delegated through an agreement. Therefore, the transferee of an asset in relation to which an integrated permit has been granted must apply for a new permit. However, the permit passes to legal successors (for example, following a corporate restructuring).

#### Penalties

Operating a facility without a relevant permit or in breach of the conditions set out in the permit can lead to a fine of up to EUR400,000.

Failure to comply with the obligation to report any material modification of the facility in relation to which a permit has been issued can lead to fines reaching up to EUR80,000.

## Water pollution

### 6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?

#### Permits and regulator

Unless it is already subject to an integrated permit (see Questions 4 and 5), any activity impacting on water (such as discharges of wastewater into water courses and consumption of large quantities of water) must be authorised by the competent authorities (Water Act). The so-called "general activities" involving water (that is, where usage does not involve diminution of the quality/quantity of water) are not subject to authorisation.

Depending on the activity involved, the competent regulator is the:

- Ministry of the Environment.
- Ministry of Agriculture.
- Regional municipality.
- District municipality.

Observance of the obligations imposed by law and particular permits is subject to supervision by the local authorities and the Czech Environmental Inspectorate (*Česká inspekce životního prostředí*) (Inspectorate).

#### Prohibited activities

Under the Water Act, legal entities and individuals must refrain from any action that would result in the deterioration of the quality of surface and/or groundwater as well as its power producing potential, except where they hold the relevant authorisation.

#### Clean-up/compensation

The regulator can request that the impact of any unauthorised pollution be remediated at the polluter's expense.

#### Penalties

Breach of the prohibition is subject to the following fines:

- Individuals: from EUR800 to EUR20,000.
- Legal entities: up to EUR400,000.

## Air pollution

### 7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

#### Permits and regulator

Whether the permitting regime is integrated or separate (and who the competent authority is) depends on the type and magnitude of the particular source of air pollution.

The mandatory integrated permit procedure covers all combustion facilities with over 5MW of heat output, in which case, the competent authority is the Ministry of the Environment.

Smaller combustion facilities require a permit from the regional or district municipality.

#### Prohibited activities

General rules on damage/environmental harm prevention apply. Activities that are not prohibited under normal circumstances or in relation to which a permit has been issued may become prohibited under specific circumstances (such as the regulation of smog under which the operation of certain air pollution sources may be temporarily restricted or prohibited).

#### Clean-up/compensation

The Inspectorate can impose fines or, where appropriate, clean-up obligations on polluters irrespective of whether the facility is operated under an integrated or separate permit (Air Protection Act).

#### Penalties

Fines of up to EUR400,000 can be imposed on any entity acting in breach of the terms of the relevant permit or without a permit where a permit is required.

See also *Question 30*.

## Climate change, renewable energy and energy efficiency

### 8. Are there any national targets or legal requirements for reducing greenhouse gas emissions, increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)? Is

## there a national strategy on climate change, renewable energy and/or energy efficiency?

### Emissions targets

The key documents in this respect are the Act on Renewable Energy Sources and the draft Climate Protection Policy. Despite not being legally binding, the Climate Protection Policy provides a framework within which future legislation will be adopted and future environmental permits granted. The most current draft of this document aims to reduce greenhouse gas emissions by 20% during the 2005 to 2020 reference period (in conformity with the EU Climate and Renewable Energy Package).

### Renewable energy

Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (Renewable Energy Directive) requires renewable energy to form 20% of total EU energy consumption by 2020, although this may be raised to 30% in future.

The contribution of the Czech Republic to the EU-wide target is 13% by 2020. As the state support of renewable energy sources has continuously been criticised for being too costly, support might be significantly reduced in early 2014.

In addition, the Renewable Energy Directive imposes an obligation on member states, including the Czech Republic, to ensure that at least 10% of overall transport fuel consumption originates from renewable sources (largely to be met by increasing the use of sustainable biofuels).

A new Renewable Resources Act became effective in January 2013. It decreased the general level of incentives for renewable energies as the targets set by EU legislation have already been met.

### Increasing energy efficiency

Regulation on energy performance of buildings, which entered into force on 1 April 2013, sets minimum requirements for the energy efficiency of buildings, implementing EU Directive 2010/31/EU on the energy performance of buildings, imposes strict energy efficiency requirements on any new or newly overhauled buildings in relation to energy consumption and efficiency.

On 25 October 2012, the EU adopted the Directive 2012/27/EU on energy efficiency. This Directive establishes a common framework of measures for the promotion of

energy efficiency within the Union. This is to ensure the Union achieves a 20% headline target on energy efficiency by 2020 and to lead the way for further energy efficiency improvements beyond that date. It lays down rules designed to remove barriers in the energy market and to overcome market failures that hinder efficiency in the supply and use of energy. In particular the Directive provides for the establishment of indicative national energy efficiency targets for 2020 and a compulsory requirement for large companies to have energy audits every four years. Member States are required to bring into force the laws necessary to comply with the Directive by 25 June 2014 (Article 28(1)). The Ministry of Industry and Trade submitted a proposal for implementation of the Directive to the Government in August 2013 and this will be discussed in Parliament in early 2014.

## 9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented?

### Parties to UNFCCC/Kyoto Protocol

The EU is a party to the UNFCCC and the Kyoto Protocol. The Czech Republic has been a signatory state of the UNFCCC since 1993 and of the Kyoto Protocol since 2010, under which it assumed the obligation to lower the emission of greenhouse gases by 8% by 2012 compared with 1990 levels. This objective has already been reached and exceeded as the volume of greenhouse gas emissions has decreased by 29% in comparison to 1990 levels.

A second commitment period has now been agreed until 2020 with parties setting their own reduction objectives. The parties have also agreed to an amendment to the Kyoto Protocol to provide for an overall objective of reducing the emissions by 18% below the levels seen in 1990 by 2020 (while the original objective was a 5% reduction below 1990 levels in the first commitment period). The EU and Member States have committed to this target on a joint basis (and the EU has pledged to strengthen the commitment to a 30% reduction if a strong international agreement is reached). Parties that have signed up to the second commitment period will review their emissions reduction objectives in 2014.

### Implementation

The obligations undertaken by the Czech Republic in pursuit of the UNFCCC and the Kyoto Protocol are, to a large extent, transposed into the relevant provisions of the Air Protection Act and the Act on Emission Allowances. The newly approved Air Protection Act, which came into force on 1 September 2012, reflects the most recent goals of Czech environmental policy in this area (see also Question 10).

## 10. What, if any, emissions/carbon trading schemes operate in your jurisdiction?

As an EU member state, the Czech Republic is covered by the EU Emissions Trading Scheme (ETS), which has four compliance stages:

- Phase I of the EU ETS ran from 2005 to 31 December 2007.
- Phase II ran from 1 January 2008 to 31 December 2012.
- Phase III started on 1 January 2013 and will run to 31 December 2020 (see below, Phase III).
- Phase IV will begin in 2021.

The EU ETS applies to specified heavy industrial activities and establishes a mandatory cap and trade system. Phase I of the EU ETS ran from 2005 to 2007. Phase II commenced on 1 January 2008. Participants must surrender allowances (or other credits) at the end of each compliance period to match their emissions. Failure to comply results in a penalty. Each allowance represents the emission of one tonne of carbon dioxide.

Following allocation and auctioning, allowances are subsequently traded in an online registry enabling companies to buy additional allowances to meet their obligations. To obtain and surrender allowances, a participant must have an account in an online registry.

### Aviation

From 1 January 2012, the EU ETS covers any aircraft operator, whether EU or foreign-based, operating international flights on routes to, from or between EU airports. There will be certain exemptions for light aircraft, military flights, flights for government business and testing flights. Various complaints were made by non-EU countries at the inclusion of flights to or from destinations outside the EU into the EU ETS. As a result the EU excluded such flights during 2012 from the EU ETS, pending discussions

at international level over the future position of international aviation in the scheme.

### Phase III

Phase III commenced on 1 January 2013. The main changes for Phase III are that:

- There is a single EU registry for all users, which was activated on 20 June 2012, rather than national member state registries.
- There is a single EU-wide cap on emissions, which will decrease annually meaning that the former National Allocation Plans will no longer be required.
- Other greenhouse gases and industrial sectors will be included.

Allocation of allowances will be replaced partially by auctioning.

For Phase III, the Czech Republic has obtained a free allocation of a part of the emissions allowances required by Czech electricity and heat generators, corresponding to the amount of investments made or to be made to enhance energy efficiency in accordance with Article 10a and 10c of Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community (Emissions Trading Directive). From 2019, however, free allowances will no longer be available.

A new Act on Emission Allowances ( Act 383/2012 Coll.) entered into force on 1 January 2013 governing the system for providing and trading in emission allowance.

## Environmental impact assessments

### 11. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

#### Scope

The Environmental Impact Assessment Act provides a limited list of activities that are subject to EIA procedure. These activities are further divided into two categories, each subject to a different regime. While an EIA is mandatory for activities in the first category (mostly the construction of large energy, industrial or infrastructure projects, mines and so on) the activities in the second category (the construction of medium-sized energy, industrial or infrastructure projects) are only subject to an EIA following a decision of the competent authority. The

key factors that the competent authority considers in this respect are:

- The location of the facility.
- The seriousness of its possible environmental impact.

#### Permits and regulator

In conducting the EIA, the applicant must provide detailed information to the Ministry of the Environment and/or the relevant regional authority. This includes information on the company background, the project in question and a report on the current environmental status of the area where the project is to be located. Although within the strict interpretation of the law the regulator issuing the final permit is not bound by the EIA report, it is considered one of the key determinants of the regulator's decision.

#### Penalties

Ignoring the EIA procedure would in most cases result in the invalidity of the relevant permit. The possibility that a third party who was not a participant in the administrative procedure may successfully challenge the final decision is very limited.

## Waste

### 12. What is the regulatory regime for waste?

The Waste Act defines the term "waste" as any movables that have been abandoned by the owner or that the owner was obliged to dispose of. Legal entities and individuals conducting business activities must ensure that their waste is transported and deposited in an authorised landfill and must pay the relevant fees. Any non-domestic waste must be categorised and, in the case of hazardous waste, properly labelled by the producer.

#### Permits and regulator

The operation of a landfill is subject to a relatively rigorous government authorisation process, including the EIA (depending on its size) and the obligation to obtain an integrated permit. Apart from landfill operations, the treatment of non-hazardous waste is not subject to particular permits.

The management of hazardous waste requires a special permit, which is usually granted by the Ministry of the Environment. In some circumstances (particularly when public health is endangered by waste) other government bodies (for example, the Ministry of Public Health) may be the competent authorities. At the regional/district level the regional/district municipalities are competent.

The Inspectorate is responsible for supervising the management of waste.

#### Prohibited activities

All persons involved in activities involving waste are under a duty of care in relation to the waste. It is prohibited to:

- Treat, keep or dispose of waste either:
- without an environmental permit;
- in a manner likely to cause pollution of the environment or harm to human health.
- Fail to comply with the conditions of an environmental permit.
- Otherwise breach the duty of care.

#### Operator criteria

Landfill operations must be operated by a person meeting certain education and experience criteria. These precautions aim to ensure that waste, primarily hazardous waste, is treated with a suitable level of professionalism. Operators must also open and make contributions to a special bank account that is earmarked for rehabilitation and reclamation of landfill sites.

#### Special rules for certain waste

The most rigorous regime applies to hazardous waste. This type of waste management is subject to various additional obligations, mainly in the area of categorisation, labelling and professional handling.

In view of the obligations arising from EU legislation, notably Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, Directive 86/278/EC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture and Directive 87/217/EC on the prevention and reduction of environmental pollution by asbestos, these areas are subject to stricter regulation, in respect of the wider range of duties relating to waste categorisation, professional handling and means of disposal.

Directive 2006/21/EC on the management of waste from extractive industries and amending Directive 2004/35/EC, governing mining waste, has been transposed into Czech law by a separate piece of legislation, that is, the Act on mining waste management (Act 157/2009 Coll). The Act provides that mining waste can only be deposited in dumps meeting special criteria.

Waste take-back obligations apply to the following products:

- Vehicle wreckages.
- Batteries/accumulators.

- Discharge lamps.
- Mineral oils.
- Packaging.
- Tyres.

#### **Electronic devices from private households.**

The relevant legislation entitles the consumer to return, free of charge, products (or their packages) falling under one of the above categories. This goes hand-in-hand with the producer's/importer's obligation to collect the returned products and arrange for their liquidation/storage in accordance with the law.

#### **Penalties**

The Waste Act provides for fines of up to EUR2 million depending on the nature of the offence. The highest charges are to be applied in cases of the most flagrant breaches of the relevant provisions of the Waste Act, notably in cases of hazardous and other high risk waste treatment.

## Asbestos

### 13. What is the regulatory regime for asbestos in buildings?

#### **Prohibited activities**

Asbestos cannot be used for construction purposes. Also, buildings that may contain asbestos can only be demolished under supervision of a specially certified inspector.

Employee handling of substances containing levels of asbestos above a specified threshold is prohibited, subject to minor exceptions.

Czech law also provides for prescribed limits on chemical, physical and biological indicators (including limits on asbestos fibres).

Asbestos is considered a specific category of hazardous waste under the Waste Act and its treatment is therefore subject to special duties (see Questions 12, Special rules for certain waste).

#### **Main obligations**

Employers are obliged to report activities which can be sources of exposure to asbestos. Where employees are permitted to work with asbestos, such work must take place only in marked and secured "controlled areas". Employers must keep records of controlled areas and ensure compliance with specific safety rules. Employers are also obliged to keep a file containing details of all categories of

work with asbestos and of their employees' exposure to asbestos. This file must be kept for a period of 40 years after the date of last exposure.

#### **Permits and regulator**

The building office of the territorially competent district municipality is responsible for approvals of the demolition of buildings that may contain asbestos.

In case of labour law legislation, the competent supervisory body is the Czech Labour Inspectorate.

#### **Penalties**

Fines of up to EUR8,000 can be imposed on persons who, contrary to the obligation imposed by the Building Code, proceed with the demolition of a building possibly containing asbestos without the supervision of a certified inspector.

The Czech Labour Inspectorate can impose fines of up to EUR80,000 on persons who fail to comply with the obligations imposed by the Act on Labour Safety.

## Contaminated land

### 14. What is the regulatory regime for contaminated land?

#### **Regulator and legislation**

The principal legislation is PRED implementing Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive).

The regulator is the territorially competent district municipality.

#### **Investigation and clean-up**

Annex I to PRED lists activities falling within the scope of this Act. Those directly connected to soil contamination are:

- Any activity that is subject to a mandatory integrated permit procedure (see Question 4 and 5).
- Transportation of chemicals through pipelines or by any kind of road, railway, fluvial, maritime or aerial transport.
- Production or handling of herbicides and pesticides.

A person conducting any of the above activities (the operator) must take all practical measures to:

- Prevent environmental damage from occurring.
- Repair environmental damage and restore the full functionality of the relevant natural resource.

In the case of a justified suspicion that environmental harm has occurred, the competent authorities have the right to require the operator to carry out a risk analysis immediately.

The operator must pay all the costs of any remediation and restoration that is required, including the costs of the risk analysis. The operator can be relieved of this obligation, if it proves that:

- The harm was caused by a third party and occurred even though all practical measures had been taken by the operator.
- The harm resulted from measures the operator took to comply with the official regulations.

In addition, the competent authority can relieve the operator of the duty to bear the costs if the operator proves that:

- It acted in full conformity with the relevant regulations and the environmental damage resulted from an activity that was authorised in accordance with the regulations.
- The occurrence of the environmental damage could not have been reasonably foreseen by the operator, despite due consideration of the Best Available Technologies (BAT).

Furthermore, operators whose operations may cause environmental damage exceeding EUR800,000 must obtain insurance covering the costs of remedying potential environmental damage (see Question 28, Types of insurance and risk).

#### Penalties

Legal entities and individuals can be subject to a fine of up to EUR40,000 in the case of a breach of the obligations to:

- Report to the competent authority any relevant information relating to the possible occurrence of environmental damage.
- Take all practicable measures to repair environmental damage and restore the original functionality of the relevant natural resource.

The fine can reach up to EUR200,000 in the case of a breach of the obligation to:

- Take immediate pre-emptive measures to avoid or mitigate environmental damage.
- Report to the competent authority all the relevant information on the circumstances under which environmental damage has occurred.

## 15. Who is liable for the clean-up of contaminated land? Can this be excluded?

### Liable party

Under the "polluter pays" principle, the administrative liability for contaminated land remains with the polluter. This liability cannot be contractually passed to another person although a buyer can seek warranties and indemnities from the seller for damages or potential future damages caused to third parties by the pollution.

However there is an exception to the application of the "polluter pays" principle. Where the polluter cannot be identified, has ceased to exist or where the pollution is attributable to military or industrial activities preceding 1989 (this is generally referred to as old ecological burdens), the clean-up responsibility rests with the state. This clean-up responsibility has often been transferred to acquirers of privatised businesses under privatisation contracts entered into between the state and the relevant acquirer. The conditions of such contracts will determine the treatment of the relevant old ecological burdens. The state has often agreed to a financial contribution to any clean-up.

See also Question 18, Asset Sale, in respect of liabilities on the sale of land.

### Owner/occupier liability

The polluter alone is responsible for the remediation. Therefore, if the owner/occupier is not also a polluter, it cannot be held liable. This, however, does not exclude any potential civil liability of the current owner towards third parties who suffer damage (for example, through migration of contaminated water) originating from a contaminated plot of land. In this case, the current owner would bear the civil responsibility to stop the contamination of third party property and compensate for any damage. The current owner could be made subject to an injunction to cease or limit the operation of the acquired asset.

### Previous owner/occupier liability

The administrative liability remains with the polluter. Therefore, previous owners or occupiers can be liable for contamination they have caused in the past.

### Limitation of liability

Since administrative liability is deemed to arise from public law, it cannot be limited.

As to civil liability, the parties are free to limit contractual liability arising from their business activities. However, this does not apply to harm caused intentionally or non-contractual liability.

The general limitation period under the Civil Code is:

- Three years for contractual claims.
- Two years for non-contractual claims.

The limitation period starts running from the moment when the damaged party became aware of the damage.

### 16. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability?

#### Lender liability

A lender is not liable for land contamination, except for cases where the "corporate veil" is lifted on the basis that the lender is deemed a "shadow director". This may happen if the following leads directly to the environmental liability:

- The lender exerts substantial influence over the management or a supervisory board member (or certain other persons).
- The lender misuses its influence to the detriment of the company and/or its shareholders.

The authors are not aware of any case law on lender liability in environmental matters.

#### Minimising liability

Whether or not in relation to environmental matters, lenders should not interfere with the day-to-day management of a borrower company to avoid shadow director liability.

### 17. Can an individual bring legal action against a polluter, owner or occupier?

If pollution constitutes unlawful interference with a legally recognised right (personal integrity or property right), this may give rise to civil responsibility, under which the wrongdoer must remedy the damage caused to the injured person or entity and/or compensate it for damages.

The concept of a legal action in the public interest (*actio popularis*) is unknown to Czech law. An individual or legal entity can only commence a civil law action against a polluter and/or the owner of property from which pollution originates if it is directly affected by such pollution.

In the area of public administrative and/or criminal liability, an individual or legal entity can only notify the relevant authorities of the alleged breach but cannot bring actions itself.

## Environmental liability and asset/share transfers

### 18. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

#### Asset sale

In an asset sale, two levels of liability must be distinguished:

- Administrative liability: the seller of the assets (where it is the polluter) retains environmental liability and cannot transfer the obligations arising from the assets to the buyer.
- Civil liability: the liability for environmental damage previously caused by the seller would in most cases remain with the seller.

However, the buyer risks liability as the new owner of the asset in the case of, for example, continuing migration of pollution. In these circumstances, the buyer may be required to cease or limit the use or operation of the acquired asset (either as a result of administrative action or third party injunction) and may also incur fines and third party civil liability.

#### Share sale

Since a company is considered a separate legal entity under Czech law, all the obligations arising from environmental law remain with the target company once it is transferred to the buyer. As a result, the buyer will be keen to ensure that the final purchase price reflects any environmental liability in the target and can also seek representations and warranties from the seller.

Environmental due diligence should be performed in cases where an operating company is being acquired (see Question 21).

### 19. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

#### Asset sale

In accordance with the "polluter pays" principle recognised by Czech law, the responsibility remains with the person responsible for the pollution. The extent of civil law liability (liability for defects under a purchase agreement) depends



on the terms of the agreement between the seller and the buyer.

#### Share sale

See *Question 18, Share sale*.

## 20. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?

#### Asset sale

In a sale of real estate, the seller must disclose to the buyer any factual or legal defects in the asset that the seller is aware of. Failure to do so may result in liability for defects, damages, or rescission of the contract. There is no specific obligation to disclose environmental information to the buyer.

Under the Act on Energy Management the seller is obliged to arrange for an energy performance certificate issued by an authorised person when intending to sell a building. Such certificate must be provided to the buyer.

In practice, a buyer generally requires a seller to give environmental warranties concerning the environmental condition of the business and its assets, to encourage the seller to disclose environmental information. Unless the seller makes a full disclosure of all relevant environmental information to the buyer, the seller is potentially liable to pay damages to the buyer if the warranties prove to be incorrect and the buyer suffers loss.

#### Share sale

No particular disclosure obligations relating to environmental matters are associated with share sales (see *Question 21*).

## 21. Is environmental due diligence common in an asset sale/a share sale?

#### Scope

Environmental due diligence is common in real estate transactions or acquisitions of industrial or agricultural businesses. Its scope always depends on the nature of the target business.

The areas usually covered by environmental due diligence include:

- Fines, penalties, lawsuits, claims, notifications or complaints made or threatened against the target.
- Old ecological burdens (see *Question 15, Liable party*).
- Circumstances existing that may give rise to a breach of environmental law in the future.

- Historic environmental reports, surveys or audits (including those relating to the presence of asbestos).
- Environmental permits or consents required to operate the business or occupy a site.
- Energy efficiency of buildings.

#### Types of assessment

In most cases the assessment takes the following form:

- Review of the relevant documentation.
- Soil/water contamination analysis.
- Analysis of potential or pending administrative procedures and civil claims relating to environmental liabilities.
- Environmental consultants
- Engaging environmental consultants is a common practice, in particular in acquisitions involving operating industrial businesses.

## 22. Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale?

#### Asset sale

The buyer is likely to seek warranties along the following lines:

- No threatened or pending environmental claims relating to the asset.
- The absence of any "old ecological burdens".
- No current or past breach of environmental laws or limits associated with the operation of the asset.
- Naturally, the scope of the representations and warranties always depends on the scope of the relevant business.

A seller usually gives the following types of environmental warranties in an asset sale:

- The business has obtained all environmental permits necessary to operate on the date on which the business is sold.
- The business has complied with applicable environmental laws and permits.
- The business is not the subject of any environmental proceedings, claims, investigations or complaints.
- There is no contamination or pollution present on any of the business's assets or properties.
- All environmental reports relating to the business or the properties have been disclosed.

**Share sale**

The position is similar to that for asset sales (see above, Asset sale). In a share sale, warranties are likely to be of increased importance as compared to asset sales due to the fact that any liabilities remain with the target.

Additionally, the buyer would seek a representation/warranty concerning the existence and validity of all permits/licences required for operation of the target's business.

### 23. Are there usually limits on environmental warranties and indemnities?

Environmental warranties are nearly always limited by time and subject to a financial cap. These are subject to negotiation but are often similar to the position on other warranties. The cap often includes all warranty claims and is linked to a percentage of the purchase price. Time limits and caps for environmental indemnities vary according to the scope of the indemnity and the environmental losses it is intended to cover.

An environmental indemnity is usually also subject to trigger events that must occur before a buyer can make a claim. Limitations of liability due to events after completion are usually included.

## Reporting and auditing

### 24. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?

#### Public registers

The Ministry of the Environment maintains a publicly accessible register of facility operators to whom integrated permits have been granted. There is also a public real estate register, which, among other things, contains information on the classification (purpose) of each plot of land (for example, farm land, industrial land or built-up area). From this information, it can sometimes be inferred indirectly whether there is an increased risk of existing pollution and, in particular, whether there is a risk of old ecological burdens (see Question 15, Liable party).

#### Third party procedures

The above register of facilities operating under an integrated permit is publicly accessible on the website of the Ministry of the Environment ([www.mzp.cz/en/](http://www.mzp.cz/en/)).

### 25. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

#### Environmental auditing

Although there is no legal obligation to this effect, environmental auditing is common among companies adhering voluntarily to environmental quality standards and ethical codes, or internal corporate responsibility policies.

#### Reporting requirements

Publicly listed companies must report matters that may have an impact on their financial situations and business activities, which includes actual or potential environmental liabilities. Otherwise, there is no generally applicable legal obligation relating specifically to public disclosure of information.

### 26. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

There is no obligation on private entities to inform the public about environmental incidents. However, the Environmental Information Act places a relatively wide range of information duties on the authorities in relation to environmental matters and the public can therefore easily gain access to information about environmental incidents.

See also *Question 14*.

### 27. What access powers do environmental regulators have to access a company?

Under PRED, the competent officials carrying out preventive or corrective measures are invested with the authority to gain access to any facility whose activities are within the scope of PRED. The officials are, however, under a duty to notify the company in advance, except in urgent cases.

## Environmental insurance

### 28. What types of insurance cover are available for environmental damage or

## liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?

### Types of insurance and risk

Under PRED, an operator whose operations may cause environmental damage exceeding EUR800,000 must maintain an appropriate insurance policy or other financial collateral to secure its potential clean-up/compensation obligations resulting from causing environmental damage.

### Obtaining insurance

Most commercial insurance companies offer a variety of relatively comprehensive and flexible types of insurance relating to:

- Additional costs that may arise in relation to remediation of latent contamination in relation to acquired land (or other assets).
- Future damage suffered by the owner/occupier as a result of land contamination or water pollution.
- Pollution claims by third parties.

## Environmental tax

### 29. What are the main environmental taxes in your jurisdiction?

Following the end of its transitional exemption period, the Czech Republic must now tax particular activities which have a demonstrable adverse impact on the environment under Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity. This is done by imposing a tax on:

- Natural gas and certain other gases.
- Solid fuels.
- Electricity.

### Tax liability

In the case of natural and certain other gases, and solid fuels, the person responsible for paying the tax is the provider supplying the gas or solid fuel to the ultimate consumer in the Czech Republic.

The person responsible for paying the tax on electricity is either:

- The operator of the electricity market.
- The electricity producer.
- Under certain circumstances, the electricity trader.

### Tax rates

The applicable rates are:

- For natural gas (and certain other gasses): the tax rate varies from EUR1.22 to EUR10.59/MWh depending on the end use).
- For solid fuels: EUR0.34/GJ, with the exothermal heat produced being the benchmark.
- For electricity: EUR1.1/MWh.

## Reform

### 30. What proposals are there for significant reform (changes) of environmental law in your jurisdiction?

Due to criticism of the excessive costs of the state support of renewable energy sources, a bill to amend the Renewable Resources Act is currently being discussed. It seeks to reduce the level of state support given to renewable generation sources starting from 2014 (see Question 8). A bill on amendment of the Act on Energy Management is also in the process of being passed. The new law will lay down requirements for persons authorised to install certain devices for the production of renewable energy.

## The regulatory authorities

### The Ministry of the Environment (*Ministerstvo životního prostředí*)

**Main activities.** The principal regulatory body in charge of environmental matters.

W [www.mzp.cz/](http://www.mzp.cz/)

### The Czech Environmental Inspectorate (*Česká inspekce životního prostředí*)

**Main activities.** The government body with the powers of investigation and supervision in the field of environmental law.

W [www.cizp.cz/](http://www.cizp.cz/)

### Regional and local councils

**Main activities.** The authorities responsible for environmental matters of lesser gravity or limited territorial impact.

W [www.statnisprava.cz/rstsp/ciselniky.nsf/i/d0045](http://www.statnisprava.cz/rstsp/ciselniky.nsf/i/d0045)

## Online resources

W [www.portal.gov.cz/app/zakony/](http://www.portal.gov.cz/app/zakony/)

**Description.** An official government website containing a variety of information related to public administration and the contact details for government bodies. The website intends to provide up-to-date legislation and relevant news concerning the administrative sector. The webpage is available in Czech only.

W  
[www.mzp.cz/\\_C1256E7000424AC6.nsf/Categories?OpenView](http://www.mzp.cz/_C1256E7000424AC6.nsf/Categories?OpenView)

**Description.** The official website of the Ministry of the Environment, publishing essential environmental legislation. The webpage is available in Czech only.

## Appendix: Author details

### Authors



**Emil Holub**  
**Partner**

**Qualified.** Advokát Czech Republic, 1994

**Areas of practice.** Real estate; M&A; environmental regulation.

T: +420 222 555 222

E: [emil.holub@cliffordchance.com](mailto:emil.holub@cliffordchance.com)



**Jan Bilek**  
**Lawyer**

**Qualified.** Advokát Czech Republic, 2012

**Areas of practice.** Banking and finance; energy and infrastructure; emissions trading.

T: +420 222 555 222

E: [jan.bilek@cliffordchance.com](mailto:jan.bilek@cliffordchance.com)

---

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

[www.cliffordchance.com](http://www.cliffordchance.com)

69697-5-1598

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance LLP 2012

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to [nomorecontact@cliffordchance.com](mailto:nomorecontact@cliffordchance.com) or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

---

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh\* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

\*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.