

INTERNATIONAL INSURANCE LAW ASSOCIATION/ AIDA

WORLD CONGRESS

Rio de Janeiro, Brazil – October 2018

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

General Reporter: Luis Felipe PELLON

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?

Dmitry Gruzintsev comment

The main legal acts in respect of environmental protection is as follows:

1. Federal Law On Environmental Protection № 7 (the main one):
 - a. Article 1 – defines the following principal terms:
 - negative effect on the environment
 - damage to the environment
 - b. - Articles 77 and 78 impose obligation to indemnify the negative effect on the environment
2. The approach to calculate the amount of damage is provided in the Russian Government Decree № 273 dated 08 May 2007
3. Other laws:
 - a. Federal Law On Animal World № 52 (Article 56)
 - b. Federal Law On Protection of Atmospheric Air № 96 (Article 32)

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?

Please see preliminary translation of main definitions provided by Russian legislation.

Negative effect on the environment is an effect of economic and other activity the consequences of which lead to a negative change in the quality of the environment;

Environmental pollution is the putting of a substance and/or energy into the environment when the properties, location or quantity of the substance cause a negative effect on the environment;

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

Individual and/or Legal entity who caused damage to the environment.

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

Usually it is determined by the Court (legal proceeding)

1.2.4. Does your legislation provide for strict or 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?

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

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

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

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

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

1.5.2. How does this system work?

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.

Yes, please refer to question 1.1

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.

2.3. Does the law provide for compulsory environmental insurance?

Russian legislation doesn't provide compulsory environmental insurance

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?

On the Russian market pollution insurance can be covered in the following ways:

1. It can be included in the scope of cover of existing insurance policies. For instance the Third Party Liability insurance policy may include the environmental liability extension. The same approach can be applied to other insurance policies.
2. The separate tailored Environmental Impairment Liability (EIL) cover. This is a complex insurance product covering different risks of the company due to damage to the environment.

This product covers:

First Party Loss (clean-up of the site; BI due to the pollution; legal costs; consultancy costs)

Third Party Loss (damage to the environment (air, water, ground, flora, fauna); damage to third parties (life/health/property damage))

3.1.1. What kinds of risks should be covered thereunder?

Please refer to 3.1.1

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

The approach to calculate the amount of damage is provided in the Russian Government Decree № 273 dated 08 May 2007

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

The following criteria:

the type of business and operations
geography of operations
turnover

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

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

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

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

3.6.1. Which are the most usual ones?

4. Coverage under pollution insurance (answer is required)

Please refer to 3.1.

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

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

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

4.4. Does the insurance cover fines?

In Russia direct fines and penalties can't be covered.

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?

It can be covered. The amount of moral damage is determined by the Court.

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?

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?

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?

Suffered parties.

For third party damage – suffered individuals and legal entities

For first party damage – the insured

For damage to the environment – State authorities.

6. Market status (answer is required)

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

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

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

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

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

7. Academic development (answer is required)

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

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.
