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ENVIRONMENT

Environmental law and practice in Mexico: overview

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ENVIRONMENTAL REGULATORY FRAMEWORK

1. What are the key pieces of environmental legislation and the key regulatory authorities?

Sources of environmental law

Mexico formerly had 31 states and one federal district. Under a recent legal and political change, the federal district is now named Mexico City and is considered as another federal entity. Each of the states are formed by municipalities, which total 2,469 throughout Mexico, while Mexico City is divided by 16 administrative divisions. The Federal Congress (Congress) can legislate to establish the concurrent authority of the federal, state and municipal governments which regulate, within their jurisdiction, the:

- Protection of the environment.
- Preservation and restoration of the ecological balance.
- Environmental damage, repair and compensation.

Federal statutes (*see below, Statutes*) stemming from the Constitution provide the framework and basis for the national environmental regulatory scheme.

International instruments, such as international treaties or trade agreements, are also a source of environmental law. Their influence has shaped the environmental regime and provided instruments to enforce environmental legislation.

Statutes

General Law on Ecological Equilibrium and Environmental Protection 1988 (LGEEPA). LGEEPA is the primary environmental law, which provides a general legal framework for national legislation on the subject. Through LGEEPA, Congress primarily distributes powers between the three levels of government and sets out overarching policies for environmental regulation, as well as the basic environmental legislation.

Other statutes. Various other general statutes have been issued at federal level, such as the:

- National Waters Law (*Ley de Aguas Nacionales*).
- General Law on Wildlife (*Ley General de Vida Silvestre*).
- General Law on the Prevention and Comprehensive Management of Waste (*Ley General para la Prevención y Gestión Integral de los Residuos*).
- General Law on Climate Change (*Ley General de Cambio Climático*).
- Federal Law on Environmental Liability (*Ley Federal de Responsabilidad Ambiental*) (LFRA). The LFRA was published in the Official Gazette of the Federation on 7 June 2013 and entered into force on 7 July 2013. Under this new law, the cause of action for environmental liability for damages has a statute of limitation of 12 years (instead of five years), starting from the day that the environmental damage and its effects were produced.
- The Law of Dumping in Mexican Marine Areas (*Ley de Vertimientos en las Zonas Marinas Mexicanas*) (LVZMM), which now only applies to environmental administrative faults The LVZMM was published in the Official Gazette of the Federation on 17 January 2014 and entered into force on 16 July 2014. This new law substitutes a former dumping regulation and sets out the new requirements to obtain permits to dump specific substances and materials to Mexican marine areas.
- The Law of the National Agency of Industrial Security and Environmental Protection for the Hydrocarbon Sector (*Ley de la Agencia Nacional de Seguridad Industrial y de Protección al Medio Ambiente del Sector Hidrocarburos*) (ASEA Law), was published in the Official Gazette of the Federation on 11 August 2014.
- The General Law on Sustainable Forest Development (*Ley General de Desarrollo Forestal Sustentable*), published in the Official Gazette of the Federation on 5 June 2018, which replaces the 2003 law of the same name.

Environmental laws have emerged in all states and in many municipalities.

Regulations

Regulations to enforce environmental laws are issued by the administrative agency in charge of the relevant sector. These include regulations on hazardous waste, water, environmental audits, air emissions, natural protected areas and ecological ordinance. Environmental regulations are issued at the federal, state and municipal levels.

Mexican Official Norms (NOMs)

NOMs are technical standards issued by the competent administrative authorities. They set out binding specifications, standards, values and characteristics applicable to a number of products, process, facilities, systems, activities, services, methods of production, wastes, substances, contaminants and species, among various other matters.

NOMs set out maximum allowable pollutant limits for contaminants in air, water and soil, and list hazardous waste, substances, and endangered species.

Additionally, there is a voluntary category of standards, known as Mexican Norms NMX, which are mostly used to provide guidelines and criteria on technical matters.

Regulatory authorities

The Secretariat of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*) (SEMARNAT) is the main governmental agency in charge of enacting and enforcing environmental regulation at the federal level.

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The following administrative agencies associated with SEMARNAT oversee specific areas of environmental policy or law enforcement:

- The National Water Commission (*Comisión Nacional del Agua*).
- The Office of the Federal Prosecutor for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*) (PROFEPA). PROFEPA is the enforcement arm of SEMARNAT and it has the authority, under the internal regulations of SEMARNAT, to:
  - carry out inspection visits;
  - prosecute environmental non-compliance;
  - apply sanctions;
  - generally enforce environmental laws and regulations;
  - perform inspections and sanction the entities and individuals subject to air emissions reports under the recently published General Law on Climate Change and its regulations. PROFEPA also oversees the federal voluntarily environmental audit programme.
- The National Commission for Natural Protected Areas (*Comisión Nacional de Areas Naturales Protegidas*) (CONANP).
- The Security, Energy and Environment Agency (*Agencia de Seguridad, Energía y Ambiente*) (ASEA) regulates and oversees industrial safety and environmental protection, and integrated waste management specifically with respect to hydrocarbon-related activities.

There are also decentralised administrative departments and other instrumentalities which act under the co-ordination of SEMARNAT, such as:

- The Mexican Institute of Water Technology (*Instituto Mexicano de Tecnología del Agua*).
- The National Forestry Commission (*Comisión Nacional Forestal*).
- The National Institute of Ecology and Climate Change (*Instituto Nacional de Ecología y Cambio Climático*), in charge, among others, of increasing research on climate change.

The information provided in this Q&A makes reference to the applicable environmental regulations published until 30 September 2020.

REGULATORY ENFORCEMENT

2. To what extent do regulators enforce environmental requirements?

Environmental statutes and regulations are generally clear about the consequences and penalties for non-compliance with them, and on the procedures to enforce and apply them. Administrative law is strictly enforced, and law enforcement is driven by the constitutional principle of legality and due process.

Mexico has seen a trend of improvement in enforcement practices over the past two decades. However, there are complex issues that affect law enforcement in general, ranging from Mexico's relatively new democratic regime (which does not always make environmental matters a priority), to inappropriate practices in administrative and judicial structures and, more recently, severe budget cuts and budgetary constraints.

A crucial factor is limited resources, both human and budgetary, facing the enforcement agencies. PROFEPA's inspectors and public officers are outnumbered by the many matters requiring their attention, and the agency does not have sufficient resources to properly attend and prosecute environmental non-compliance to an acceptable level.

Relatively limited knowledge and involvement from the judiciary in environmental matters is also a key factor. Historically, environmental issues have been kept at a certain distance from courts and judges. Consequently, there are a relatively small number of decisions to shed light on environmental laws and regulations, and their interpretation by judicial authorities.

ENVIRONMENTAL NGOS

3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active?

There are legal mechanisms to involve NGOs and other organisations in environmental matters and decision making. Public consultation processes are set out in various statutes and regulations, and are widely used by NGOs and pressure groups to put a certain project or its effects under public scrutiny.

The LGEEPA provides the right of the following to submit legal actions against acts that damage (or could damage) the environment, or that breach environmental laws through an administrative appeal or annulment complaint:

- Third parties with a legitimate interest in the matter (that is, who are directly affected by the project or activity).
- Interested parties that belong to communities that may become affected by a project or activity.

PROFEPA is authorised to prosecute any claim made through a "popular denouncement" (that is, a mechanism allowing any person to denounce, through PROFEPA, any act or omission of a third party that may affect ecological balance, damage the environment or breach applicable environmental laws).

The Mexican Federal Code of Civil Procedures and LGEEPA provide the system and mechanics allowing class action lawsuits. PROFEPA, non-governmental organisations (NGOs) and groups of at least 30 people have the right to bring a collective action before the federal courts against individuals or entities responsible for causing environmental harm.

Under the LFRA, the following are entitled to legally claim environmental liability:

- PROFEPA.
- Environmental agencies of state jurisdiction or of Mexico City.
- Individuals that live in a community within or adjacent to the area where damage has been caused.
- Mexican non-profit organisations where the corporate purpose is to protect the environment, when acting on behalf of a claimant and with more than three years incorporation. A project to amend the LFRA proposes to reduce this requirement to one year, on the basis that a three year requirement limits access to justice. Congress has not yet approved the amendment, which is being modified.

Hydrocarbon-related projects require approval from the Ministry of Energy before submitting a request for an environmental impact authorisation. As part of its consideration process, the Ministry of Energy can require a prior consultation with communities potentially affected by the hydrocarbon projects.

ENVIRONMENTAL PERMITS

4. Is there a permitting regime for polluting emissions to land, air and water? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

Integrated/separate permitting regime

There is an integrated permitting regime.

Sources of emissions subject to federal regulation must obtain an Integrated Environmental Licence (LAU), which includes in one single procedure environmental impact and risk, air emissions, hazardous waste and water. The LAU is optional for all other industries or companies that wish to integrate their permits for these matters into one procedure.

There is also an integrated reporting regime for the release of contaminants into the environment, which includes emissions into air and water, and hazardous waste management. The data on these emissions and the management of hazardous waste is annually reported through the annual operation card (*cédula de operación anual*), which is submitted to SEMARNAT on 30 June each year at the latest, for inclusion in the Emissions and Transfer of Contaminants Register. Some states also issue a local integrated environmental licence for air emissions sources subject to local regulation, and which generally covers other local environmental matters.

Single/separate permits

At the federal level, sources of air emissions must obtain the LAU, which can also incorporate permits related with other areas of applicable federal environmental matters. Therefore, applicable local environmental permits must be secured separately. Air emissions subject to local regulations must obtain a local integrated environmental licence if provided under the local environmental regulations in question, and federal or municipal permits must be secured separately.

5. What is the framework for the environmental permitting regime?

Permits and regulator

Only the sources of air emissions subject to federal regulation must obtain an Integrated Environmental Licence granted by SEMARNAT (LAU) (*see Question 4*).

In principle, the LAU must include all the federal environmental obligations that the source of air emission under federal regulation is also subject to. However, most other permits required in connection with federal environmental matters are usually initially applied for to SEMARNAT or to the National Water Commission (*Comisión Nacional del Agua*) in the case of water permitting individually, and the LAU includes certain conditions or terms that cover all these areas. Because of the specific terms and conditions of certain authorisations requiring compliance by the permit holder, these terms and conditions are sometimes not set out in the LAU.

Length of permit

Typically, an LAU is issued only once with an indefinite validity term, while other environmental permits, authorisations, licences and concessions have different terms which can range from one to 30 years, depending on a number of factors. They are generally renewable provided certain conditions are met.

Restrictions on transfer

As a general principle, environmental authorisations are not assignable. If assignment of authorisations is permitted, it typically requires the prior written consent of SEMARNAT or the issuing agency, which may require prior evidence of compliance with a permit's terms and conditions, before authorising the permit's transfer.

Penalties

The consequences of non-compliance with the conditions of an authorisation (or generally of environmental laws) depend on a number of factors, including the type of authorisation and the seriousness of the non-compliance. In general, sanctions include, among others:

- Fines ranging from the peso equivalent of about USD165.40 to USD275,660.
- Definite, total or partial closure of the work or activity in question.
- Administrative arrest for up to 36 hours.
- Revocation of authorisations.
- ASEA's law provides for specific administrative sanctions in the event that companies in the hydrocarbon sector violate that law, the Hydrocarbons Law or any other regulation that falls within ASEA's jurisdiction. These administrative sanctions may consist of the following:
  - fines ranging from the peso equivalent of about USD41,349 to USD826,979;
  - definite, total or partial closure of the work or activity in question;
  - administrative arrest for up to 36 hours;
  - revocation of authorisations; and
  - personnel dismissal.

For the purposes of penalties applicable to environmental damage and environmental liability please refer to *Penalties*.

Under amendments to the Federal criminal legal framework, individuals and entities committing environmental crimes may be investigated by Mexico's Federal Prosecutor (*Ministerio Público Federal*) and further assessed and sanctioned by federal courts, which can impose both:

- Economic and imprisonment penalties to individuals.
- Corporate and commercial sanctions to legal entities (for example, economic penalties and wind-up and dissolution of the company).

Criminal liability can be attributed to legal entities when their representatives, employees and/or officials commit an environmental crime using the entity's means and where "due control" has not been implemented by the entity. Given the recent amendment to include entities as subjects of criminal liability, the construction of the term "due control" is not yet clear.

WATER POLLUTION AND ABSTRACTION

6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?

Permits and regulator

The National Waters Law (*Ley de Aguas Nacionales*) (LAN) is the most comprehensive federal statute to control water pollution. Among others, it regulates the extraction of federal underground or surface waters, discharge of residual wastewater into federal

recipient bodies and federal property under the National Water Commission's (*Comisión Nacional del Agua*) (CNA) administration.

The discharge of wastewater into federal recipient bodies requires a concession authorisation, also known as a wastewater discharge permit, issued by the CNA (LAN). The occupation of federal zones administered by the CNA also requires a CAN-granted concession. Therefore, if the discharge of wastewater into a federal recipient body is made through equipment located over a federal zone, a concession must be secured from the CNA.

Wastewater discharge permits or concessions issued by the CNA typically set contaminant limits for the discharges that the permit holder must comply with, which are usually determined according to the classification of the recipient bodies of water. This is mainly established through the NOM-001-SEMARNAT-1996 or through particular discharge conditions that may apply on a case-by-case basis. The PROY-NOM-001-SEMARNAT-2017, modifying the NOM-001-SEMARNAT-1996, has not yet been published (*see Question 40*).

Domestic and non-industrial discharge of residual wastewater into municipal sewage systems requires no federal concession. However, it does usually require a permit issued by, or a registration with, the corresponding local authority. The maximum permissible limits of pollutants for water discharged into municipal sewage systems and the maximum allowed limits of pollutants for wastewater that is treated and reused for public services are set out in the NOM-002-SEMARNAT-1996.

Prohibited activities

The CNA can order the suspension of any activities that lead to the discharge of wastewater, when:

- The discharges are made without a permit or concession.
- The quality of the discharges breach applicable Mexican Official Norms or particular discharge conditions.
- No federal duties are paid for the use and enjoyment of federal recipient bodies where the wastewaters are discharged.
- The party responsible for the discharges dilutes wastewater to comply with applicable levels.

Clean-up/compensation

At the federal level, a party responsible for unauthorised discharge containing contaminants exceeding permitted levels into a national recipient body must immediately notify the CNA and PROFEPA of the discharge. This is so the CNA and PROFEPA can determine the measures to be undertaken by the responsible party. These can include clean-up directly by the party in breach or by the CNA at the contaminating party's cost, regardless of the penalties that may be imposed.

Exceeding maximum permissible limits for certain pollutants can be compensated through payment of additional federal duties, if this compensation is paid according to the tariffs set out in the Federal Duties Law.

Penalties

Non-compliance with the LAN can lead to different sanctions, for example:

- Fines ranging from about USD1,010.70 to USD101,068.45.
- Closure of water wells, and constructions or facilities for extracting water.
- Revocation of the concession authorisation or wastewater discharge permit.

To impose these sanctions, the CNA considers, among others, the:

- Seriousness of the breach of law.
- Economic situation of the party in breach and the profits derived from the breach.
- Whether the offence was committed intentionally or accidentally.
- Destruction or damage to federal property.
- Repetitive nature of the offence, if applicable.

For penalties relating to environmental damage and environmental liability see *Penalties*.

For penalties applicable to environmental crimes and criminal liability, see *Penalties*.

7. What is the regulatory regime for water abstraction (whether part of an integrated regime or separate)?

Permits and regulator

The Mexican Constitution provides that water bodies can either be of federal or state jurisdiction, depending on their specific characteristics. Federal water bodies include lagoons, inland lakes, rivers, streams and subsoil water, and the corresponding water is deemed to be national water. State water bodies are those that do not fall under the Mexican Constitution's description of federal water bodies and do not require any permit for their exploitation.

The CNA administers federal water bodies and their extraction under LAN and its Regulations.

To extract water from a federal water body or groundwater, a person or entity must secure from the CNA both:

- A concession title for the use of a determined volume of water per year.
- A permit for the construction or installation of the required infrastructure for the extraction. If the infrastructure is located over a federal zone, an additional concession title is required.

From a rural perspective, the LAN and its Regulations provide for Irrigation Districts (*Distritos de Riego*) and Irrigation Units (*Unidades de Riego*) to be created by presidential decree. Through these, rural communities can create the necessary legal entities and co-ordinate several users to administrate water resources and hydraulic infrastructure. The entities hold the relevant concession titles and construction permits.

Prohibited activities

The LAN and its Regulations prohibit:

- The extraction of national water without a concession title and applicable construction permits.
- The transfer of concession titles without the CNA's authorisation.
- The extraction of national water above the volumes authorised in the relevant concession title.
- The extraction of national waters from banned (*veda*) or reserved zones.
- The extraction of national water with the purpose of diluting wastewater and reducing its contaminants.

Concession titles also include particular terms and conditions that must be complied with to avoid sanctions and/or the administrative cancellation of the relevant concession title.

Compensation

Federal duties are payable on the extraction of national water, which are determined depending on:

- Whether the national water is extracted from a superficial or underground federal water body.
- The availability zone (*zona de disponibilidad*), established in the Federal Duties Law, on which the federal water body is located.
- The intended use of the extracted water (for example, industrial, services or rural purposes).
- The extraction volumes, which are measured by the title holder through an authorised water meter. The volume of extracted water must be declared to the CNA on a quarterly basis, and the corresponding payment is due before the end of the subsequent month following the declaration.

(*Federal Duties Law (Ley Federal de Derechos) (LFD).*)

The CNA can make a presumptive calculation of the extracted volumes through several mechanisms established in the Federal Duties Law and require the payment of the corresponding federal duties, where the:

- Title holder does not install a water meter.
- Water meter does not receive CNA's approval.
- Water meter malfunctions.
- Extraction of national water without a concession title. In this case, the relevant person or entity would have to pay the potential administrative and criminal sanctions.
- Title holder fails to make its quarterly declarations or the corresponding payment of federal duties.

Penalties

For administrative sanctions, see *Question 6, Penalties*.

If the volume of national water authorised in the relevant concession title has not been used for two consecutive years, the CNA can totally or partially cancel the concession.

For penalties relating to environmental damage and environmental liability, see *Question 6, Penalties*.

The extraction of national water without a concession title can result in criminal sanctions, including both:

- Two to 12 years' imprisonment.
- Economic penalties ranging from about USD7,580 to USD101,068.45.

For criminal liability applicable to legal entities, see *Question 6, Penalties*.

AIR POLLUTION

8. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

Permits and regulator

All sources of air pollution are regulated. Certain stationary sources (for example, chemical, petroleum, petrochemical, paint, automotive, pulp and paper, metal, glass, electricity, asbestos, cement and hazardous waste industries) and federal zones are subject to federal jurisdiction.

Local authorities regulate the prevention and control of contamination generated by industrial stationary sources located in their jurisdictions, and by mobile sources not of federal jurisdiction.

All federal stationary sources must secure, from SEMARNAT, an operating licence for air emissions (for example, an Integrated Environmental Licence (LAU) (*see Question 4 and Question 5*) (*Regulations on the Prevention and Control of Atmospheric Contamination (RPACAC)*). This licence will only be issued once for every industrial facility with an indefinite validity term (variations on the processes of the facility and changes in emissions must be reported and the LAU is updated accordingly). SEMARNAT can modify emission limits set out in LAUs if either:

- A certain zone has become critical.
- More efficient technologies for pollution control have emerged.
- New production processes have been implemented by the source.

Prohibited activities

All air emissions issued by stationary sources must not exceed the limits set out in Mexican Official Norms (*see Question 1, Mexican Official Norms (NOMs)*), which are issued jointly with the Health Ministry (RPACAC).

SEMARNAT can set out specific maximum limits for air emissions for sources that have certain facilities or processes which complicate their compliance with ordinary limits. Mobile sources must also comply with the levels issued for this purpose. These levels are jointly issued with other administrative agencies based on the criteria issued by the Health Ministry. RPACAC is federal, but mobile sources are usually regulated by states according to their policies and criteria.

Clean-up/compensation

As an incentive to greenhouse gas (GHG) mitigation, and to foster local emissions trading schemes, the Law of Special Production and Services Tax (*Ley del Impuesto Especial sobre Producción y Servicios*) (IEPS Law) allows taxpayers to use carbon offsets in substitution for carbon tax payments, provided that the offsets result from emission reduction projects both:

- Developed in Mexico.
- Approved under the United Nations Framework Convention on Climate Change.

Specific rules on the transfer and value of carbon offsets were published in the Official Gazette on 18 December 2017 and entered into force on 18 February 2018. These rules include:

- Carbon offsets amount to 1 ton of carbon dioxide that has not been emitted to the atmosphere.
- When paying the carbon tax according to the IEPS Law, the taxpayer must transfer the carbon offset to the account held by Mexico's tax authority at the United Nations Framework Convention on Climate Change, exhibiting the identification number of the transfer.
- The corresponding IEPS tax declaration must include the previous day's value both in euros and Mexican pesos of the carbon offset posted at*https://www.eex.com/en/market-data/environmental-markets/spot-market*, the number of carbon offsets transferred and the total amount of the carbon offsets in Mexican pesos.

If the total value of the carbon offsets is higher than the IEPS tax, the taxpayer will not receive any returns or compensations.

Penalties

For penalties for non-compliance, see *Question 6, Penalties*.

For penalties applicable to environmental damage and environmental liability see *Question 6, Penalties*.

CLIMATE CHANGE

9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and/or the Paris Agreement? How are

the requirements under those international agreements implemented or being implemented?

Parties to UNFCCC/Kyoto Protocol

Mexico is a signatory to the UNFCCC, the Kyoto Protocol and the Paris Climate Change Agreement.

Implementation

As a Non-Annex I party under the Kyoto Protocol, and as the Paris Agreement calls on the international community to comply with an Intended Nationally Determined Contributions (INDC), Mexico does not have GHG emission reduction targets. However, the Mexican government encourages the application of clean development mechanisms under the Kyoto Protocol and national mitigation actions known as Nationally Appropriate Mitigation Actions through various projects, public policies and legislation to reduce GHG emissions, and under the Paris Agreement it must comply with its INDC (*see Question 10*).

Mexico hosted the 2010 COP16, UN climate change conference in Cancún, at which the Cancún Agreements were reached. Mexico participated at the 2014 COP20 in Lima, Peru, and it had an important role at the 2015 COP 21 in Paris, in November and December 2015, by submitting a strong INDC under the Paris Agreement, which was confirmed during the 2016 COP 22 in Marrakech. At the 2017 COP23 in Bonn, Mexico proposed that Short Living Climate Pollutants (SCCP) be considered as a GHG mitigation option. At the 2018 COP24 in Katowice, Mexico backed the aim that the planet's temperature does not increase more than 1.5°C. At 2019 COP25 in Madrid, support was obtained from the Latin American and Caribbean Regional Group (GRULAC) for Mexico to occupy a position on the Adaptation Fund Board, and the co-operative mechanism on Nature-based Solutions was announced, to be co-lead by Canada and Mexico.

The General Law on Climate Change provides:

- That the Federation must prepare a National Adaptation Climate Change Policy within the framework of the National Climate Change System.
- That an Emission Trading System (ETS) will be implemented.
- 2050 as its goal year for adaptation and mitigation actions.

Mexico also committed unconditionally to reduce 22% of its GHG and 51% of black carbon emissions with respect to base line, by the year 2030.

10. Are there any national targets or legal requirements for reducing greenhouse gas (GHG) emissions? How far are the targets aligned with the 1.5 degree target in the Paris Agreement, if at all? Has a climate emergency been declared? Is there a national strategy on climate change?

National strategy

Mexico has established a non-binding, long-term target of reducing its GHG emissions by 30% by 2020 and 50% by 2050 (using as a baseline the GHG emission levels from 2000) (Special Programme on Climate Change (PECC) and the General Law on Climate Change). This target is subject to both:

- Industrialised countries providing financial and technological support to the less industrialised countries. Mexico as a less industrialised country would seek to receive financial support to invest in new technology to reduce its GHG emissions.
- "Common but differentiated responsibilities" being recognised in new international agreements in climate change.

Since 2008, Mexico has confirmed the targets of reducing the country's GHG emissions, established by the National Strategy on Climate Change published on 6 June 2013.

Additionally, during the 2015 21st Conference of the Parties (COP) 21 in Paris, Mexico's Intended National Determined Contribution involved a voluntary commitment to reduce unconditionally 25% of its GHG and short-lived climate pollutants emissions (below its usual levels) for the year 2030. This commitment implies a reduction of 22% GHG and a reduction of 51% of black carbon. Mexico also committed to implement various adaptation actions by 2030 (for example, to protect communities from the adverse impacts of climate change, and reach a rate of 0% deforestation).

General Law on Climate Change

On 6 June 2012, the General Law on Climate Change was published on the Official Gazette of the Federation, which entered into full force and effect on 10 October 2012. The law provides that 35% of the country's electricity must come from renewable sources by 2024 and requires mandatory emissions reporting by the air emissions sources specified in the regulations of the General Law on Climate Change. This will be registered in the National Emissions Registry created by SEMARNAT through the Regulations of the General Law on Climate Change for the National Emissions Registry, published on the Official Gazette of the Federation on 28 October 2014. The law also creates a Climate Change Trust Fund and a Climate Change Commission and the latter has the purpose of formulating public policies on climate change and encouraging the development of carbon-trading schemes (*see Regulatory authorities*). The Climate Change Fund financially supported "zero carbon" mobility projects and education programmes for a transition to a low carbon economy and climate change adaptation.

On 29 October 2014, the Regulations of the General Law on Climate Change for the National Emissions Registry came into force. These regulations provide that certain activities of the energy, transportation, industry, agriculture, wastes, trade and services sectors must report their GHG. Reporting is mandatory if their GHG emissions are equivalent to 25,000 tons of carbon dioxide per year. The report must be made through the format for the annual operation card (*cédula de operación anual*) (COA).

11. Do any emissions/carbon trading schemes operate?

Although the ETS will be implemented according to the recent reform of the General Law on Climate Change (*see Question 9*), the preliminary basis for the ETS's implementation must be published in the Official Gazette of the Federation no latter then ten months following the entry into force of that reform. The preliminary basis should determine the specific sectors that will be liable to reduce their GHG emissions and the relevant implementation mechanisms. It is expected that liability will depend on the:

- Type of industry.
- Amount of emissions generated.

It is also expected that the liable sectors will be required to reduce their air emissions generated at their premises or, if they exceed the maximum emissions allowed, buy the equivalent in:

- Emission rights.
- Compensation offsets.

If they do not do this, sanctions are expected to apply. (*www.mexico2.com.mx/uploadsmexico/file/INFO_COP22.pdf*; *https://openknowledge.worldbank.org/bitstream/handle/10986/23874/ETP.pdf?sequence=11&isAllowed=y*; *https://icapcarbonaction.com/en/?option=com_attach&task=download&id=542*).

The June 2018 reform of the General Law on Climate Change also provides that, before the implementation of the mandatory ETS, a test programme will be implemented with no economic effects. The preliminary basis for the ETS's test programme was published in the *Official Gazette of the Federation* on 10 October 2019. Its compliance period started on 1 January 2020. The ETS's test programme will run for three years: two years on a pilot phase and one year on a transition phase into the mandatory ETS. Regulations for the operational phase of the mandatory ETS will be published in 2022.

The ETS's test programme applies to the electric and industrial sectors, and only covers direct CO2 emissions from about 300 entities with annual emissions greater than 100,000 tCO2 corresponding to around 45% of annual emissions. The electric sector includes the generation of electricity as well as the production, extraction, transport and distribution of hydrocarbons. The industrial sector includes, among others, cement, chemicals, food and beverage, glass, mining, petrochemicals, paper, iron and steel, and others consisting of sectors for which there is only one installation.

On 27 November 2019, SEMARNAT *announced* the cap for the ETS's test programme. The 2020 cap is set at 271.3 million emission allowances. For 2021, the cap is set at 273.1 million. This represents a reduction of about 1% and about 0.3%, respectively, of the CO2 emissions *reported* to the National Emissions Registry in 2016 by the entities covered by the ETS's test programme.

RENEWABLE ENERGY

12. Are there any national targets or legal requirements for increasing the use of renewable energy (such as wind or solar power)? Is there a national strategy on renewable energy?

Mexico aims to produce 35% of its energy from renewable sources by 2024 (*General Law on Climate Change*). Likewise, the Energy Transition Law (*Ley de Transición Energética*) (LTE), which regulates the sustainable use of energy, sets 2024 as its goal year for Mexico to produce 35% energy from clean energy, which includes renewable sources such as wind and solar energy.

On 8 July 2020, the Ministry of Energy (*Secretaría de Energía*) (SENER) approved and published in the *Official Gazette of the Federation* the Energy Sectoral Programme (*Programa Sectorial de Energía*) (PSE) for the period of 2020 to 2024. Among others, the PSE provides a strategic plan divided in two phases:

- The first phase, from 2019 to 2021, involves the recovery of self-reliance of the energy sector, based on fossil fuel and, to a lesser degree, on renewable energy. This recovery is aimed to be achieved mainly through the strengthening of the state's productive entities, and the decentralised governmental entities such as Petróleos Mexicanos (PEMEX) and the Federal Electricity Commission (*Comisión Federal de Electricidad*) (CFE).
- The second phase, from 2021 to 2024, involves Mexico contributing in international actions relating to climate change, GHG emissions reduction, renewable energy, and energy efficiency, to reach its 35% target (*see above*).

In addition to the PSE, SENER must approve and publish in the *Official Gazette of the Federation* a Special Programme of Energy Transition (*Programa Especial de Transición Energética*) (PETE), setting out the activities and projects required to reach Mexico's targets on renewable energy. SENER is currently preparing the PETE for 2019 until 2024.

13. Do any renewables support schemes operate?

The LTE and the Energy Industry Law (*Ley de la Industria Eléctrica*) (LIE), provide for a trade scheme, under which producers of clean energy (including renewable energy) can obtain one or more clean energy certificates (*certificados de energías limpias*) (CELs) from the Energy Regulatory Commission (*Comisión Reguladora de Energía*) (CRE), and sell them in the wholesale electric market or through bilateral transactions. CELs are mandatory for electricity suppliers and qualified users, among other participants in the wholesale electric market. Each year, SENER publishes in the *Official Gazette of the Federation* the guidelines to obtain CELs and the amount of CELs that must be acquired, three years before said amount must be met. Each CEL is equivalent to one MW of clean energy.

In addition, Mexico's Income Tax Law grants tax benefits in relation to renewable energy investment and equipment acquisition.

ENERGY EFFICIENCY

14. Are there any national targets for increasing energy efficiency (for example, in buildings and appliances) or legal requirements for achieving energy efficiency standards? Is there a national strategy on energy efficiency?

SENER must publish in the *Official Gazette of the Federation* a National Programme for the Sustainable Use of Energy (*Programa Nacional para el Aprovechamiento Sustentable de la Energía*) (PRONASE), under which energy efficiency targets must be set for a specific period. SENER is currently preparing the PRONASE for the 2020 to 2024 period. The draft PRONASE and the 2020 Annual Operation Programme of the National Commission for Efficient Use of Energy (*Comisión Nacional para el Uso Eficiente de la Energía*) (CONUEE), provide six specific targets, including:

- Energy efficiency programmes with federal, state and municipal governmental agencies (for example, public lighting).
- Technology for efficient use of energy in different sectors and facilities (for example, commercial and services buildings, and industrial and agro-industrial activities).
- Reduction of energy intensity in passengers and freight transportation.

15. Do any mandatory or voluntary labelling schemes exist to identify energy efficient goods or buildings?

If certain specific goods claim to be energy efficient, they must meet the requirements provided in specific NOMs. The NOMs currently cover 16 goods, including household appliances such as washing machines, refrigerators, water boilers, and certain air conditioners. These items must have labels showing that they meet the NOMs. They also cover energy efficiency in envelope buildings (that is, a building's ceiling, walls, doors, floors and the space inside the buildings with residential use), to improve thermal insulation.

16. Do any energy efficiency support schemes operate?

The Trust for Electricity Energy Saving (*Fideicomiso para el Ahorro de Energía Eléctrica*) (FIDE) provides financial support to public and private entities for costs such as replacing equipment with electricity saving equipment. Among others, the CONUEE offers

technical advice and training for public and private entities in relation to energy saving projects.

ENVIRONMENTAL IMPACT ASSESSMENTS

17. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

Scope

The aim of EIAs at a federal level is to regulate activities and works both:

- In certain sectors which imply environmental risks (such as the oil or mining industry).
- In environmentally sensitive areas (such as the coast, mangroves or natural protected areas).

Generally, the works and activities subject to EIAs are the following:

- Hydraulic works, communication routes (major highways), pipelines, gas pipelines, carbo-ducts (coal pipelines) and poli-ducts.
- Oil, petrochemicals, hydrocarbons, chemicals, steel, paper, sugar, cement and electricity industries.
- Exploration and exploitation, as well as benefitting from minerals and materials reserved to the federal government in terms of relevant mining and nuclear laws.
- Facilities for the treatment, confinement and elimination of hazardous and radioactive waste.
- Employment of forestry resources in tropical rainforests.
- Forestry cultivation.
- Land use change in forestry, rainforest and arid areas.
- Industrial parks where high-risk activities are carried out.
- Real estate developments in coastal environments.
- Works and activities in wetlands, mangroves, lagoons, rivers, lakes and estuaries connected to the sea, including their coasts and federal zones.
- Works and activities in natural protected areas of federal jurisdiction.
- Fishing, aquaculture and agriculture activities that could endanger the preservation of one or more species, or cause damage to ecosystems.
- Works or activities of federal jurisdiction that can:
  - cause grave and irreparable ecological imbalance;
  - have a harmful effect on public health or the ecosystems; or
  - exceed the limits and conditions set out in the laws that regulate the preservation of ecological equilibrium and protect the environment.

Permits and regulator

An EIA at federal level must be obtained from SEMARNAT before carrying out certain listed projects and activities (*see above, Scope*). This generally begins with submission of the environmental impact statement (EIS) for SEMARNAT's review and assessment, and ends with its final environmental impact resolution, which can:

- Allow the proposed project or activity under the terms set out in the EIS.
- Allow the work or activity to be carried out subject to conditions which must be complied with during the construction, operation and abandonment of the project.
- Deny the proposed work or project if it breaches applicable laws, if it threatens one or more endangered species, or if it contains false information or statements.

EIAs are limited to the environmental aspects of the works and activities subject to the environmental impact procedure. Under the General Law on Ecological Equilibrium and Environmental Protection 1988, if works require other environmental authorisations that are also in SEMARNAT's field, these can be included in the EIA. Even though there is no authorisation needed for an EIA, EIAs are often required for the issuance of other permits and authorisations. This is clearly seen in real estate projects, where the EIA is a prerequisite for other permits.

State legislatures can regulate the environmental impact of other activities outside federal jurisdiction. The projects subject to a state EIA vary from jurisdiction to jurisdiction but are generally smaller-scale projects with a less significant environmental impact (such as a shopping centre if it does not fall under any of the activities subject to federal jurisdiction).

EIA legislation generally allows for public and NGO participation.

Penalties

For penalties for non-compliance with permits, see *Question 6, Penalties*.

With respect to penalties applicable to environmental damage and environmental liability, see *Question 6, Penalties*.

HABITATS AND BIODIVERSITY

18. What requirements and regimes apply for the conservation of nature, habitats and biodiversity that affect development? What assessments or obligations are required before any development begins?

Requirements are regimes

Mexico has ratified several international conventions in connection with the conservation of nature, habitats and biodiversity that directly affect development and are taken into consideration by environmental authorities when assessing EIAs (*see Question 17*). For example, Mexico has ratified the:

- Convention for the Protection of Migratory Birds and Mammals and its Amendment Protocols.
- Convention for the Protection of World Cultural and Natural Heritage.
- Convention on Wetlands of International Importance.
- Convention for the Protection of Flora and Fauna and Scenic Landscapes of the Americas.

A national level, Mexican Federal and State governments have enacted several Laws, Regulations, NOMs, and other secondary regulations that have the purpose of conserving nature, habitats and biodiversity by directly regulating anthropogenic activities, creating various land use regimes and establishing natural protected areas.

For example, the LGEEPA and other State and Municipal Laws provide:

- The National Programme of General Ecological Ordinance of the Territory (*Programa de Ordenamiento Ecológico General del Territorio*).
- Local Ecological Ordinance Programmes (*Programas de Ordenamiento Ecológico Local*).

- Urban Development Programmes (*Programas de Desarrollo Urbano*).

Further, the LGEEPA and its Regulations for Natural Protected Areas regulate the process for the creation of protected natural areas, their operation and maintenance, and the activities that can be carried out in them. The CONANP surveys and protects natural protected areas of Federal jurisdiction.

In addition, several NOMs provide specific guidelines and obligations aimed at protecting specific environmental goods and assets, such as NOM-059-SEMARNAT-2010 for the Environmental Protection of Mexican Native Species of Savage Flora and Fauna-Risk Categories and Specifications for their Inclusion, Exclusion or Amendment-List of Endangered Species (*Protección ambiental-Especies nativas de México de flora y fauna silvestres-Categorías de riesgo y especificaciones para su inclusión, exclusión o cambio-Lista de especies en riesgo*).

Prior assessments and obligations

All of the Laws, Regulations, programmes, NOMs and land use regulations referred to above are considered by Federal, State and Municipal environmental authorities when assessing the issuance of relevant environmental permits to develop any type of regulated activity. For example, regulated activities established in protected natural areas of Federal jurisdiction require CONANP's prior approval, which is obtained during the EIA process.

When assessing new development projects, the environmental authorities usually grant relevant permits under the condition that the applicant will carry out measures aiming at mitigating or compensating the impacts that the relevant project could cause to habitats and biodiversity.

WASTE AND THE CIRCULAR ECONOMY

Regulatory regime

19. What is the regulatory regime for waste?

Permits and regulator

Responsibility and jurisdiction. A range of statutory laws address the risks posed by hazardous waste. Waste is classified as hazardous waste, special management waste and solid waste. Hazardous waste generators, importers, exporters, consumers, companies authorised to manage waste, and the three levels of government, share the responsibility for the environmentally safe management of hazardous waste.

Hazardous waste is of federal jurisdiction and is deemed hazardous according to its corrosive, reactive, explosive, toxic, flammable and infectious nature. It is classified as hazardous under the NOM-052-SEMARNAT-2005 and the NOM-053-SEMARNAT-1993.

Generators of hazardous waste must be registered with SEMARNAT and must comply with several obligations which vary depending on the amount of hazardous waste generated yearly (for example, an authorised management programme, keeping records for generation, transport and final disposal, and submitting their annual operation card (*cédula de operación annual*)).

All professional services rendered in relation to the recollection, storage, transport, and final disposal of hazardous waste must have the prior authorisation of SEMARNAT.

Prohibited activities

It is prohibited to carry out the above activities without a permit (*see above, Permits and regulator*).

In addition, while the storage of self-generated hazardous waste does not require a specific permit, the warehouse and storage itself must comply with certain procedures and specifications provided under the LGPGIR and its Regulations. Storage of hazardous wastes generated by third parties requires SEMARNAT approval.

Operator criteria

There are numerous technical and legal requirements that must be met by operators who provide hazardous waste-related services. For example, a financial guarantee must be granted to cover the damages that may be caused during and after these services are rendered.

Special rules for certain waste

Special management waste is of state jurisdiction (for the exception, *see below*) and is classified in LGPGIR. Its regulation varies from jurisdiction to jurisdiction. Some states require special management waste generators to register with the local environmental authority.

On 2 May 2018, the general administrative provisions that establish the guidelines for comprehensive management of Special Management Wastes of the Hydrocarbon Sector were published in the Official Gazette of the Federation. As a result of the energy reform, the regulation of special management waste of the hydrocarbon sector is now under federal jurisdiction. These provisions provide the obligations that generators of special management waste of the hydrocarbon sector must comply with, such as the obligation to register with the ASEA.

Solid waste is municipally regulated. Usually, generators of non-domestic solid wastes use an authorised company to transport waste from its source to municipal final disposal. Some municipalities require solid waste generators to register with the environmental authority of the municipality.

Penalties

For penalties for non-compliance with permits, see *Question 6, Penalties*.

With respect to penalties applicable to environmental damage and environmental liability, see *Question 6, Penalties*.

National strategy, targets and producer responsibilities

20. Is there a national strategy to tackle particular types of waste (such as plastics waste or marine litter)? What waste targets exist? What producer responsibility schemes exist?

National strategy

In January 2019, SEMARNAT published the National Vision towards a Sustainable Management: Zero Waste. This sets out the government's goal to transform the current waste management system into a circular economy scheme, promoting the rational use of natural resources and sustainable development. 30 Mexican states have already published legislation in this regard, and two have initiatives that are close to coming into force.

Mexico is currently paying special attention to plastic (particularly single-use) waste. On 25 June 2019, amendments to the Solid Waste Law of Mexico City were published in the *Official Gazette*, under which the marketing, distribution and delivery of plastic bags to consumers at points of sale of goods or products is prohibited, unless the bags are either:

- Compostable.
- Required for hygiene reasons or to avoid food waste if there are no compostable alternatives.

Targets

The government proposes to transform open-air dumps into materials banks and create markets for recycled raw materials, promoting the remanufacturing and recycling industry.

International and national organisations have expressed their willingness to co-operate in the implementation of activities aimed

at strengthening waste management. The United Nations Environment Programme proposes to support the disposal of:

- Single-use plastics.
- Packaging in supermarkets.

Producer responsibility schemes

Management of special management waste and urban solid waste is a social co-responsibility and requires the joint, co-ordinated and differentiated participation of the:

- Manufacturers, distributors, consumers, and users of byproducts.
- Government.

On 5 November 2019, the Senate of the Republic proposed an initiative to amend the General Law for the Prevention and Integral Management of Waste (LGPGIR) to, among others, extend the manufacturers' responsibility. Under this amendment, manufacturers would be responsible for organising, developing and financing the integral management of the waste generated as a result of the consumption of their products. This amendment has not yet been approved and may undergo additional changes.

ASBESTOS

21. What is the regulatory regime for asbestos?

Prohibited activities

Generators of friable asbestos as hazardous waste, as well as its management and storage at a site, must not be performed without being registered as a hazardous waste generator with SEMARNAT (*see Question 19*).

Main obligations

Certain types of asbestos and their derivatives, essentially friable asbestos, are listed as hazardous waste (mainly under the NOM-052-SEMARNAT-2005) and require special handling and final disposal.

Additionally, particles of asbestos fibres in the workplace are regulated and must comply with certain health and safety levels (mainly set out in the NOM-010-STPS-2014) (although the applicable law does not require the performance of surveys of asbestos or asbestos-containing materials).

Permits and regulator

The PROFEPA enforces the special handling and final disposal or friable asbestos.

The Ministry of Labour and Welfare (*Secretaría del Trabajo y Previsión Social*) enforces the relevant health and safety levels in relation to asbestos fibres in the workplace.

No permits or authorisations are required for asbestos-containing materials in buildings that contain asbestos.

Penalties

For penalties for non-compliance with permits, see *Question 6, Penalties*.

With respect to penalties applicable to environmental damage and environmental liability see *Question 6, Penalties*.

Administrative sanctions can also be imposed by the Ministry of Labour and Welfare.

CONTAMINATED LAND

22. What is the regulatory regime for contaminated land?

Regulator and legislation

The LGEEPA and the LGPGIR and its Regulations establish the main policies for soil remediation. Remediation standards and procedures are gradually beginning to be implemented through Mexican Official Norms (NOMs) (including NOMs on soils contaminated with total petroleum hydrocarbons and with heavy metals). LGEEPA sets out the obligations for parties responsible for soil contamination to carry out the necessary remedial action, so that soils are restored to a condition for the proposed uses under the applicable ecological ordinance or urban development plan.

SEMARNAT and PROFEPA are the responsible regulators.

Investigation and clean-up

SEMARNAT or PROFEPA can require a soil investigation and remediation as part of an administrative proceeding related to soil contamination. Soil investigation and clean-up can also be imposed if an establishment voluntarily stops operations and the possibility of soil contamination exists.

SEMARNAT oversees site remediation. Its main supervisory method is approval of a remediation programme, which must be applied for in almost all cases of remediation, before any remedial actions are undertaken by the responsible party.

Matters regarding remediation programmes are still at relatively early stages of enforcement. Consequently, there is a certain degree of uncertainty as to the scope of many remediation programmes and how they are enforced.

Penalties

For penalties for non-compliance, see *Question 6, Penalties*.

Under the LFRA, soil contamination deemed as environmental damage can also be subject to economic fines ranging from USD1,653.95 to USD275,659.95 for individuals and from USD5,513.20 to USD3,307,919.50 for legal entities. They can be imposed regardless of:

- Any repair or compensation for the environmental damage.
- Any reimbursement of expenses to those individuals or entities that commenced an action claiming environmental liability.

The minimum and maximum amount of the economic sanctions applicable to legal entities could be reduced by a third in the case of certain exceptions provided under the LFRA such as:

- Having an environmental compliance certificate in accordance with the environmental legislation.
- Not being considered a repeat offender.

23. Who is liable for the clean-up of contaminated land? Can liability be excluded in transactions?

Liable party

Following the "polluter pays principle", the LGEEPA and LGPGIR and its Regulations provide that the party causing soil contamination is ultimately responsible for carrying out or paying for remedial actions to clean-up contaminated sites. Where contamination is generated by multiple liable parties, the obligation to remediate is allocated to each one of the contaminating parties according to its participation in the contamination. If it is not possible to allocate the specific participation of each liable party, then all parties are equally liable for the remediation.

Where land has been abandoned and/or the owner or occupier/possessor of a contaminated site is unknown, SEMARNAT, in co-ordination with other state and municipal authorities, can carry out remediation works and issue a remedial declaration for a site.

However, see below, *Owner/occupier liability.*

Owner/occupier liability

Owners and/or occupiers/possessors of real property affected by soil contamination are jointly and severally liable for the remediation of contaminated sites. This is irrespective of both:

- Any liability of the contaminating party.
- Actions these owners and/or occupiers/possessors may have against the liable contaminating party.

If the owner or occupier of a contaminated site is unknown, SEMARNAT, in co-ordination with other state and municipal authorities, can carry out remediation works and issue a remedial declaration for a site.

Previous owner/occupier liability

Previous owners or possessors of land can be liable for carrying out remedial works if either:

- It is proved that they caused the contamination.
- They had actual knowledge that the property was contaminated and they failed to secure a transfer authorisation before transferring the site to the new owner. The direct transfer of contaminated sites is subject to SEMARNAT approval. If no responsible party is determined at the time of the transfer, the selling party is deemed responsible for the contamination.

Limitation of liability

Parties cannot limit their clean-up liability set out in the statutory legislation. However, parties can contractually agree indemnification, defence and hold harmless provisions (that is, provisions in an agreement under which one or both parties agree not to hold the other party responsible) among themselves. Non-compliance with these contractual conditions involves civil and commercial responsibilities. It does not release a responsible party from liability before the government authorities for carrying out remediation for contamination it has caused, or for ownership or possession of contaminated sites.

Voluntary clean-up programme

Currently, under Mexican environmental political and legal frameworks there are no incentives or programmes to foster remediation of contaminated land by non-liable third parties, for redevelopment.

24. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability?

Lender liability

Mexican environmental law does not contain any specific provisions establishing lenders' liability for financing projects that can result in harm to the environment or natural resources. However, if due to foreclosure of a security interest a lender takes title to and becomes the owner or occupier of a contaminated site, it will be jointly and severally liable for clean-up of the site along with the contaminating party. This liability can be enforced by competent environmental authorities during the time the lender remains the owner of the contaminated site, or after transferring the site if the lender fails to secure authorisation for the transfer.

Under applicable statutes, lenders can also incur environmental liability from their own actions (for example, potential instructions given by the lender to the debtor to adopt or implement a contaminating or illegal action).

Minimising liability

To minimise liability, it is advisable for a lender to perform a comprehensive environmental due diligence of the debtor's assets and activities and include representations, warranties and relevant indemnity provisions in the lending documents.

25. Can an individual bring legal action against a polluter, owner or occupier?

A private individual can bring legal action for damages and loss of profits before a civil court against any party that is causing damage to its property (through the release of a hazardous substance or otherwise from a contaminating activity). Damage remediation must consist of either:

- Re-establishment of the property to its previous condition, if possible.
- Payment of damages and lost profits.

Administrative liability can also arise if a third party publicly reports the polluter to the PROFEPA. This will lead to an investigation by PROFEPA and the imposition of administrative sanctions, if the polluter is found liable.

Under the LFRA, individuals that live in a community affected by damage and certain Mexican non-profit organisations (*see Question 3*) are also entitled to claim environmental liability.

ENVIRONMENTAL LIABILITY AND ASSET/SHARE TRANSFERS

26. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

Asset sale

The buyer can inherit environmental liability on a purchase of real property if it both:

- Takes title to or possession of the land.
- Cannot prove to SEMARNAT that the seller assumed liability for pre-existing contamination on transfer.

If an issue is detected before the purchase of the property that could involve contamination and remedial action, a potential buyer can contractually require the seller or other responsible third party to expressly assume liability for the issues before SEMARNAT, and to defend, release and indemnify the purchaser in any action related to the contamination. In these circumstances, SEMARNAT can acknowledge the responsible party and can release the purchaser of duly disclosed liabilities shown in relevant baseline environmental studies.

In an asset sale, if the environmental contamination issue is detected before the transaction, the transfer of title must be authorised by SEMARNAT. The authorisation process cannot obstruct or unwind the sale, as it aims solely to determine a party responsible for the remediation of the site.

Share sale

By acquiring an equity interest in a Mexican limited liability corporation (*sociedad anónima*) or similar type of entity (target), the buyer acquires an indirect (through the target) proportionate share of any liabilities of the target. The liability is limited to the buyer's equity contribution to the target (the corporate veil of a Mexican limited liability corporation protects the

buyer/shareholder). The target remains liable for any contamination it may have caused, and for any environmental liability from ownership or possession of contaminated sites.

Indemnification, defence and hold harmless provisions between the seller and buyer (*see Question 23, Limitation of Liability*) are typically negotiated contractually in asset and share deals.

27. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

Asset sale

Contractually, the seller can agree to retain environmental liability. Legally, if the seller or both parties have knowledge of the contamination and fail to determine who will remain liable, the seller retains liability for any contamination it may have caused or for transferring a contaminated site without the prior approval of SEMARNAT.

Share sale

In a share sale, retention of environmental liability by the seller typically only happens contractually. The party liable for any past contaminating activities or for ownership or possession of a contaminated site is typically the entity being sold (the target).

28. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?

Asset sale

The seller is bound by statute to inform the buyer of both:

- The environmental condition of the site.
- Any past remedial actions conducted at the site.

(*LGPGIR and its Regulations.*)

The seller must include this information in the purchase and sale agreement, together with any remediation obligations. A copy of the final version of the purchase and sale agreement must be provided to SEMARNAT when requesting a contaminated site transfer authorisation.

Share sale

The obligation does not exist under statute. However, most share sales involve a certain degree of environmental disclosure by the seller in relation to the target.

29. Is environmental due diligence common in an asset sale/a share sale?

Scope

Environmental due diligence is common in an asset or share sale. Generally, environmental due diligence covers:

- Emissions to air.
- Water extraction.
- Wastewater discharge.
- Occupation of maritime terrestrial zones administered by SEMARNAT and other federal zones administered by the National Water Commission (*Comisión Nacional del Agua*).
- Environmental impact and risky activities, including compliance with conditions of environmental impact authorisations.
- Hazardous waste and solid waste.
- Past and potential releases of hazardous substances into a property, including the preparation and review of environmental site assessments.
- Land use (including changes of forestry land use), and ecological zoning restrictions, as well as general compliance with all required permits and applicable laws.
- The assignability or need for re-issuance of permits on completion of the transaction.

Types of assessment

Phase I and Phase II environmental site assessments are most commonly used in transactions. Although these assessments are very common in Mexico, they are not legally required and are therefore not specifically defined. However, in practice, Phase I and Phase II environmental site assessments are typically prepared in compliance with American Society for Testing and Materials standards or international standards. If soil contamination is detected through these, risk assessments and other studies may follow.

Environmental consultants

Environmental consultants are generally engaged to conduct environmental assessments of a business or assets. An engagement letter usually covers:

- Objective and scope of the work.
- Required tasks.
- Cost of the project.
- Information regarding disclosure and confidentiality.
- Disclaimers.
- Indemnifications.
- Environmental indemnities granted by the client.
- Responsibilities of the consulting firm.

30. Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale? Are there usually time limits or financial caps on environmental warranties and indemnities?

Asset sale

A seller generally grants warranties relating to at least the following:

- Compliance with environmental laws.
- Past releases and presence of hazardous substances.
- Past remedial actions.
- Existence and validity of permits.
- Administrative or judicial procedures.
- Disclosure of environmental reports and studies.

Share sale

Representations and warranties used in a share sale typically include those used in an asset sale (*see above, Asset sale*), but tend to be more comprehensive and extensive, given the framework of liability (*see Share sale*).

Environmental warranties and indemnities can be as important as tax or labour matters in a share or asset sale. Sellers commonly agree to both:

- Have environmental warranties and indemnities last for at least two or three years after the transaction's close, and in some cases even for as long as the maximum statute of limitations allows (typically five years, for administrative breaches and 12 years for environmental damages, conditions and issues under the LFRA).
- Set financial caps at a relevant percentage of the purchase price, which in environmentally sensitive cases can reach 100% or even be uncapped.

However, in bidding contests, warranty periods and caps tend to be substantially lower.

REPORTING AND AUDITING

31. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?

Public registers

Although not yet operational, a national inventory of contaminated sites is contemplated by the LGPGIR and its Regulations, and its implementation is progressing. This will run parallel with the information kept at the public registries of property rights, to provide information on contaminated sites at federal and local level, under the jurisdiction of each level of government. If a site is detected by SEMARNAT as being contaminated it will be added to the national inventory and noted in the public registry of property rights as a form of environmental lien. When a site has been remedied and released by SEMARNAT, the site will be taken out of the national inventory and the note in the public registry will be deleted.

On other regulatory matters, SEMARNAT has created a public database with recent federal environmental impact statements that is available at their central offices. Environmental impact and other authorisations (or extracts of them) issued by SEMARNAT are also publicly available on the internet at SEMARNAT's webpage.

Other types of information can be requested from SEMARNAT and obtained subject to a waiting period and confirmation that the information is not classified or otherwise protected or exempted from public scrutiny (Federal Law on Access to Public Information).

Information on concession titles issued by the National Water Commission (*Comisión Nacional del Agua*) (CNA) is publicly available on the website of CNA's Public Registry of Water Rights (*https://app.conagua.gob.mx/consultarepda.aspx*).

Third party procedures

The procedure through which a third party will be able to request information in the national inventory is not yet determined. Regulations, guidance or criteria on this matter are expected to be enacted in the near future.

32. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators about environmental performance?

Environmental auditing

Environmental auditing in Mexico is voluntary and carried out through the PROFEPA or the environmental state authorities' environmental audit programmes.

Reporting requirements

Companies that join the environmental audit programme must comply with Mexican environmental laws and, in some cases, international environmental standards. An individual compliance programme and timeline is set out in an agreement between the entity joining the programme and the competent authority, under which certain reporting obligations can be imposed.

Companies and other regulated parties must report environmental compliance with federally regulated matters such as hazardous waste, federally regulated sources of air emissions and wastewater discharges into national recipient bodies, through annual filing of a annual operation card (*cédula de operación anual*) (COA) (*see Question 4*). Likewise, on state regulated matters, companies and other regulated parties must report through annual filings similar to a COA.

Projects of the hydrocarbon sector

State companies, private, social and public companies, and any individual that performs activities regulated by the ASEA Law must implement an administration system for industrial and operational safety and environment protection (administration system) for those activities (ASEA Law). The administration system has the purpose of preventing, controlling and improving the performance of the facilities where hydrocarbon activities are carried out with respect to industrial and operational safety and environmental protection matters. At least every two years, an external audit must be performed to evaluate the operation and performance of the administration system under guidelines published by the ASEA in the Official Gazette on 24 January 2017.

33. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

In addition to the disclosure and reporting obligations through the annual operation card (*cédula de operación anual*) (*see Question 4*), companies must report any unregulated discharge containing contaminants into national recipient bodies. Additionally, all incidents related to the spill, infiltration, discharge or release of hazardous waste and substances must be notified to the PROFEPA within three days after the incident occurred, unless the spill, infiltration, discharge or release of hazardous materials does not exceed one cubic metre.

Reports and governmental information regarding incidents are regulated by the Federal Law on Access to Public Information and are available to the public, subject to certain restrictions (*see Question 31*).

34. What powers do environmental regulators have to access a company?

PROFEPA can conduct all necessary inspection procedures, using authorised personnel, to verify compliance with the LGEEPA and other federal environmental laws and regulations. Additionally, state environmental agencies can perform inspection visits. All inspection visits must be carried out through an inspection order, which must be served on the inspected party before the inspection (in some cases, the inspection order is served minutes before the actual inspection begins). Both the inspection order and the notice must comply with the conditions of all administrative acts (*Federal Law of Administrative Procedure*). This includes that authorities must specify the purpose and scope of the visit, as well as other time and place details.

During the inspection visit, authorities can request any document related to the matters covered by the scope of the visit, except for those that are allegedly in the authority's files. Competent authorities can access the facilities specified in the inspection order that relate to the inspection and must be allowed entry. If the inspected party refuses to let the relevant environmental authority perform the inspection visit, the authority can ask law enforcement agencies (such as the police) to force entry into the inspected site.

An inspection record must be made during and after the visit, containing a section in which the person in charge of the facilities can express anything related to the inspection (this is one of many opportunities the administrative law procedure gives to inspected parties to argue their defence).

35. What obligations are there on companies to report on environmental issues in their annual corporate reports?

The companies that, under the Mexican Securities Market Law, have securities (shares, notes, or any other security issued in the market) registered in the National Security Registry must file annual reports before the National Securities and Banking Commission (*General Provisions applicable to the Issuers of Securities and Other Stock Market Participants (Disposiciones de Carácter General aplicables a las Emisoras de Valores y Otros Participantes del Mercado de Valores) (CNBV Regulation)*).

Mexico's Federal Congress issued the new legal framework for the energy sector under the official decree published in Mexico's Official Gazette on 11 August 2014. Under this, Mexico's National Securities and Banking Commission is authorised to review and modify the scope of the reports the issuers of securities must provide on expected financial benefits related to hydrocarbon exploration and exploitation activities to which they are a part. As a result, on 27 August 2016, Mexico's National Securities and Banking Commission modified the CNBV Regulation, so that as of 28 August 2015 the annual reports must include information on the issuer of securities' environmental performance. The environmental performance statement should refer to whether:

- The issuer of securities has an environmental policy.
- An environmental administration system has been or will be implemented.
- The issuer of securities has secured an environmental certificate or award.
- The issuer of securities has implemented a programme to protect, defend or restore the environment and natural resources.

(*CNBV Regulation's Exhibit N.*)

In addition, the report must state whether:

- The activities performed by the issuer of securities represent a relevant risk to the environment.
- There is any relevant, current or potential climate change impact caused by the business performed by the issuer of securities.

36. What mandatory GHG, carbon reporting or transparency requirements apply to corporates, including as part of their annual corporate reporting requirements? Is reporting in accordance with the Task Force on Climate-related Financial Disclosures (TCFD) recommendations? Do any voluntary GHG reporting schemes exist?

Mandatory requirements

Companies that, under the Mexican Securities Market Law, have securities registered in the National Security Registry must file annual reports before the National Securities and Banking Commission (*see Question 35*). The annual reports must include information on the issuer of securities' environmental performance, including whether their activities cause any relevant, current or potential climate change impact. The applicable regulations do not make any reference to TCFD recommendations. However, TCFD recommendations can be followed when preparing annual corporate reports.

Voluntary schemes

Companies that do not have securities registered in the National Security Registry are not bound to include GHG or carbon reporting as part of their annual corporate reporting requirements. However, as part of their corporate social responsibility policies, they could voluntarily include information on GHG or carbon reporting in their annual corporate reports.

37. What corporate governance requirements apply in relation to climate change?

Corporate governance requirements only apply to companies that, under the Mexican Securities Market Law, have securities registered in the National Security Registry. These must file annual reports before the National Securities and Banking Commission. The reports must include information on the issuer of securities' environmental performance, including any relevant current or potential climate change impact.

According to the General Financial Provisions Applicable to the Mexican Pension System (*Disposiciones de Carácter General en Materia Financiera de los Sistemas de Ahorro para el Retiro*) published in the Official Gazette of the Federation on 18 September 2019,

Mexican pension funds (*sociedades de inversión especializadas de fondos para el retiro*) (Siefores) and their managers (*administradoras de fondos para el retiro*) (Afores) must, from 2022, include in their corporate documents a set of rules for the purposes of designing, approving and verifying (with respect to their investment strategies and investments):

- Environmental, social and corporate governance assessment criteria.
- Policies for the administration of and exposure to environmental, social and governance (ESG) risks.

The rationale behind these changes is to implement, through regulation, awareness among investment decision makers on, among others:

- Population growth, scarcity of raw materials and globalisation trends.
- The way that investment decisions have an impact on these trends and the risks related to them.

Based on international experience, Mexican regulators think that implementing ESG criteria can help investors look beyond traditional financial reporting and to better understand investments' long-term risks and profitability prospects.

ENVIRONMENTAL INSURANCE

38. What types of insurance cover are available for environmental damage or liability, and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?

Types of insurance and risk

The LGEEPA sets out an obligation to obtain insurance when a regulated party carries out certain activities that could harm the environment, including high risk activities and hazardous waste generation. Procedural aspects and the nature of the required insurance are not yet fully regulated.

There are different kinds of insurance, to cover:

- Third parties for damage that can be caused by the company.
- Catastrophic events.
- Breach of environmental agreements.
- Damage caused by the company to the environment.

Obtaining insurance

Insurance to cover environmental liabilities between individuals can be privately obtained. Not all insurance companies offer insurance for environmental risks.

According to the LFRA, a national system of environmental risk insurance will be created.

ENVIRONMENTAL TAXES

39. What are the main environmental taxes?

Carbon tax

All entities and individuals that produce fossil fuels must pay carbon tax when carrying out activities such as the sale and import of fossil fuels (IEPs Law). When the fossil fuels are combined with other fuels or substances the tax is calculated by the amount of fossil fuel contained in the mixture. The tax fee is calculated each year according to the update factor that is published by the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) within the Federal Official Gazette during January of each year.

Tax rates

The tax rates for 2020 are:

- Propane: 7.48 cents per litre.
- Butane: 9.68 9.68 cents per litre.
- Fuel and jet fuel: 13.12 cents per litre.
- Turbosine and any other kind of Kerosene: 15.67 cents per litre.
- Diesel: 15.92 cents per litre.
- Fuel oil: 16.99 cents per litre.
- Pet coke: 19.72 pesos per tonne.
- Coke of coal: 46.23 pesos per tonne.
- Mineral coal: 34.81 pesos per tonne.
- Other fuels: 50.32 pesos per tonne of carbon in fuels.

The tax rates change each year. Additionally, please also note that other environmental taxes can be indirectly regulated through the Federal Duties Law, which collects funds to support environmental causes, such as whale watching and visiting natural protected areas. Other duties are paid by the title concession's holder for the:

- Discharge of residual wastewaters.
- Use of groundwater (or other waters coming from federal sources
- Occupation of federal zones.
- Issuance of certain permits.

These are used for recovering costs incurred in that specific area by the administration.

On 27 May 2011, the National Water Commission (*Comisión Nacional del Agua*) (CNA) and the Ministry of Finance recently published the mechanism to calculate the payment of a guarantee duty provided under the National Water Law (*Ley de Aguas Nacionales*). This guarantee duty is to protect unused volumes of national water granted under a certain concession title, from being cancelled for lack of use. Partial or total cancellation is generally warranted if during two consecutive and uninterrupted years a concession title holder does not extract the full volume of water that it is allowed to extract. However, if the guarantee duty is paid by the title holder on time, the CNA must not cancel the unused volumes of water.

There are certain tax incentives to foster investigation and technological developments (*see Question 10*). In addition, organisations responsible for preserving flora, fauna and threatened species, can benefit from certain tax exemptions.

REFORM

40. Are there any proposals for significant reform of environmental law?

Forestry land use

On 5 June 2018, a new General Law on Sustainable Forestry Development (*Ley General de Desarrollo Forestal Sustentable*) was published in the Official Gazette of the Federation. It replaces the 2003 law of the same name. This law upholds various aspects of the 2003 law and introduces and modifies others.

Civil liability

Certain NGO's political sectors have long argued for the need for the creation of a law for civil liability in environmental matters. Discussions on the subject continue.

Water regulations and underground water contamination

New regulations under the National Water Law (*Ley de Aguas Nacionales*) (LAN) are being drafted. Further regulations or Mexican Official Norms on underground water contamination (among others) are also being considered. On 5 January 2018, the PROY-NOM-001-SEMARNAT-2017 was published in the Official Gazette of the Federation. This intends to modify NOM-001-SEMARNAT-1996, to protect and preserve national waters by, among others:

- Introducing new permissible limits of contaminants in wastewater discharges.
- Including new parameters for chemical oxygen demand, toxicity and colour, among others.
- Controlling non-biodegradable contaminants.
- Updating the standards used to test the pollution in wastewater.

The observations made in relation to this project are being reviewed by the authority and are available at the Federal Commission for the Regulatory Improvement's website.

New Water Law

A project to enact the General Law on National Water is currently being discussed in Congress. In case of enactment, such law would repeal the LAN.

New Waste Law

A project to enact the General Law on Sustainable Management of Wastes is currently being discussed in Congress. In case of enactment, such law would repeal the General Law on the Prevention and Comprehensive Management of Waste (*Ley General para la Prevención y Gestión Integral de los Residuos*).

New general law on biodiversity

A project to enact a general law on biodiversity is being discussed in Congress, which proposes to include the Nagoya Protocol signed and ratified by Mexico in 2012 and to incorporate the General Law on Wildlife.

New project for plastics regulations in Mexico

There is a project to amend, add and repeal various provisions, related to plastics, of the LGPGIR, to make Mexico comply with the suggestions made by the United Nations Environmental Programme during the Fourth Session held at Nairobi, Kenya from 11 to 15 March 2019. The project intends to:

- Improve waste management and encourage recycling of plastic products, through tax and economic incentives for the production of recycling sub-products.
- Discourage the production of plastic products, by imposing additional obligations on producers, importers, distributors, agents and generators of wastes derived from plastic products.

The project also intends extend producers' responsibility for environmental and social costs from the consumption of their products, and require that they undertake development, financing and integral management of their products in relation to their environmental impact. Further, the Federation is authorised to create Mexican official standards regulating plastic products' labelling and ban the consumption, commercialisation and distribution of plastics in natural protected areas, coastal areas and islands.

Amendment to the Solid Waste Law of Mexico's Federal District

On 25 June 2019, an amendment to the Solid Waste Law of Mexico's Federal District (*Ley de Residuos Sólidos del Distrito Federal*), applicable in Mexico City, was published in the *Official Gazette of Mexico City*. The amendment adds concepts regarding various kinds of plastics and their components, including single-use plastic products. It states that Mexico City's Ministry of the Environment (*Secretaría de Medio Ambiente de la Ciudad de México*) (SEMA) is authorised to, among others:

- Establish Mexico City's regulatory standards regarding production and consumption of plastic products, taking into account the input of producers and distributors.
- Guarantee prices for producers, distributors and merchandisers of plastic products, to promote their recycling once they become waste.

Further, this amendment includes prohibitions regarding the merchandising, distribution and delivery of plastic products including, among others:

- Bags.
- Products containing intentionally added microplastics.
- Single use plastic coffee capsules with low reuse and recycling potential.

These prohibitions will come into force between 2020 and 2021.

Cancelation of Climate Change Trust Fund

On 6 October 2020, the decision to reform and cancel several trusts (*dictamen que reforma y deroga diversas leyes en materia de fideicomisos*) was approved, through which, among others, the Climate Change Trust Fund (*Fideicomiso: Fondo de Cambio Climático*) was cancelled. This fund is regulated under the Law on Climate Change, so it is expected that there will also be an amendment to that law.

Practical Law Contributor profile

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