

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

**Mexico**

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**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?***

The person causing damage to the environment, intentionally or unintentionally, will be liable and must remediate or compensate the damage caused to the environment and third parties.

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

The objective of the environmental civil liability under the Federal Environmental Liability Law ("**Liability Law**") and the court precedents is **(i)** the preservation and restoration of the environment and ecological balance, to protect the human right to a healthy environment for every person, **(ii)** to impose liability on polluters that damage or deteriorate the environment and **(iii)** to force polluters to amend and restore the environment after the pollution events.

Based on the Liability Law, the damage caused to the environment is independent of the patrimonial damage suffered by the owners of the properties and natural resources affected by pollution.

***1.2.1. How are environmental damages described under the law?***

Damages are described in the Liability Law as any adverse and measurable change, loss, deterioration or impairment of the habitat, ecosystem, or natural resources, their chemical and biological characteristics.

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

The person that performs the pollution activities will be liable for any damage to the environment or to third parties. The entities will be liable for the damage caused by their employees, directors and officers in their course of their business activities.

Additionally, directors and officers of a company can be held liable if they fail systematically to comply with the environmental regulation; shareholders and parent companies may be liable if the damage to the environment was intentional and the action of pollution was approved by the shareholder or parent company.

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

The causal link is the correlated sequence of actions or omissions that influenced and produced an effect in the environment.

The damage can be caused either directly or indirectly. Under the Liability Law, a direct damage occurs as a direct consequence of the original cause and its subsequent effects. An indirect damage is considered a damage that did not occur as a direct consequence of the action or omission that produced the damage to the environment.

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

Our legal system provides both strict and fault-based environmental liability. Fault-based liability triggers from the intent, error or negligence of a person. Strict liability triggers from accidents that occur due to use of dangerous activities, regardless of the intent, error or negligence.

***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?***

The environmental damages that result from pollution are calculated on the limits of contamination set forth in the Official Mexican Norms ("**NOMS**").

Notwithstanding that the limits for air, soil and water pollution are set forth in different NOMS, the sanctions and remedies that the authority could impose have the same basis.

Based on the General Law of Ecological Equilibrium and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*) ("**Environmental Law**"), the person that polluted the air, soil or water will need to **(i)** repair or compensate the damage produced to the environment, and **(ii)** pay any fine imposed due to the violations to the environmental laws.

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

- Ministry of Environment and Natural Resources. ("**SEMARNAT**").
- Federal Environmental Protection Agency ("**PROFEPA**").
- National Water Commission. ("**CONAGUA**").
- National Agency for Safety, Energy and Environment ("**ASEA**").

In addition, each Mexican state has its own environmental authorities that implement and supervise local environmental laws.

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

- **SEMARNAT:** Is responsible for the protection, restoration and maintenance of the country's ecosystems and natural resources, as well as pollution control, climate change prevention and water resource management.

- **PROFEPA:** Is responsible for the supervision and protection of the environment, and monitoring the implementation of laws. It is also responsible for safeguarding the interests of the people in environmental matters, ensuring compliance of environmental legislation as well as sanctioning those who violate these legal provisions. It also serves as public prosecutor in environmental matters.

- **CONAGUA:** Is responsible for managing and protecting the country's water resources in order to ensure their sustainable use. It also prevents weather and hydrometeor risks and controls its effects; and evaluates the climate change effects in the water cycle.

- **ASEA:** Is responsible of regulating and supervising industrial and operational safety, and environmental protection in the hydrocarbons sector activities.

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

- **SEMARNAT:** Is a federal authority that conducts the national environmental politics and promotes the sustainable development and preservation of natural resources of the nation. SEMARNAT operates through

its delegations located in each Mexican state, and enforces the environmental law through its decentralized administrative agencies. Its authority is set forth in the Environmental Law.

- **PROFEPA:** Is a decentralized administrative agency of SEMARNAT, with technical and operational autonomy. PROFEPA operates through its Sub-agencies and its 31 delegations in every state of the country. PROFEPA's authority is set forth in the Environmental Law.

- **CONAGUA:** Is a decentralized administrative agency of SEMARNAT with technical and operational autonomy. CONAGUA operates through its Sub-agencies and 13 governmental bodies located in hydrological regions across the country. Its authority is set forth in the National Water Law.

- **ASEA:** Is a decentralized administrative agency of SEMARNAT, with technical and operational autonomy. ASEA operates through its Sub-agencies. Its authority is set forth in the National Agency of Industrial Safety and Protection of the Environment of the Hydrocarbons Sector Law and the Hydrocarbons Law.

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

Yes. There are administrative procedures conducted by administrative authorities, in particular PROFEPA, in which sanctions can be imposed to a person or entity for violations to environmental laws, including pollution of the environment.

Class actions are also available for the persons that suffered environmental damages, in order to obtain indemnification through remediation and, if not possible, compensation.

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

The Federal Authorities SEMARNAT, PROFEPA, CONAGUA and ASEA are in charge of environmental protection in Mexico. PROFEPA in particular is the main responsible to enforcing the environmental protection laws.

##### ***1.5.2. How does this system work?***

The authorities mentioned above apply the principle of prevention to protect the human right to a healthy environment. In case of breach to the environmental laws, authorities may impose punitive and corrective sanctions on the responsible person and, if applicable, entities.

SEMARNAT, supervises the compliance of the environmental law in order to preserve the environment, through its decentralized administrative agencies PROFEPA, CONAGUA and ASEA.

In particular PROFEPA has the authority to **(i)** conduct inspections, **(ii)** preside administrative procedures for violations to the environmental laws, and **(iii)** impose sanctions.

**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.***

The Environmental Law sets forth the requirement for any party carrying out activities that may harm the environment, including high risk and hazardous waste generation activities, to contract environmental risk insurance based on the secondary regulation (*Reglamento*) ("**Environmental Insurance Regulation**") to be issued by SEMARNAT for such purpose. If applicable, the Environmental Insurance Regulation includes the specifics of coverage, insured amount, requirements and other terms of the environment risk insurance and the creation of a National System of Environmental Risk Insurance.

As of this date, the Environmental Insurance Regulation has not been published by SEMARNAT and, therefore, the provisions set forth in the Environmental Law regarding the environmental insurance are not yet effective.

Other than the foregoing, there are no specific law regulating the environmental risk insurance.

***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.***

Mexican insurance policies are governed by the Insurance Contract Law (*Ley sobre el Contrato de Seguro*) ("**ICL**"). The ICL applies to all insurance contracts, except for maritime insurance governed by its special regulation. Environmental coverage is included as part of civil liability and/or professional risk insurance policies, that are regulated under the general framework of the ICL and are considered as part of the Property & Casualty line of business.

The ICL regulates the basic requirements of the insurance contract, special provisions for each line of business, and regulation on premium and claim determination. Pursuant to the ICL, insurance contracts are

formed through the consent of the parties. According to Article 21, paragraph I, of the ICL, the insurance contract comes into effect when the insured receives a confirmation that the insurance company accepted his request for insurance coverage, regardless of whether any written evidence such as an insurance policy or certificate is issued. The effectiveness of an insurance contract may should not be subject to the condition that the respective insurance policy or any other document evidencing its acceptance is issued nor to the condition that the respective premium is paid.

In addition to the general legal framework set forth in the ICL applicable to insurance contracts, the following regulation sets forth mandatory insurance:

**(a)** The Regulation on Environmental Impact Assessment (*Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Evaluación del Impacto Ambiental*) ("**EIA Regulation**"), grants authority to SEMARNAT, in those projects that require its authorization, to request compulsory environmental insurance if it deems the project may produce several damages to the environment. An activity would be considered to produce several damages to the environment if: **(i)** substances to be released may transform into toxic, persistent and bio-accumulative agents, **(ii)** the activities would be performed in an area with bodies of water, flora and fauna, areas with endangered, vulnerable and threatened animals, or protected natural areas, or **(iii)** the specific project is considered to be of high risk pursuant to the Environmental Law and other regulations. In these cases, terms of insurance coverage would be defined by the SEMARNAT on a discretionary basis.

**(b)** In 2016, the National Agency for Industrial Safety and Environmental Protection of the Hydrocarbons Sector (*Agencia Nacional de Seguridad Industrial y de Protección al Medio Ambiente del Sector Hidrocarburos*) ("**ASEA**") issued the Rules on the Minimum Insurance Requirements applicable to Regulated Parties that perform Projects or Activities in the Exploration and Extraction of Hydrocarbons, Oil Treatment and Refining, and Natural Gas Processing ("**ASEA Rules**"). Pursuant to the ASEA Rules, the parties performing the activities regulated thereunder, shall contract environmental liability coverage and, if applicable, well control insurance, with the minimum coverage provided thereunder.

As a general rule, insurance policies covering environmental risks taking place in Mexico must be contracted with a Mexican licensed insurance company.

**2.3. Does the law provide for compulsory environmental insurance?**

Yes. Mandatory environmental insurance is regulated under the EIA Regulation and the ASEA Rules (please refer to Section 2.2 above).

The Environmental Insurance Regulation to be issued by the SEMARNAT will also include the terms and conditions pursuant to which a regulated party would be required to contract environmental risk insurance if the activity to be performed may harm the environment, including high risk and hazardous waste generation activities.

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

**(a) EIA Regulation.** EIA Regulation does not provide the terms and conditions of coverage or minimum requirements. SEMARNAT has the authority to determine the insured amounts and terms of coverage taking into consideration the damages that may occur in the implementation of the corresponding project.

**(b) ASEA Rules.** Pursuant to the ASEA Rules, regulated parties should obtain civil liability and environmental liability insurance and, in its case, well control coverage. Insurance policies should be registered before the ASEA. Reinsurance shall be ceded to duly foreign reinsurance companies duly registered with the National Insurance and Bonding Commission or duly licensed Mexican insurance companies. The minimum insured amount for the required coverage are the following:

<b>Activity</b>	<b>Minimum Insured Amount</b>
Onshore Wells	100,000,000.00 USD
Onshore Wells with Production	25,000,000.00 USD
Shallow Wells	500,000,000.00 USD
Deep Wells	700,000,000.00 USD
Mobile Platforms, Jack-ups, or similar	300,000,000.00 USD
Boats and Minor Ships	5,000,000.00 USD
Tugboats	10,000,000.00 USD
Floating Production, Storage and Offloading and Floating Storage and Offloading, and similar	1,000,000,000.00 USD
Other	100,000,000.00 USD
Oil treatment, refinement, and natural gas processing	500,000,000.00 USD

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

The environmental insurance policy must be obtained prior to commencement of the activity or project. Failure to comply with such

requirement, may have as a consequence that the corresponding project is suspended or the authorization revoked by the authority.

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

Insurance policies must be valid and in force through all of the different development stages of the project or activity, and the coverage may vary depending on the specific coverage requirement for each stage.

Under the ASEA Rules, the insurance policies must be registered with the ASEA prior to the commencement of the project.

**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?**

Environmental risks are usually covered under general commercial insurance or civil liability policies. Performance bonds have a more general coverage but includes compliance of environmental regulation.

SEMARNAT accepts both performance bonds and civil liability to comply with contractual obligations (including the obligations to comply with environmental regulation).

**3.1.1. What kinds of risks should be covered thereunder?**

Risk covered under environmental insurance include: **(i)** third parties for environmental damages, including bodily injuries and remediation, **(ii)** catastrophic events, **(iii)** breach of environmental obligations and contracts, and **(iv)** environmental damages, including sudden and accidental events.

Coverage also includes the following costs: clean-up, restoration, legal costs, crisis management consulting and business interruption.

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

Yes, in case of compulsory insurance (please refer to Section 2.3.1 above).

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

Under the EIA Regulation, limits should be determined taking into consideration the specific risk and possible environmental damages. The limits



set forth in the ASEA Rules, were determined taking into account international standards.

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

No, both state-owned and private ventures must comply with the same requirements before the authorities. It may be the case that State-owned projects have additional rules in the contracting of environmental insurance to be taken into account. Private ventures do require environmental risk coverage, however, requirements are more flexible and follow market practices.

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

Under the ASEA Rules, there are different minimum insured amounts applicable for fixed or mobile assets (please refer to Section 2.3.1 above). Additionally, the insurance policy for mobile facility will require to include transportation coverage.

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

Other than the minimum insured amount set forth in the ASEA Rules applicable for the different type of well projects, there are no additional regulation that provide different treatment for underground works, mines or underground quarries.

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

**Answer:** Yes.

***3.6.1. Which are the most usual ones?***

**Answer:** The insured has the pre-contractual duty of utmost good faith and the obligation to disclose every material circumstance which the insured knows or ought to know and respond to the respective questionnaire of the insurance company. The disclosure must be written following the form provided by the Insurer.

**4. Coverage under pollution insurance (answer is required)**

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

Please see answer to question 3.1.1. above.

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

Contractual Pollution Liability Insurance serves as guarantee in case of any breach to any of the environmental obligations under a specific contract or project.

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

Sudden and accidental coverage is an operational risk covered usually under catastrophic coverage. Gradual spills and slow leaks are usually covered under non-catastrophic coverage.

**4.4. Does the insurance cover fines?**

Fines are usually excluded.

**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?**

Moral damages may be covered. Usually it is excluded from the general coverage unless a special endorsement is added including this coverage.

**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?**

Collective moral damages may be covered under catastrophic coverage. Usually it is excluded from the general coverage and is only covered when a special endorsement is added including this coverage.

**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?**

Punitive damages are usually excluded.

**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?**

The authorities and any party suffering damages may be appointed as beneficiary. Under the ASEA Rules, any payment of insurance should be included in a special Trust for purposes of restoring the environment.

## **6. Market status (answer is required)**

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

There is limited public information available regarding the environmental insurance market in Mexico.

From the limited information available, we estimate that in 2016, environmental insurance represented 0.08% of the overall insurance market and 7.3% of the civil liability insurance market.

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

There is no public information available to determine premium paid under environmental insurance policies in Mexico.

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

Sectors that contract environmental coverage are mainly hydrocarbons, petrochemical, chemical, iron and steel, paper, sugar, cement, electrical, real estate developments, fishing and agricultural.

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

There is no public information available on losses paid under environmental insurance policies in Mexico.

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

There is no public information available on losses paid under environmental insurance policies in Mexico.

## **7. Academic development (answer is required)**

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

The Mexican Association of Insurance Companies (*Asociación Mexicana de Instituciones de Seguros*) ("**AMIS**") is an association comprised by the main insurance companies in Mexico. Within its functions, AMIS carries out development and market studies regarding different type of line of business, including the environmental coverage. We approached AMIS to

obtain information on the environmental insurance market and have been told they do not have any such information.

Also, the National Institute of Ecology and Climate Change (*Instituto Nacional de Ecología y Cambio Climático*) ("**INECC**") is a scientific research institute within the SEMARNAT. INECC's mission is to contribute to the development, conduct and evaluation of national policy on climate change, green growth and sustainability through the development, coordination and dissemination of studies and scientific or technological research.

**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.**

Below please find some examples of academic works on environmental insurance, as follows:

**(i)** *Teoría y práctica de los seguros y fianzas ambientales* (Mayela García Vázquez, Adán Martínez Cruz and Carlos Rodríguez Castelán), (2004).

**(ii)** *La importancia del sector asegurador* (Adán Martínez Cruz y Carlos Rodríguez Castelán).

**(iii)** *Compulsory Insurance and Alternatives to Liability Insurance* (Michael Faure) (2003).

**(iv)** *Los seguros y fianzas como instrumentos de protección al medio ambiente* (Carlos Rodríguez Castelán).

**(v)** *La responsabilidad civil por contaminación del ambiente y su aseguramiento* (Arturo Díaz Bravo).

**(vi)** *El principio de la reparación del daño ambiental en el derecho internacional público. Una aproximación a su recepción por parte del derecho mexicano* (Tania García López) (2007).