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The International Comparative Legal Guide to:

Environment Law 2005

A practical insight to cross-border Environment Law

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1 Enforcement agencies/bodies

1.1 What agencies/bodies are involved in the enforcement and administration of environmental law?

Czech administrative bodies in the field of environmental law may be divided into general environmental administration bodies and other bodies/agencies focusing on specific areas of environmental protection.

The bodies involved in general environmental administration are the Ministry for the Environment, Ministry of Agriculture, regional (district) authorities and municipal councils.

The bodies and agencies involved in specific areas of environmental protection include, in particular, the Czech Environmental Inspectorate ("Ceská inspekce životního prostredí"), administrative authorities for national parks and preserved landscape areas and the State Office for Nuclear Safety ("Státní úrad pro jadernou bezpecnost").

1.2 What policies underlie the enforcement of environmental law by such agencies/bodies, and to what extent is environmental regulation impacted by other regulatory controls (such as price controls and/or energy regulation)?

The Ministry for the Environment is the central state administrative body responsible for a broad range of policies, including those on water, air and landscape protection, waste management, genetically modified organism control, national parks and forest protection, etc. Certain environmental policies, however, fall within the ambit of other Ministries, e.g. the Ministry of Agriculture is responsible for forest management, fishing and hunting outside of national parks and certain aspects of water management while the Ministry for Regional Development manages land use planning.

Regional authorities and municipal councils exercise a very broad range of powers at a local level. Their powers are subject to a complex regulatory system.

The Czech Environmental Inspectorate is the supervisory body in the areas of air, water, forest and landscape protection, waste management, chemicals and genetically modified organisms. Its main powers include the imposition of fines and remedial measures.

Administrative authorities in National Parks and Preserved Landscape Areas exercise administrative powers in the corresponding preserved areas.

Nuclear material and nuclear waste disposal falls within the ambit of the State Office for Nuclear Safety.

There are also a number of other administrative bodies that exist whose powers relate to environmental issues. For example, the Energy Regulatory Office ("Energetický regulacní úrad") is entitled to grant licences concerning electricity, natural gas and heat production and distribution. In deciding upon the issuance of licences, the Energy Regulatory Office must consider whether or not the licensed activities would pose a threat to the environment. The Czech Mining Bureau ("Ceský bánský úrad") and its local offices decide upon the issuance of mining licences, the Ministry for the Environment and other bodies are consulted regarding the regulation of mining conditions.

2 Environmental permits

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

The most significant cases when an environmental permit is required are as follows:

Under the Air Protection Act, operators of all stationary sources of air pollution are obliged to set up and operate their facilities in accordance with prescribed technical conditions. In addition, operators of large to medium-sized stationary air pollution sources must comply with certain air protection requirements, as stipulated in the official statements and permits of relevant air protection authorities. Starting from 1 January 2005, air polluters will face limits according to the emission credits granted to them under the National Plan prepared based on the EU Emission Trading System or the Kyoto Protocol.

Under the Water Act, a special permit from the state regulator is required for the treatment of surface and ground water and for the establishment of water facilities.

Under the Waste Management Act and Council Regulation (EEC) No. 259/93, operation of waste collection, treatment

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and disposal facilities and waste exportation and importation require a permit from the relevant administrative authority.

Under the Agricultural Land Protection Act, any act of land re-classification, i.e. designation of agricultural land for non-agricultural purposes, must be approved by the Agricultural Land Resources Protection Authority.

Under the Nature and Landscape Conservation Act, a special permit from an authorised state agency is required (in addition to relevant zoning and building permits) for the construction and functional modification of buildings, as well as the operation of water treatment and water plants where such activities take place within national parks or other protected areas. Under this Act, a special permit from an authorised state agency is also required for tree felling, exceptions apply to this rule.

The above permits may be replaced by a combined permit issued under the Integrated Protection Act. This combined permit stipulates the conditions under which various pollution sources may be operated. Certain types of facilities must obtain a combined permit in order to operate.

Under the Genetically Modified Organisms Act, a special permit from an authorised state agency is required for any contained operations using genetically modified organisms as well as the introduction of such organisms into the environment and/or their placement on the market. This permit may not be replaced by a combined permit issued under the Integrated Protection Act.

In general, the above environmental permits may not be transferred from one person to another. However, a permit issued under the Integrated Protection Act will pass to the legal successor of the facility operator who received such permit; the transfer must be notified to the relevant administrative body (i.e. the Ministry for the Environment or the relevant regional authority) which issued the permit. The same principle applies under the Water Act: a permit issued with respect to real property will be transferred to the new owner/tenant of such property. Such transfer is also subject to notification to the relevant body.

2.2 Is there any right of appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of unduly onerous conditions contained in an environmental permit?

The above permits are issued in the course of administrative proceedings and are therefore subject to the particular procedural rules governing the operation of the administrative bodies concerned. Such rules include and regulate the appeal process. In addition, the decision of an administrative authority may be appealed through the courts. Where the conditions of a permit are stipulated by the environmental regulator within the scope of its discretion, objections regarding unduly onerous conditions can generally be raised within the appeal proceedings.

2.3 Are there any special permitting requirements (e.g. requirements to conduct environmental audits or environmental impact assessments) for particularly polluting industries or large-scale installations/projects?

In cases where a project may have a substantially negative impact on the environment and its population or where a particular concept must be approved by an administrative authority, an authorised auditor must assess the negative impact of such project or concept prior to the commencement of the project or, as the case may be, the approval of the concept. This auditor's assessment (known as an EIA) will form an integral part of the complete documentation required to obtain all related or subsequent permits, such as zoning decisions and building permits. It will be taken into account although not binding in the ensuing administrative proceedings. Projects considered to have a substantially negative environmental impact include in particular: permanent deforestation, groundwater extraction, construction of water dams, operation of sewage plants, waste disposal facilities, railways, airports and highways, oil extraction, mining, and production and processing of certain raw materials and chemical substances. Concepts to be assessed include, in particular, any plans, programmes and strategies which (i) may have an impact on more than one municipality and, at the same time, (ii) may serve as the basis for future projects (as described above), and/or (iii) are funded by the European Community.

In addition, under the Act on Prevention of Accidents Caused by Selected Chemical Substances, any operator of a facility storing certain dangerous chemical substances in specified quantities is obliged to conduct risk analyses which include data referred to in relevant regulations published by the Ministry of Environment.

2.4 What civil and/or criminal enforcement powers does the government have in connection with the violation of permits?

The most common enforcement method in cases of permit violation is through administrative proceedings. Where installations are operated either without or in breach of the relevant permit, administrative sanctions, i.e. fines or revocation of licences/permits, may be imposed by the relevant state authority.

Under the Criminal Code, the state may impose criminal sanctions in cases where conduct by natural persons which causes an environmental threat or damage and falls within the category of a criminal offence. The basis for these offences is damage caused by the violation of environmental laws and regulations, including violation of relevant permits. Penalties which may be imposed on offenders generally take the form of an injunction order, a fine or imprisonment.

Civil liability for damage caused to other persons will typically be enforced by the private parties to which the damage was caused. For more details concerning liability, refer to question 4.1 below.

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3 Waste

3.1 What is waste and are there special categories of waste that involve additional duties or controls?

The Waste Act defines waste as any movable property which an owner (waste producer) either disposes of or intends or is obliged to dispose of; such property must also fall within one of the 16 categories of waste which are listed in Schedule 1 to this Act.

The Waste Act specifies two particular categories of waste: hazardous waste and communal waste. *Hazardous waste* includes the waste listed in the Act's implementing regulation and any other waste which has one or more hazardous characteristics listed in Schedule 2 to the Act. *Communal waste* is waste produced within a municipal district through the activities of natural persons, excluding waste resulting from the business activities of legal or natural persons.

In addition, the Waste Act recognises a distinct category of '*special products and selected waste and equipment*', all of which are subject to special provisions of the Act. These special provisions concern listed polychlorinated biphenyl products (PCBs) and equipment in which they are present, as well as waste oils, batteries and accumulators, sedimentation from water plants, waste from titanium dioxide production, asbestos and end-of-life vehicles.

Other groups and categories of waste are subject to particular conditions and provisions contained in specific legislation. Such forms of waste include waste water, waste resulting from mining activity, precious metal waste, radioactive waste, human corpses and remains, bodies of dead animals, non-captured air emissions and explosives and ammunition waste.

3.2 Can I store and/or dispose of waste on my property?

A waste producer may only store or dispose of waste if it is able to do so in accordance with the Waste Act and its implementing regulation. Should a waste producer not be capable of such disposal, it is obliged to transfer the waste to an authorised person operating a waste handling facility.

3.3 If I transfer waste to a lawful recipient, do I retain any residual liability in respect of it (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

A waste producer remains liable until the moment when ownership of the waste is transferred to its lawful recipient, i.e. the duly authorised person operating a waste handling facility. At the moment of the transfer of the title to the waste, all liabilities and obligations of the producer pass to such lawful recipient and no residual liability with respect to the transferred waste remains with the polluter. However, the producer is obliged to ascertain that the person assuming possession of the waste is authorised to do so.

4 Liabilities

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

A breach of environmental laws may result in criminal or administrative liability for offences and/or civil law liability for causation of damage to third persons. In addition, the Environment Act of 1992 introduced a new form of public liability of persons responsible for forms of specifically ecological damage.

We summarise the relevant liabilities below:

Liability under the Criminal Code

Relevant broad offences under the Criminal Code include the crime of endangering and damaging the environment. In addition, the Code contains several specific categories of crime related to damage caused to the natural world and environment. Criminally prohibited offences include: forest damage caused by logging; unauthorised treatment of dangerous waste; and unlicensed trade in endangered species of plants and animals. Only natural persons may be prosecuted for such crimes since legal persons cannot commit criminal acts under Czech law. Generally, the Code requires that criminal acts be intentional unless liability for negligence is specified in particular cases; thus, in relevant cases, defences based on the absence of any intention to cause harm will apply. Penalties which may be imposed on offenders depend on the details of the offence and generally will consist of an injunction order, a fine, or imprisonment.

Administrative liability

Administrative breaches are regulated by a wide range of environmental and other laws which are not centrally codified. Liability for these offences may apply in certain cases to both natural and legal persons; it may be strict in cases where legal or natural persons breach an administrative regulation in the course of their business activities. Penalties for these offences consist largely of revocation of licences/permits and monetary fines. The imposition of administrative fines is the chief tool currently used by state authorities to ensure environment protection. Defences regarding unduly onerous conditions can be raised in cases where the relevant state authority has discretion to decide on the extent of the conditions to be imposed.

Civil liability

Any breach of environmental laws and permits which results in damage to a third person's property may lead to civil liability under the Civil Code. Any person causing damage through the breach of its legal duties shall be liable for such damage. In addition to this general provision, the Civil Code contains other types of liability which can be invoked in the absence of any breach of legal duty provided that the damage was caused by the physical, chemical or resulting biological effects of the defendant's conduct on its surroundings; the defendant may be absolved of liability if it can establish that the damage was caused by the conduct of the injured person or by an inevitable event not originating in its own conduct or operation. If, however, it is proven that the damage was caused by the defendant's performance of extremely dangerous activities (e.g. operations involving

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radiation or chemicals), no defences will be available unless the defendant can prove that the damage was unpreventable despite the adoption of all steps to forestall it.

Liability under the Environment Act

Under the rather general provisions of the Environment Act, liability results from a person's causation of ecological damage, i.e. the loss or reduction of the inherent functions of ecosystems due to human activity causing damage to their parts and/or impairment of their internal dynamics and processes. The liability may only arise if the damage was caused by action *contra legem*. As the principles of the Environment Act have not been implemented in specific laws, seeking redress for ecological damage under this Act is somewhat problematic.

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

Administrative or criminal penalties only apply in cases of permit violation. However, an operator's performance of polluting activities within the limits of granted permits will not always protect it from the private civil actions of persons whose property is damaged in consequence. For more details, please refer to question 4.1 above.

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

Czech law contains no specific provision stipulating the liability of directors or officers of a corporation for the corporation's wrongdoing. However, under the general provisions of the Commercial Code, a company's directors can be held liable towards the company provided that they caused damage to the company as a consequence of breaching their legal duties. If the directors caused such damage while acting under the instructions of the company's general meeting, they can only be held liable towards the company if these instructions were illegal. Directors who caused such damage may also be held liable for the company's debts to creditors if the company is not able to settle such creditors' claims arising from the damage.

As mentioned above, a legal entity cannot be held liable for criminal offences. Where criminal acts are performed "by" a corporation however, it may be possible to hold the director(s) of such corporation criminally liable for these acts, provided that such person(s) personally carried out or, for example, ordered such acts.

Any provision of a company's Articles of Association and/or in an agreement between the company and its director which limits the director's liability towards the company will be invalid. Directors may protect themselves against liability risks by arranging for insurance; most insurance companies, however, exclude environmental liabilities from the range of liabilities covered by such insurance policies.

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

The sale of a company's shares will result in a change in its shareholding structure but will not alter its liabilities, including its environmental liabilities. The company will, for example, remain the operator of any of its sources of pollution and retain environmental liability for such sites.

Where, however, a company is purchased outright based on an agreement on the sale of an enterprise, a change of the pollution source's operator will occur. Based on this agreement, the new operator will accede to all of the seller's existing civil liabilities related to the operation of the purchased enterprise (e.g. liability for damage caused to third parties). Criminal and administrative liability will not, however, pass to the purchaser unless specific provisions of law stipulate otherwise (e.g. as is the case with laws regulating the privatisation of state property).

In the event that only certain assets are purchased and the sale therefore does not qualify as the purchase of an entire business or its independent line, the new operator will not automatically accede to all of the seller's rights and obligations regarding the operation of the entire business. The accession to such rights and obligations will need to be regulated contractually between the parties.

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

A lender may not be held liable if its debtor commits an environmental wrongdoing. The lender may, however, be criminally liable if it intentionally credits an amount to the debtor for use in the commission of a criminal offence which damages the environment (Please refer to question 4.1 above for details of relevant offences).

5 Contaminated land

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

Historic contamination of soil and groundwater is mostly connected with environmentally irresponsible behaviour prior to 1989. After massive political changes in 1989, the Czech government implemented measures to reduce damage to the environment (especially with respect to underground water and soil). In the process of privatisation of state-owned property, for example, the government concluded agreements with the new owners of such property on the elimination of ecological damage. Under these agreements, the government agreed to fund relevant costs spent by the new owner on environmental clean-ups or to reduce the purchase price for the property.

At present, no codified regulation of land protection exists, and the provisions of the Water Act on water pollution are generally applied to issues involving land contamination clean-ups. In cases where the identity of the original polluter of land is unknown, any new owner which did not participate in the mentioned government privatisation programme, and which acquired the property without knowing of the contamination, may not be ordered to

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undertake its clean-up under the Water Act. In such cases, the decontamination will be funded from the state budget. In a limited number of cases, the provisions of the Waste Act may also be applicable.

Based on the provisions of the Civil Code, a private action may also be brought against the owner of polluted land if such land is likely to cause further damage to the property of third persons. In such cases, the court may order the owner to take appropriate measures to mitigate the threat of damage.

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

In cases where more than one person is responsible for damage, Civil Code rules state that the wrongdoers will be jointly and severally liable. Persons who are held jointly and severally liable for damage are required to settle the liability among themselves in proportion to their causal responsibility. In addition, in justified cases (e.g. gross negligence by one person), courts may rule that the wrongdoers are individually liable according to their actual responsibility for the damage.

Where jointly acting persons are held criminally liable, each offender will be treated as if he or she committed the offence individually.

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

In general, environmental remediation programmes are based on a decision (order) of the relevant state authority, and as such, are not part of a formal negotiation process with the authority.

The relevant state authority has the right to inspect whether the conditions of its decision have been complied with. The state authority may enforce its decision either through the repeated imposition of fines on the polluter or by contracting out the clean-up to a third party at the polluter's expense.

In the case of administrative proceedings, third parties generally have the right to send notifications, proposals or suggestions to the relevant state authority, but cannot participate directly in the proceedings leading to an administrative decision. As such, they cannot challenge a remediation programme ordered in an administrative decision.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination?

Under the Civil Code, a person who purchases contaminated land for consideration has the right to demand an appropriate reduction in the price of such land. This right arises irrespective of whether the seller caused the contamination, provided that under the sale contract, the purchaser expected the land to be unpolluted and the contamination was not evident at the time of the sale (i.e. the purchaser had no opportunity to discover it during its standard inspection of the land). In cases where the seller represented to the purchaser that the land was free of defects, the purchaser may demand an appropriate reduction of the price of the land even if it did have the opportunity to discover the pollution during its inspection of the land.

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

There is no regulation under Czech law which would enable state authorities to obtain monetary damages for aesthetic harm caused to the environment by a polluter. One obstacle to such action is that Czech law does not provide any guidelines for the monetary quantification of immaterial damage.

6 Powers of regulators

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

Environmental inspections are generally conducted by the Czech Environment Inspectorate acting under the auspices of the Ministry for the Environment. While the powers of the Inspectorate vary depending on the environmental area involved (i.e. water, air, forest, land or waste), inspectors usually have the right to enter private land or private premises used for business or other economic activities, to demand necessary documents, data or written or oral explanations related to the subject of the inspection, to take samples and to retain products and substances, etc. Other regulators with similar powers may also carry out inspections related to particular environmental areas.

7 Reporting/disclosure obligations

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

In case of the discovery of on-site or migrating pollution, individuals will be bound by their general duty under the Civil Code to behave in a manner which prevents damage (injury) to health, property or the environment. Under these rules, any person facing the threat of damage must act to avert the threat in a manner appropriate to the circumstances. Similarly, under the Environment Act, any person aware of the threat of impending environmental damage or the fact that such damage has occurred must adopt necessary measures to avert or mitigate its consequences. This Act stipulates a duty to report any impending or already occurring damage to the responsible state authority without delay. The Water Act stipulates similar general duties with respect to water protection.

In addition, under laws pertaining to particular industries, operators of sources of environmental pollution are required to notify the relevant state supervisory authorities of any accidents, including ecological accidents, caused by the operation of their installations.

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

No specific affirmative obligation to investigate land for contamination is imposed by any environmental regulation. However, the Environment Act places a duty on all persons whose activities cause contamination or damage to the environment, including land, and/or who make use of natural resources, to ensure the appropriate monitoring of the impact of such activities at their own expense. As stated above, this Act also imposes various damage control and reporting obligations on persons who discover that environmental damage is imminent or has already taken place. Unfortunately, however, the provisions of the Environment Act are rather vague and tend not to be enforced by state authorities.

7.3 Is it necessary for a seller to disclose environmental problems to a prospective purchaser in the context of a merger and takeover transactions?

No specific regulation exists regarding environmental disclosure in the context of mergers and takeovers. Disclosure in these transactions is most commonly secured through the purchaser's performance of an on-site due diligence and through representations and warranties in the sale agreement. In practice, misrepresentations may lead to the dissolution of the sale or reimbursement of part of the purchase price and/or settlement of the cost of the resulting damage.

8 General

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

Environment-related liabilities are governed by public law and, as such, cannot be contractually limited. Such public law liabilities (e.g. obligations to pay imposed fines) will not pass with the transfer of property (e.g. the sale of an enterprise) and environmental liability will remain with the polluter. Therefore, even if the seller of a property makes a payment to a purchaser under an environment-related indemnity this will not discharge the seller from any public law environmental liability related to such property.

Where an entity acquires shares in a company which is subject to environmental liabilities, the acquired entity will remain technically liable towards relevant authorities despite the fact that the purchaser may bear the practical financial or other burden of such liability. The purchaser may, however, turn to the vendor to attempt to recover the loss resulting from the acquired company's environmental liability if such vendor breached its environment-related representations and warranties contained in the sale agreement.

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

Existing environmental liabilities form part of a company's costs and cannot be sheltered off the balance sheet. There are several categories of future environmental liabilities for which obligatory reserves need to be set aside in the balance sheet, e.g. operators of dump and mining sites must set aside reserves for land re-cultivation. Depending on how likely certain liabilities are to arise, the company may need to make provisions for them or to disclose them in at least the footnotes of its financial statements.

No environmental liabilities can be enforced against a dissolved company (i.e. a company deleted from the Commercial Register). However, before a company is dissolved, its existing debts (including environmental liability payments) must be settled in the liquidation process.

8.3 Can a parent company be held liable for pollution caused by an affiliate and/or sued in its national court for pollution caused by a foreign affiliate?

Under Czech law, each affiliate is considered to be a separate legal entity with its own legal personality and is therefore held liable for any pollution which it causes. Given, however, that the activities of a legally independent affiliate may be greatly influenced by the decisions of its parent company, the Commercial Code protects affiliates in cases where their parent company has used its influence to enforce arrangements causing the affiliate material loss. In the event that the affiliate becomes liable for pollution caused through the fulfilment of orders given by the parent company, the parent company will be obliged to compensate the affiliate for such damage until the close of the accounting period in which the damage arose.

As the parent company cannot be held directly liable for pollution caused by its affiliate, it cannot be sued for such liability.

8.4 Is there any legislation to protect "whistle-blowers" in environmental matters?

Where independent reporting of environmental damage results in criminal or administrative investigation or proceedings, the rights of the whistle-blower (as the person who initiated the investigation or proceedings) are not expressly protected. Since this individual is not the subject of the inquiry or proceedings, he/she is not afforded any procedural rights or obligations under governing legislation.

Although the Environment Act stipulates a duty to report any impending or already occurring environmental damage to a responsible state authority, the form of such report is not prescribed. The reporter may therefore remain anonymous. In addition, where an environmental law is breached resulting in a criminal offence, persons who are witnesses to this breach or who testify in the course of criminal investigations or proceedings may request that their identifies be withheld under the Criminal Procedure Code.

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

Neither class actions nor exemplary or penal damages are recognised under the Czech legal system.

9 Emissions trading and climate change

9.1 Does the law facilitate emissions trading and, if so, what emissions trading schemes are in operation?

Yes. The Czech Republic is a party to the United Nations Framework Convention on Climate Change and also the Kyoto Protocol. In addition, as a new member state of the European Union, the Czech Republic is obliged to begin participating in the EU Emission Trading Scheme in January 2005. In October 2004, the Czech government approved the National Allocation Plan under this Scheme for the period of 2005-2007.

9.2 What is the general policy with respect to climate change?

The Czech Republic's policy goals regarding climate change are set out in the National Programme for Reducing the Impact of Climate Change. This is a special programme related to the broader National Schemes for Emissions Reduction; the latter are based on the Air Protection Act and incorporate the country's general policy goals regarding air pollution. The most recent of these official schemes was approved by the Czech government in May 2004 and contains the administration's goals for emission reductions by 2010, including the outlook for the period until 2015/2020. The individual goals for each region are outlined further in the Regional (and Local) Schemes for Emissions Reduction.

All of these initiatives reflect a general trend in the country towards emissions reduction in accordance with the obligations of the Czech Republic arising from international treaties. However, environmental experts have criticised the limited and conservative nature of some of the government's goals in this area.

10 Asbestos

10.1 Is the Czech Republic likely to follow the lead of the US in terms of asbestos litigation?

Asbestos is recognised by law as a dangerous substance and its production, distribution and use are restricted. EU Directive No. 83/477/EEC on the Protection of Workers from Risks related to Asbestos Exposure in the Workplace has been implemented into Czech law; this directive sets stricter requirements for the lawful performance of work involving asbestos.

Under Czech law, companies whose employees are exposed to asbestos are obliged to implement substantial safety measures in order to minimise the risks of such exposure. Employers are liable, in particular, for health problems (as stated in the official list of scientifically proven diseases triggered by asbestos exposure) incurred by their employees as a result of exposure to workplace asbestos; such liability applies even where all mandatory safety measures have been implemented and observed, unless it can be established that such measures were not observed by the employee in question. In addition, employers whose employees are exposed to asbestos in the workplace are obliged to maintain records regarding each affected employee and his/her work and to provide a list of the employment positions of such persons to the relevant state authority.

Despite these facts, awareness of the dangers of asbestos exposure remains very low among the general public. In addition, the compensation provided for damage to health is strictly regulated and the financial settlements obtained by claimants are generally very low. Therefore, we believe that the country is highly unlikely to follow the US lead in asbestos litigation at least in the foreseeable future.

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

As stated above, the use of asbestos is highly restricted by law. The use of fibrous asbestos and the sale of products containing fibrous asbestos are generally prohibited. However, as these prohibitive regulations were only adopted recently and have no retroactive provisions, they apply solely to new construction projects.

Although the Waste Management Act requires owners/occupiers of premises to remove asbestos waste from their sites, there is no specific regulation which would oblige them to remove existing structures containing asbestos. Arguably, however, the obligation of owners and occupiers to remove asbestos contained in on-site structures might be implied from general principles of the Civil Code and the Environment Act (see response to question 4.1 above), as well as generally binding regulations on public hygiene.

11 Environmental insurance liabilities

11.1 How big a role does environmental risks insurance play in the Czech Republic?

Facultative environmental risks insurance is not common in the Czech Republic. Some insurance companies operating on the Czech market offer insurance against environmental damage, mostly as an additional policy to standard risks liability insurance; such additional insurance is generally quite limited and its conditions are negotiated on an individual basis in most cases.

Nevertheless, since 2000, the Act on Prevention of Serious Accidents has imposed an obligation on all operators using dangerous chemicals specified in this Act to conclude insurance policies covering, *inter alia*, liability for environmental damage. The number of operators to whom this requirement applies is, however, rather low.

In addition, under the Atomic Energy Act, any person permitted to operate a nuclear facility and/or to transport nuclear materials is obliged to insure itself against damage caused by its activities.

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11.2 What types of environmental insurance are available in the market?

Environmental risks insurance may be arranged in individual cases. Even these policies, however, exclude environmental damage caused by gradually accumulating pollution. Insurance benefits will not be paid unless insured persons comply with all relevant legal regulations and periodically review the technical condition of the insured facility.

Mandatory insurance taken out under the Act on Prevention of Serious Accidents must include coverage against environmental damage which is objectively foreseeable given the types and quantities of dangerous chemicals produced, used, stored or transported by the operator. The classes and quantities of relevant dangerous chemicals are specified in an Annex to this Act. In order to assess the extent of foreseeable environmental damage, the operator must prepare and update a security report for approval by the relevant authorities. At present, only a limited number of insurance companies provide mandatory insurance under this Act.

Czech insurance companies have banded together in an insurance pool to offer mandatory insurance products under the Atomic Energy Act.

11.3 What is the environmental insurance claims experience?

The experience with environmental insurance claims in the Czech Republic has been fairly negative. This is a result of the limited availability and lack of development of environmental insurance and the onerous conditions imposed in standard insurance policies.

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Irma Comstock, an associate at the firm, has acted for a number of major Western investors in the Czech Republic in environmental law matters involving risk assessment in connection with privatisation and acquisition projects. She has prepared due diligence reports regarding projects in the property development, petrochemical and energy sectors, which included in-depth assessment of environmental risks. Educated at Masaryk Univeristy in Brno and New York University School of Law, Ms. Comstock speaks Czech, English and German.

GLATZOVÁ & Co.

Glatzová & Co. was founded by Vladimíra Glatzová in 1994 and is considered to be a leading Czech law firm in the areas of environment and planning, utilities, real estate and construction, M&A, privatisation, banking and finance, capital markets and joint ventures. The firm is ranked highly in the IFLR Guide to the World's Leading International Business Law Firms, online European Legal 500 as well as Global Counsel 3000. Its partners are also listed in other specialised Euromoney publications among the world's leading lawyers in corporate finance, M&A and privatisation.

As counsel to a host of major Western and multi-national investors in the Czech Republic, the firm has extensive experience in advising on environmental law issues across the gas, electricity, water, construction, land development, waste disposal, manufacturing, chemical, pharmaceutical, biotechnological and related industries. It has extensive experience in the performance of specialised environmental due diligence of target companies, arrangement of environment permit provision and compliance, and preparation and negotiation of environmental clean-up, waste removal and biotechnological research contracts. The firm also has expertise in the assessment of pre-existing ecological burdens in cases of restitution of property from the State.

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