

INTERNATIONAL INSURANCE LAW ASSOCIATION/ AIDA

WORLD CONGRESS

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**Topic IV - POLLUTION INSURANCE
- METHODS, COVERAGE AND BENEFICIARIES**

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QUESTIONNAIRE

Introduction

The topic relating to environmental damage insurance covering losses resulting from pollution was selected by AIDA's Brazilian Chapter for discussion during the World Congress to be held in Rio de Janeiro, in October 2018.

Such choice was justified by the growing frequency and intensity of environmental damages worldwide that sometimes affect entire communities and stop the production of goods and the supply of basic public services. History has been disclosing events of great impact relating to chemical industries (such as Seveso/1976 and Bhopal/1984), to oil industries (such as black tides from oil spill in several locations, and Exxon Valdez in the Gulf of Alaska/1989), to nuclear industry (such as Three Miles Island, Chernobyl), and, recently, the explosion at Deepwater Horizon in 2010, in the Gulf of Mexico, that produced a significant repercussion.

In Brazil, environmental pollution has been raising great awareness and discussions, particularly in view of the last relevant event occurred in Mariana city (State of Minas Gerais), in November 2015, resulting from the collapse of the Fundão dam, that spilled 50 million cubic meters of mine wastes downstream, contaminated the Doce River in its whole extension, and caused huge environmental, social and economic impact to populations and cities.

This context requires an analysis on how national legislations address the matter, as well as on the contribution provided by the insurance industry to either remedy or mitigate the impact from environmental damages. The local reports shall be particularly useful to the

assessment of an issue whose perceptions may vary on a significant basis, depending on national legal and administrative peculiarities. Please prepare your report in such a way as to submit the information as required for a correct and full understanding of the answers to the questions made herein.

This questionnaire contains only indicative questions. Please try to inform all the issues you may deem as important to the study of the topic, in the light of your country's scenario. Any information and comments shall be relevant. As the purpose of this questionnaire is to know the situation in your country, we kindly ask you to provide answers that specifically refer to such scenario.

PRELIMINARY REMARK:

Please note that the questions under “1. Environmental Legal Aspects” relating to liability issues are aimed at ensuring a better understanding of the pollution insurance law and practice in different countries. Answering those questions is left to the sole discretion of the national reporter who may freely choose to answer only questions relating to insurance law aspects (i.e. to questions from “2. Legal aspects on environmental insurance policies” to “7. Academic development”).

1. Environmental legal aspects (answer is optional)

1.1. Which are the major general rules on civil liability arising from environmental damages in your country?

Answer : *Environmental damages are generally regulated by industries relevant to potential environmental pollutions, e.g. the petrochemical industry, as well as by different environmental elements such as air, water and soil, where the environmental conditions are examined constantly or regularly by governmental organizations or by requirements of assessments by relevant companies or organizations.*

1.2. Please describe the main characteristics and objectives of environmental civil liability in the light of national legislation and court precedents.

1.2.1. How are environmental damages described under the law?

Answer : *There's no specific definition of environmental damages. Yet there are laws describing reference threshold or indexes of the environmental conditions in air, water or soil. Companies would be fined if they produce pollutions exceeding the reference level, or they will take civil liabilities if the pollutions cause casualties to persons.*

1.2.2. Who may be (either directly or indirectly) made liable?

Answer : *It would be the company who produces pollutions to be made liable according to relevant regulations or under the civil law.*

1.2.3. How is the determination of causal link of environmental damages?

Answer : *It would be determined by the relation between cause and effect.*

1.2.4. Does your legislation provide for strict or fault-based environmental liability?

Answer : *It is fault-based environmental liability.*

1.3. Are there peculiarities regarding environmental damages resulting from pollution? If so, are there differences in the legal treatment to air, soil or water pollution?

Answer : *Yes, and yes.*

1.4. Which are the governmental entities in charge of authorizing and supervising activities that produce environmental impacts or pollution?

Answer : *Environmental Protection Administration, Executive Yuan (EPA) is the main body in central government to be in charge of the environmental impacts or damages.*

1.4.1. What is the scope of activity of these entities?

Answer : *A. Building a sound structure to promote sustainability
B. Saving energy and reducing carbon emissions to cool the earth
C. Recycling resources to achieve zero waste
D. Eliminating pollution to protect the ecosystem
E. Cleaning neighbourhoods and promoting good lifestyles of health and sustainability*

1.4.2 How do they operate, and on which legal grounds?

Answer : *Environmental Protection Administration, Executive Yuan (EPA) works with local governments and non-official organizations together with relevant industries to monitor, maintain, assess and mitigate environmental conditions according to various regulations and programs.*

1.5. Is there a legal system of procedural mechanisms in case of environmental offenses?

Answer : For relevant regulations, please refer to the link of the website:

<https://oaout.epa.gov.tw/law/EngLawQuery.aspx>

Here are some relevant regulations for reference purposes :

- *Petroleum Administration Act*
- *Soil and Groundwater Pollution Remediation Act*
- *Regulations Governing Collection of Soil and Groundwater Pollution Remediation Fees*
- *Water Pollution Control Act*
- *Marine Pollution Control Act*
- *Waste Disposal Act*
- *Public Nuisance Dispute Mediation Act*

1.5.1. Who is in charge of keeping the environmental protection?

Answer : *Environmental Protection Administration, Executive Yuan (EPA).*

1.5.2. How does this system work?

Answer: *Environmental Protection Administration, Executive Yuan (EPA) works with local governments and non-official organizations together with relevant industries to monitor, maintain, assess and mitigate environmental conditions according to various regulations and programs.*

2. Legal aspects on environmental insurance policies (answer is required)

2.1. Is there a specific legal framework to regulate environment insurance policies? If so, please describe such legislation, as well as the major features thereof.

Answer : *No.*

2.2. In the event of a negative response to the question 2.1, please inform if there is any administrative rule, or any other kind of legal regulation that applies to environmental insurance policies. In this case, please describe such regulation, as well as the major features thereof.

Answer : *No, not for environmental insurance. However, there are regulatory requirements of purchasing public liability insurance for some industries, e.g. the petrochemical industry, to pay for bodily injuries or deaths under civil liabilities.*

2.3. Does the law provide for compulsory environmental insurance?

Answer : *No, yet as described above, there are regulatory requirements of purchasing public liability insurance for bodily injuries or deaths caused by some industries, such as the petrochemical industry.*

2.3.1. If so, which would be the relevant risks, covered items and limits?

2.4. In case of a legal requirement or regulation, when should an environmental insurance policy be obtained?

2.4.1. In which step of a venture should such policy be submitted under the law?

3. Operational methods for pollution insurance (answer is required)

3.1. Which are the pollution insurance's modalities that are offered in the market? Performance bonds or civil liability insurance?

Answer : *The modality is the civil liability insurance on bodily .*

3.1.1. What kinds of risks should be covered thereunder?

Answer : *A. Civil liabilities for Bodily Injury, Property Damage, Trespass Nuisance or Obstruction caused by Pollution Conditions whether they are On-Site or Off-Site;*

B. Off-Site Clean-Up Costs arising from the migration of On-Site Pollution Conditions;

C. On-Site Clean-Up Costs that the Insured becomes legally obligated to pay which are caused by Pollution Conditions on or under the Insured Property.

D. Business Interruption

3.2. Does the law or administrative rule define upper limits for losses or coverage?

Answer : *No, yet there are requirements on minimum insured amount for coverage of bodily injuries or deaths.*

3.2.1. Which are the criteria that should apply to limits' definition?

3.3. Is there any difference in the legal treatment to state-owned and private ventures?

Answer : No.

3.4. Is there any difference in the legal treatment to fix and mobile facilities?

Answer : No.

3.5. Is there any difference in the legal treatment to underground works, mines or underground quarries?

Answer : No.

3.6. Do insurers use to insert pre-contractual provisions in the policy (pre-contractual disclosure)?

Answer : No, although the insurer will collect information and do on-site assessment when necessary, those assessments are not inserted explicitly as pre-contractual provisions in the policy. Nevertheless, the insured is subject to the obligation of truthful representations indicated in Insurance Law (Article 64):

Article 64 At the time a contract is entered into, the proposer shall make truthful representations in response to the written inquiries of the insurer. If the proposer has made any concealment, nondisclosure, or misrepresentation, and such concealment, nondisclosure, or misrepresentation is sufficient to alter or diminish the insurer's estimation of the risk to be undertaken, the insurer may rescind the contract; the same shall apply after the risk has occurred, provided that this provision does not apply where the proposer proves that the occurrence of the risk was not based upon any fact that it did or did not represent.

3.6.1. Which are the most usual ones?

4. Coverage under pollution insurance (answer is required)

4.1. Which are the major covered risks relating to civil liability arising from pollution?

Answer : *The major covered risks relating to civil liabilities are bodily injuries, deaths, cleaning expenses and business interruptions arising from the pollutions.*

4.2. Which are the major covered guarantees for events arising from pollution?

Answer : *No guarantees for events arising from pollution.*

4.3. Which are the major covered operational risks arising from pollution?

Answer : *The major covered industry would be the petrol stations.*

4.4. Does the insurance cover fines?

Answer : *No.*

4.5. Is there coverage for individual moral damages, being understood as such any physical or psychological suffering experienced by the victim and/or injury against his/her honor or personality?

Answer : *The insurance covers bodily Injury which includes physical injury, sickness, disease, and mental anguish, emotional distress or nervous shock when accompanied by physical injury, sustained by any person, other than an Insured including death resulting therefrom.*

4.6. Is there coverage for collective moral damages, being understood as such any moral injury undergone by a group of certain persons who are interconnected by a fundamental legal relationship or by a same event experienced by all of them, or any injury to non-determinable trans-individual rights?

Answer : *No.*

4.7. Is there coverage for punitive damages, being understood as such any penalty levied on the agent of the illicit conduct, in addition to the compensation of damages themselves?

Answer : *No.*

5. Beneficiaries (answer is required)

5.1. Who is entitled to be beneficiary of losses recoverable under pollution insurance? Any individuals, legal entities, state-owned or private institutions, collectivities?

Answer : *It could be any individuals, legal entities, state-owned or private institutions.*

6. Market status (answer is required)

6.1. What is the percentage of participation of environmental insurance at the insurance market in its whole?

Answer : *For pollution insurance (not for the public liability insurance required by regulations), the insurance is just in the market recently. There will not be relevant statistics until meaningful scale is achieved.*

6.1.1 As regards the figures thereof, what is the yearly participation of premiums collected under environmental insurance?

Answer : *For pollution insurance (not for the aforementioned public liability insurance required by relevant regulations), the insurance is just in the market recently and hence there is no meaningful statistics at this stage.*

6.2. Which are the sectors of economic activity that use to obtain environmental insurance?

Answer : *Majorly the petrochemical industry, the electronics industry and the steel industry.*

6.3. During the last 5 (five) years, what is the sum of losses paid by virtue of environmental damages?

Answer : *For pollution insurance (not for the aforementioned public liability insurance required by relevant regulations), the insurance is just in the market recently and hence there is no meaningful statistics at this stage.*

6.3.1. What percentage of the aforesaid losses was covered under insurance?

Answer : *For pollution insurance (not for the aforementioned public liability insurance required by relevant regulations), the insurance is just in the market recently and hence there is no meaningful statistics at this stage.*

7. Academic development (answer is required)

7.1 Are there research institutes focused on the study of environmental insurance? Please identify them.

Answer : *The Taiwan Insurance Institute has been keeping an eye on the development of the environmental protections and the environmental insurances in cooperation with relevant parties such as the government, insurance associations and relevant institutes. There are also many scholars who are specialised in this area and do researches and publish reports.*

7.2 Are there academic and scientific works produced in the fields of law, economy, environment or other similar area, that specialize in environmental insurance? Please indicate some reference legal manuscripts and books, and the main authors thereof.

Answer : Here are some research documents as examples :

- *Discussion on the Sustainable Developments of Insurance Industry and the Principle of Sustainable Developments. Ming-Che Cheng and Yu-Chuan Hsiao - (2014)*
- *An Active planning for Establishing Environmental Liability Insurance System - By Environmental Protection Administration, Executive Yuan (EPA) (2012)*
- *A Scientific Report of Climate Changes in Taiwan - By National Science and Technology Center for Disaster Reduction (2011)*
