Mexico


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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in your jurisdiction and which agencies/bodies administer and enforce environmental law?

Environmental policy in Mexico stems from articles 4, 25, 27 and, to a lesser degree, 28 of the Federal Constitution.

These articles set forth the right for every person to a healthy environment and access to water, sustainable development, and the subordination of private property and exploitation of natural resources to the common interest.

To meet this end, environmental policy – as outlined in Mexico's main environmental law, the General Law of Ecologic Balance and Environmental Protection ("**LGEEPA**") – is geared towards keeping ecosystems viable, by ensuring rational exploitation, preservation and/or restoration thereto, as well as ensuring compensation for environmental damage.

The administration and enforcement of environmental policy and law is overseen by the Federal Environment and Natural Resources Ministry (*Secretaría de Medio Ambiente y Recursos Naturales* – "**SEMARNAT**"), which has a number of de-centralised organisms that, while ascribed to the Ministry, retain a certain degree of independence and capacity to act, namely:

(a) The Federal Environmental Protection Attorney's Office (*Procuraduría Federal de Protección al Ambiente* – "**PROFEPA**"), which deals with environmental law enforcement issues.

(b) The National Water Commission (*Comisión Nacional del Agua* – "**CONAGUA**"), which deals with water preservation, concession and enforcement.

(c) The National Institute of Ecology and Climate Change (*Instituto Nacional de Ecología y Cambio Climático* – "**INECC**"), a think tank devoted to the investigation and creation of policy to address ecologic impacts and climate change.

(d) The National Agency of Industrial Safety and Environmental Protection (*Agencia Nacional de Seguridad Industrial y Protección al Medio Ambiente del Sector Hidrocarburos* – "**ASEA**"), a regulatory and enforcement agency that deals with safety and environmental protection issues, stemming exclusively from the oil and gas sector.

(e) The National Forestry Commission (*Comisión Nacional Forestal* – "**CONAFOR**"), which deals with sustainable forestry practices.

(f) The National Comission of Natural Protected Areas (*Comisión Nacional de Áreas Naturales Protegidas* – "**CONANP**"), which deals with the creation, protection and conservation of natural protected areas.

While the above are the main regulatory and enforcement agencies at the federal level, other commissions exist, focusing on a variety of issues, from the administration of natural protected areas to the study of Mexico's biodiversity.

Finally, similar ministries and agencies exist at the state level, which govern and enforce state environmental laws in each jurisdiction.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

PROFEPA, CONAGUA and ASEA are the main enforcement agencies, and their objective is to ensure strict compliance with environmental law by citizens and companies.

This does not mean that these agencies will have a strictly punitive approach – although imposing economic sanctions and ordering the suspension of activities are well within their capabilities – rather, their focus is on ensuring that regulated individuals meet their environmental obligations. In recent years, the approach has gradually begun to focus more on the reparation of environmental damages, rather than imposing severe or large economic penalties.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

Public transparency and providing access to environmental information is an obligation by all federal and state governments. As a general rule, environmental authorisations and registrations are public information, and authorities may redact such information when needed to protect personal data, trade, banking fiduciary, tax or industry secrets, or if it concerns national security, endangers the life or safety of a third party, or obstructs law enforcement procedures, among others. Authorities may also reserve or classify specific information for limited periods of time, but this needs to be justified.

Hence, it is a matter of procedure to have access to environmental impact assessments, authorisations, water concessions, wastewater discharge permits, etc.

However, enforcement actions, such as administrative procedures enacted by PROFEPA or ASEA, when still active, are considered reserved or confidential.

2 Environmental Permits

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

As a rule, an environmental permit is required for the use or exploitation of a natural resource or for the construction and operation of works and activities that have the potential to produce environmental effects or environmental damages if unregulated. Environmental permits may approve all environmental aspects of works or activities, or alternatively regulate one specific environmental aspect, such as wastewater- or hazardous waste-handling permits.

Some of the matters requiring permits include the handling of hazardous waste, use of water, air emissions, environmental risk and removing forest vegetation, among others.

The transfer of environmental permits from one person to another is generally permitted; however, it must be assessed on a case-by-case basis. For example, registers of hazardous waste generators and federal air emissions licences are not transferrable. Some permits that can be transferred from one person to another are the following: environmental impact authorisations issued by SEMARNAT or ASEA; water concession titles; water discharge permits; and federal maritime zone concessions. The transfer of certain permits requires prior authorisation from the issuing authority while, in other cases, a simple notice after the transfer has taken place is sufficient.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

As a general rule, final resolutions issued by regulators, which are administrative authorities, can be appealed when the decision affects the legal interests of the applicant. Decisions issued by federal environmental authorities, which deny a permit or establish any other conditions affecting the applicant can be appealed through either: (i) an administrative review (*recurso de revision*); or (ii) before the competent jurisdictional instances (*juicio de nulidad*).

The officer who is the hierarchical superior to the authority that issued the decision will resolve the administrative review. This decision can also be appealed through jurisdictional instances and, ultimately, through a constitutional appeal (*amparo*), which is to be resolved by the federal courts (judiciary).

Applicants may skip the administrative review and appeal a final resolution directly through jurisdictional instances before the Federal Tribunal of Administrative Justice.

Environmental permits and resolutions issued under local jurisdictions may be appealed using the instances available under local regulations and, ultimately, a constitutional appeal, to be resolved by the federal courts.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Environmental impact assessments are required for most works or activities in the country. Determining whether the work must be assessed by local or federal authorities is based on an exclusive list of sectors reserved to the federal authorities, so that all those sectors not included in this list can be regulated by state or municipal authorities. Sectors whose works or activities must have a federal environmental impact assessment authorisation include: (i) hydraulic works, general means of communication, oil and gas; (ii) oil, petrochemical, chemical, steel, paper, sugar, cement and electrical; (iii) exploration, exploitation and benefit of minerals and substances reserved to the federation; (iv) facilities for the treatment, confinement or elimination of hazardous waste, as well as radioactive waste; (v) forest exploitation within tropical forests and species of difficult regeneration; (vi) forest land use changes, as well as land use changes in jungles and arid zones; (vii) industrial parks with high-risk activities; (viii) real estate developments that affect coastal ecosystems; (ix) works and activities in wetlands, coastal ecosystems, lagoons, rivers, lakes and estuaries connected to the sea, as well as in their coastlines or federal zones; (x) works and activities in protected natural areas under federal jurisdiction; and (xi) fishing, aquaculture or agricultural activities that may endanger the preservation of one or more species or cause damage to ecosystems.

Environmental audits are not mandatory, except when included as an obligation in an environmental permit. Furthermore, the federal environmental enforcement agency runs a voluntary audit programme whereby participating companies can obtain different certifications as "clean industries" after completing an action plan resulting from the audit.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

PROFEPA has powers to carry out inspections in order to verify compliance with federal environmental obligations and may impose corrective and/or safety measures in cases where there is: (i) an imminent risk of ecological imbalance or of serious damage to natural resources or deterioration; or (ii) contamination, with dangerous repercussions for ecosystems, their components or public health. These safety measures can consist of: (i) temporary closure of the polluting sources or facilities; (ii) seizure of hazardous materials and waste, specimens, products or by-products of species of wild flora or fauna or their genetic material, forest resources and instruments directly related to the irregular conduct; or (iii) neutralisation, or similar actions, of hazardous materials or waste.

PROFEPA also has powers to investigate irregularities and impose any of the following sanctions: (i) fines; (ii) suspension of the activities; (iii) administrative arrest for up to 36 hours; (iv) confiscation of instruments, specimens, products or by-products directly related to offences concerned with forestry resources, species of wild flora and fauna or genetic resources; or (v) suspension or revocation of concessions, licences, permits or authorisations.

PROFEPA also has powers to file complaints in connection with activities that may involve the perpetration of environmental crimes, so that the offending party or parties may be prosecuted by the criminal authorities. Likewise, PROFEPA has powers to initiate judicial processes to claim the reparation of environmental damages caused by illicit conduct.

CONAGUA is another federal authority with the power to enforce environmental regulations. Specifically, CONAGUA has the power to investigate and enforce breaches of the National Waters Law as well as other regulations related to the use of water and the protection of bodies of national waters from contamination.

ASEA has the same powers as PROFEPA with respect to activities within the hydrocarbons sector.

At the state level, the government usually has an agency with specific powers to investigate and impose penalties for breaches of local environmental laws.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

Waste is defined in the LGEEPA as any material generated in the extraction, benefit, transformation, production, consumption, use, control or treatment processes and which cannot be reused in the process that generated it.

More specifically, the General Law for the Prevention and Integral Management of Wastes ("**LGPGIR**") defines waste as a material or product discarded by its owner or possessor, which is found in a solid, semi-solid, liquid or gas state, contained in containers or tanks, and that is subject to recovery or requires treatment or final disposal.

Waste is classified as follows:

- Hazardous: Waste that presents corrosive, reactive, explosive, flammable or toxic characteristics or contains infectious agents. Hazardous waste is subject to federal jurisdiction.
- Special management: Waste generated as part of a productive process that does not share the characteristics of hazardous waste or urban solid waste or is generated by a large generator of urban waste. Special management waste is subject to state jurisdiction unless such waste is generated by the hydrocarbons industry, in which case it is subject to federal jurisdiction.
- Urban solid: Domestic waste generated in households as a result of the disposal of materials used in domestic activities. Urban solid waste is subject to municipal jurisdiction.

Based on the volume of waste generated on a yearly basis, a generator can be classified as micro, small or large and it must comply with certain obligations regarding the handling of such waste. These obligations include, among others, having adequate temporary storage areas and evidence of collection, delivery, transportation and final disposal of the waste generated. If classified as a large generator of hazardous waste, it is also required to have a waste management plan and environmental insurance policy.

3.2 To what extent is a producer of waste permitted to store and/or dispose of it on the site where it was produced?

Waste generators are permitted to store hazardous waste in temporary storage areas located on site for up to six months from its generation, which can be extended for an additional six months with prior written request to SEMARNAT or ASEA (only for the hydrocarbons industry), as applicable. Environmental regulations and the Mexican Official Standards contain provisions specifying the requirements and conditions for the temporary storage of hazardous waste.

The disposal of waste, however, must be carried out off-site at authorised facilities and through authorised transportation companies. This excludes waste from the mining industry, such as tailings, which can be disposed of at the mining site through tailings dams. The disposal of special management waste and urban solid waste should be conducted on a landfill authorised by the state environmental authorities. These sites should operate in compliance with certain environmental regulations and the Mexican Official Standards.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/ disappears)?

Pursuant to the LGEEPA and LGPGIR, those who generate hazardous waste are responsible for such waste from "cradle to grave" and are therefore liable for the contamination or any damages that such waste may cause even after it has been transferred to an authorised third party for disposal; however, once the waste has been delivered to authorised hazardous waste management companies, for storage, transportation, reuse, treatment or final disposal, such liability becomes secondary.

Authorised management companies are required to have sufficient guarantee to cover damages that could be caused during and after the provision of the management services. The person in charge of a facility for the final disposal of hazardous waste must provide proof of insurance in order to cover the repair of possible damages, and such insurance policies must remain in force for a period of 20 years after closure of the cells or the facility, regardless of bankruptcy or abandonment of the site.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

LGPGIR includes a general principle of shared responsibility between all parties participating in the generation of waste, including producers, importers, distributors, commercialisation, and final consumption. Additionally, it establishes an obligation for importers, exporters and distributors of products that become hazardous waste, special management waste or large volumes of urban solid waste, to develop and execute waste management plans; however, LGPGIR does not establish an express obligation to take-back or recover any of these wastes. It is expected that the General Law of Circular Economy, which is still under discussion amongst the different actors, will in fact establish specific rules for these matters.

4 Liabilities

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

Administrative liability, pursued by enforcement agencies, is the principal type of liability arising for noncompliance with applicable laws or permits. This liability may result in administrative fines, suspension of activities and even closure of facilities found in breach of law.

Available remedies against a sanctioning decision are those mentioned in question 2.2 above (i.e. administrative review, nullity trial or constitutional appeal).

Civil liability derives from the Federal Civil Code and may arise for the damages suffered by any third party in its person or patrimony, stemming from noncompliance with environmental laws or permits. Litigation may result in the payment of damages and losses incurred by the innocent parties.

Criminal liability derives from the Federal Criminal Code and may arise from environmental crimes (i.e. illegal commerce with endangered wildlife, forestry vegetation removal, simulation of compliance with environmental obligations, etc.).

Environmental liability sets forth the liability for environmental damage. The Federal Law of Environmental Responsibility ("**LFRA**") creates a judicial scheme to force those parties found guilty of generating damages to the environment, to restore the damage or, in case this is impossible, pay substantial fines. The liability set forth in the LFRA is strictly subjective and, thus, the sanctions can only be imposed to the individual accountable for the environmental damage.

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

Generally speaking, operators may not be held liable for environmental damage when operating within permit limits, unless false or inaccurate information was provided to obtain said permits, or to comply with the terms and conditions set forth therein.

Notwithstanding the foregoing, parties responsible for soil and groundwater contamination, in excess of applicable thresholds, are liable for remediation, even if such contamination was generated while operating in compliance of applicable permits.

Likewise, an operation may be held liable (strict liability) for damages caused to third-party property as result of the use of hazardous materials even if compliance with environmental permits.

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?

In Mexico, the practice of piercing the corporate veil is not generally followed, particularly for environmental compliance issues, which leaves a company's stockholders free from administrative liability stemming from noncompliance with applicable laws or permits.

Notwithstanding the foregoing, pursuant to the LFRA, directors, agents and managers of corporations may be held liable for environmental damage reparations, if proven that they ordered the damaging activities.

In this regard, the Mexican market has available Directors & Officers insurance policies so that such companies may protect themselves from such liabilities.

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?

Administrative liability for noncompliance with applicable environmental laws and permits rests on the party or corporation obliged thereto.

This means that, in a share purchase agreement, administrative liability will follow the corporation subject matter of the transaction, thus being transferred from the vendor to the buyer, who, as the new owner of the corporation responsible for any irregularity, will be liable before enforcement agencies.

In contrast, in an asset purchase agreement, there is an increased possibility of curtailing administrative liabilities for legal or permitting noncompliance between vendor and buyer, since the corporation responsible for the noncompliance remains within the vendor's sphere of influence.

An exception to the above is liability stemming from environmental damage, which will always rest on the individual (or corporation) responsible for causing such damage.

For the policy on the liability to remediate contaminated sites, please refer to section 5 below.

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

In Mexico, lenders may not be held liable for environmental wrongdoing or remediation.

5 Contaminated Land

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

With regard to soil contamination, there is an administrative liability to remediate. The general rule is that the person who was responsible for causing the contamination is also responsible for its remediation; however, the LGEEPA and LGPGIR also establish joint-and-several liability between owners and possessors of a contaminated site for its remediation, even if the owner or possessor is not responsible for causing it.

The LGPGIR presumes that a site is contaminated under two different scenarios:

- Environmental emergency: Contamination resulting from an unexpected and sudden event that results in an uncontrolled release, explosion or fire involving hazardous materials or waste that immediately affects human health or the environment.
- Historic: Contamination caused by the prior release of hazardous materials or waste which were not remediated in a timely manner in order to avoid the dispersion of contaminants, and that must now be remediated.

In case of an environmental emergency, the party responsible for the spill, leakage or discharge of hazardous materials or waste greater than one cubic meter should immediately notify PROFEPA, implement the necessary measures to contain the materials or waste, minimise or limit the spread of the contamination and conduct the clean-up of the site.

Regarding the remediation of a contaminated site resulting from an environmental emergency or historic contamination, prior to conducting the remediation activities, a remediation programme must be approved by SEMARNAT or ASEA. The remediation programme should include characterisation studies, an environmental risk evaluation, historical research and the remediation proposal.

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

Mexican environmental legislation follows the "polluter pays" principle; therefore, the general rule is that those who are responsible for the contamination of a site are also responsible for its remediation. If there is more than one person responsible for the contamination, they will be jointly and severally liable for the remediation.

However, when the guilty party cannot be identified, the law establishes joint-and-several liability between owners and possessors of contaminated sites to conduct any required remediation. In this case, the liability for the innocent party would be limited to conducting the remediation.

When a contaminated site is transferred, the seller has the obligation to inform the buyer about the condition of the site and to obtain an authorisation for the transfer of the site from SEMARNAT. This authorisation is intended to allocate liability for remediation between buyer and seller and, therefore, when a contaminated site is transferred without this authorisation, the law allocates liability for remediation to the seller.

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?

The remediation programme should be filed with SEMARNAT or ASEA, as applicable, for its evaluation and approval. After finalising the remediation activities, a final sampling should be conducted to confirm that the concentrations of contaminants are within the parameters set forth in the applicable Mexican Official Standards or the remediation levels included in the environmental risk evaluation. At this stage, SEMARNAT may require additional remediation.

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, and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

The general rule under Mexican environmental legislation is that those responsible for causing the contamination of a site will be liable for repairing any damages caused. Therefore, and even when the LGPGIR sets forth that owners or possessors of contaminated sites will be jointly and severally liable for conducting any required remediation, an innocent owner or possessor that has been forced to remediate is entitled to claim the costs from the responsible party through civil courts.

When a contaminated site will be transferred and the seller has knowledge about the contamination of the site, the seller has the obligation to inform the purchaser about it, and such disclosure must be included in the respective purchase agreement.

In these cases, the transfer of the contaminated site will require an authorisation from SEMARNAT. The purpose of this authorisation is to allocate liability for remediation of the contaminated site between seller and buyer and, therefore, it can be useful to transfer the risk or limit liability for remediation for buyer or seller, as the case may be.

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

Pursuant to the LFRA, the government has the authority to obtain economic compensation from parties responsible for environmental damage (i.e. damage caused by activities undertaken without applicable environmental licences and authorisations or in excess thereto). This may include damages for aesthetic harms to public – or even private – assets.

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.?

Enforcement agencies have extensive powers for the discovery of evidence in the course of an administrative procedure, provided that the information requested or obtained is specifically and directly connected with the subject matter of the inspection or administrative procedure.

This includes the ability to request documents, interview employees, take samples, etc.

If this process of discovery exceeds or is not connected to the subject matter of the administrative procedure, findings may be disregarded in a court of law.

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?

Per statutory law, pollution found on a site does not need to be disclosed to environmental authorities nor affected third parties; however, affected third parties may seek civil compensation for any damages suffered in connection thereto if they are made aware of such contamination.

Furthermore, pursuant to the LGPGIR's Regulations, an obligation to obtain an authorisation from SEMARNAT in order to sell a contaminated site exists, which indirectly implies the requirement to disclose the status of the site to potential buyers.

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

There is no regulatory obligation to investigate historic land contamination under Mexican law.

Such investigation usually occurs as part of a due diligence practice, in the context of commercial asset transactions.

However, sudden and expected releases of hazardous materials do trigger the obligation to investigate the cause and extent of the contamination caused by such release.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

In Mexico, disclosure of environmental issues in the context of a transaction adheres to the usual standards followed at the international level.

This means that a buyer may hold a seller responsible for any breach in the representations or warranties pertaining to the environmental performance or state of the corporation or assets subject to the transaction.

Hence, the sufficiency of the representations and warranties and indemnities liabilities attached thereto will be contingent on the nature of the findings after an appropriate due diligence effort and the business and legal acumen of each party to the transaction. The only express disclosure is set forth in LGPGIR.

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 for that matter?

Environmental liability is mainly administrative and therefore follows the person, meaning the individual or entity responsible for the breach of environmental law, contamination or

the conduct generating the liability. Therefore, environmental indemnities can be a good alternative to limit exposure for actual or unknown environmental liabilities acquired in the context of a commercial transaction (stock or asset purchase mainly) by an innocent acquirer; however, indemnities alone do not eliminate exposure of an innocent acquiring party to liabilities, particularly with respect to environmental liabilities that do not have a statute of limitation, or breaches to environmental laws, the consequence of which could be the shutdown of a facility or the impossibility of obtaining or renewing a permit required for operation.

Environmental indemnities help recover damages caused by environmental liabilities; however, these do not limit the enforcement authorities' powers to pursue breaches to environmental laws and impose fines and other measures to the indemnified party.

On the other hand, liability for environmental damages caused by illicit conduct is subjective and, therefore, a guilty party could continue to be liable for the reparation of environmental damages, even after having paid an indemnity to the innocent party. To clarify, under the Federal Law of Environmental Liability, it may be the case that both the indemnified and indemnifying parties are sued at the same time for the reparation of environmental damages; in which case, the indemnifying party would not be released from liability after paying an indemnification.

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

The dissolution of a company that has breached environmental laws and must pay fines or implement corrective measures or remediation, would effectively make it impossible for the administrative authorities (SEMARNAT, PROFEPA and CONAGUA) to execute those penalties or collect the fines. However, such conduct, that is to say, dissolving a company to avoid environmental liabilities, may constitute a criminal act and the officers of such company ordering the dissolution could potentially be charged with a crime. Additionally, liability for damages caused by illicit actions is subjective, and it extends to those officers of a company who had operation powers over the company and filed to avoid the damage. Therefore, even if a company is dissolved, officers may still be held responsible by a federal court for the reparation of environmental damages caused by such company.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

Shareholders of a company cannot be held personally liable for breaches of environmental law caused by the company; administrative liability cannot pierce the corporate veil; however, if a shareholder with operational power of a company ordered or failed to avoid environmental damages caused by illicit conducts of the company, such shareholder could be held responsible for the reparation of those environmental damages under the Federal Law of Environmental Liability.

On the other hand, a parent company cannot be sued in Mexico for breaches of environmental law or reparation of environmental damages caused by a subsidiary or affiliate.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

Mexican environmental regulations do not include any legal provisions regarding "whistle-blowers". The LGEEPA does permit individuals to file anonymous complaints regarding breaches of environmental law; however, there are not any other additional protections for these types of claimants.

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

In 2010, the Federal Constitution was amended to introduce class actions in Mexico. This constitutional addition triggered a series of amendments to different laws, including the Criminal Procedures Code and LGEEPA, to regulate environmental class actions; however, Mexico does not have a litigious culture, and the amendment has not been broadly used in Mexico.

On the other hand, the Federal Criminal Code includes a catalogue of environmental crimes that can be punished with prison and penalties, and a guilty party may be liable for the reparation of damages; however, exemplary damages are not available under Mexican regulations.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

Certain vulnerable groups such as owners of social property (*ejidos*) and other communities affected by projects or activities causing environmental damages or risks have access to different legal actions and maintain the right to request injunctions from federal courts to halt the construction or operation of polluting activities. In these cases, a court may decide to grant such injunction but release the plaintiff from the obligation to post bond or guarantee the reparation of any damages that the defendant may face because of the injunction. This is the only benefit or exemption in terms of costs of environmental litigation that certain vulnerable groups have access to.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in your jurisdiction and how is the emissions trading market developing there?

Mexico does not yet have an operating national emissions trading scheme; however, in 2018, the General Climate Change Law was amended to instruct the implementation of the Mexican emissions trading scheme ("**SMCE**"). The SMCE is currently undergoing a trial period, with the participation of companies in the energy and industrial sectors that generate 100,000 tonnes or more per year of CO_2 equivalent. The SMCE will operate as a cap-and-trade system, in which SEMARNAT will allocate allowances per industry and will develop auctions. Those sectors that do not participate in the SMCE may register projects that reduce greenhouse gas emissions ("**GHE**") and generate carbon credits that can also be traded in the SMCE. The trial period ended in 2021, entering a transition period in 2022 to be operational in 2023.

9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

In terms of the General Climate Change Law and its Regulations on matters of the National Registry of Emissions ("**RENE**"), those responsible for facilities that generate 25,000 tonnes/year of GHE (CO_2 equivalent) must monitor and report their direct and indirect emissions to the RENE. Likewise, an independent verification report of those emissions must be filed every three years. This verified report will be used by SEMARNAT in order to allocate the emissions allowances once the SMCE is operational. The annual report must be filed between March and June using the Federal Annual Emissions Inventory Report.

9.3 What is the overall policy approach to climate change regulation in your jurisdiction?

Mexico is a signatory of the United Nationals Framework Convention on Climate Change and has ratified the Kyoto Protocol and the Paris Agreement. Mexico enacted its General Climate Change Law in 2012 and had been leading Latin America in building a legal and institutional framework to address climate change, including through the creation of the INECC. The policy had been focused on both the implementation of mitigation and adaptation measures, creating instruments such as Clean Energy Certificates and Transition Energy Law commitments to reduce its national GHE and to increase the generation of renewable energy. Notwithstanding, under the new federal administration, the environmental sector has seen a significant reduction in its budget and is trying to eliminate the INECC due to "budget austerity". Additionally, initiatives and policies by the federal government undermining the private energy sector with potential affectations to the renewal energy market have created a scenario that may throw back progress on the matter significantly.

In any case, during COP 27, Mexico increases its unconditional NDCs to 30% by 2030 (from 22% in 2015 and introduces new components to the strategy including Natured Based Solutions (blue carbon and natural protected areas)). Even when, in theory, the policy remains to combat climate change, Mexico has already failed to comply with its prior commitments under the Paris Agreement and the future on public policy, or its implementation, remains uncertain.

10 Asbestos

10.1 What is the experience of asbestos litigation in your jurisdiction?

There are precedents registered in Mexican jurisprudence regarding asbestos in international trade matters; however, there is no information available in public information databases regarding jurisprudence derived from asbestos litigation related to health issues.

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

In Mexico, a health-related official standard (NOM-125-SSA1-2016) sets forth the health and environmental requirements related to the process and use of asbestos.

This standard strictly prohibits the production and use of crocidolite-based asbestos (blue asbestos), while other types may be used in the production of high-density materials, where asbestos fibres are encased and will not become friable (usually building materials).

Notwithstanding the foregoing, asbestos may not be used – or must be removed – when concentration limits exceed the 0.1 f/cm^3 (i.e. fibres present in a volume of one cubic centimetre) threshold.

Used asbestos must be handled as hazardous waste.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in your jurisdiction?

Environmental liability insurance policies are becoming increasingly common in Mexico. Originally, only large generators of hazardous waste, those holding authorisations for providing hazardous waste management services and those who develop high-risk activities required to have environmental insurance policies to cover environmental damages that could be caused from handling hazardous materials or waste.

Additionally, SEMARNAT has made it standard to require as a condition any form of guarantee to cover the costs of the implementation of the mitigation measures and other obligations resulting from environmental impact authorisations for the development of works and activities. In order to determine the amount of the guarantee, the holder of the authorisation must present a technical-economic study, which will be approved by SEMARNAT in advance of the acquisition of the guarantee.

Insurance has also become a relevant issue for the oil and gas industry. ASEA has issued official guidelines to determine the scope and amount of environmental liability insurance policies that the developers and operators of oil and gas projects in Mexico must retain. Environmental liability insurance must usually cover environmental damages and third-party liability.

In the Mexican market there are different kinds of insurance policies, to cover the following liabilities:

- Third-party liability for damages caused by the company.
- Catastrophic events.
- Breach of environmental agreements.
- Damage caused by the company to the environment.

However, please note that not all Mexican insurance companies offer environmental insurance policies.

11.2 What is the environmental insurance claims experience in your jurisdiction?

In the past few years, environmental insurance in Mexico has shown some growth and has become an efficient tool to claim losses for environmental damages more rapidly.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in environment law in your jurisdiction.

An initiative seeking to enact legislation on circular economy has been under discussion in Mexico's Congress, since November 2021 by the Environmental Commission of the Chamber of Deputies.

Furthermore, discussions have been held in Congress to approve a new General Waters Act, which seeks to reshape how water is managed and granted in concession in Mexico. This initiative has been under review of the Political Coordination Board of the Chamber of Senators since March 2022.

A new Mexican official standard, NOM-001-SE-MARNAT-2021, that establishes new and very stringent permissible levels of contaminants in wastewater discharges to national bodies or water or soil, will enter into force on April 3, 2023. Through action programs, compliance with these new standards could be deferred until 2027.

On the other hand, the three years period of the Pilot Program of the Mexican Emissions Trading System ("**ETS**") has come to an end and SEMARNAT is expected to publish the regulations of the operational period of the ETS in the first half of 2023. The ETS – which operates under a traditional cap-and-trade scheme – will bring a significant change to the way in which business is carried out in Mexico. Another significant initiative is to establish a voluntary carbon market specific to the forest sector.

Finally, more and more states are enacting new local green taxes, mostly for the emission of contaminants or green-house gasses. So far, Zacatecas, Tamaulipas, Nuevo León, Baja California, Querétaro, Oaxaca, Coahuila, Campeche, Yucatán, State of México and, more recently, Guanajuato, have established these types of local taxes.

Mariana Herrero Saldivar has in-depth experience in all aspects of environmental law and approaches environmental issues from different perspectives, often in collaboration with the firm's Projects, Litigation and M&A practice groups. She is praised by clients and peers for her ability to bring outstanding environmental expertise to the firm's transactional projects, regulatory practice and strategic litigation capabilities. She has a particular expertise in advising intense water-consuming industries on the preservation of water rights and designing strategies to ensure compliance with the complex wastewater regulations in Mexico. International publications have recognised Mariana's expertise – *Chambers and Partners* ranks her in Band 2 in the Environmental practice, while *The Legal 500* has named her as a "Leading Individual" in the same practice.

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Lucía Manzo Flores has been part of the Environmental practice group since 2010 and has participated in the development of several infrastructure and energy projects. She has participated in the development and implementation of corporate environmental and permitting strategies, as well as in the process of obtaining authorisations, concessions, licences and permits from federal, local or municipal authorities necessary for the development of industrial, tourism, commercial, real estate, infrastructure and energy projects. Lucía is a member of Asociación Nacional de Abogados de Empresa, Colegio de Abogados, A.C., and is currently participating as Coordinator of the Environmental Law Committee.

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Ranked as a leading firm in Mexico by renowned international publications such as *Chambers and Partners*, *Latin Lawyer* and *The Legal 500*, among others, for its international and cross-border capabilities, Galicia is an independent firm with broad international reach through its alliances and network in Europe, Latin America, USA and Asia.

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