



# The Legal 500 Country Comparative Guides

## Mexico

# ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Mexico.

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## MEXICO

### ENVIRONMENT



#### 1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

In Mexico, the Environmental legal framework has its roots in the General Law of Ecological Equilibrium and Environment Protection (LGEEPA) issued back in 1988. Please note that as its name states, this ruling have the purpose to set a general frame for specific regulation in the 3 existent levels of governance (federal, state and municipality). Furthermore, as part of the key pieces that enabled the construction of this provisions, can be found specific standards regarding water, forestry matters, emissions, special conservation of natural resources, among others.

#### 2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The main environmental authority is the Federal Attorney's Office for Environmental Protection (PROFEPA), this office has jurisdiction for carrying out the surveillance of the aforementioned standards; there can be found central offices in Mexico City and representations in each one of the states. Also, for matters related to water resources, the National Water Commission (CONAGUA) is the competent authority for such purpose and is in charge of the enforcement of the LAN and RLAN, regarding the use of water and the discharge of wastewater.

Also, there's the National Agency of Industrial Safety and Environmental Protection of the Hydrocarbons Sector. (ASEA) this Agency is in charge of enforcing environmental law and industrial safety in the hydrocarbons sector.

Finally, local jurisdictions also have attorney offices for enforcing state and municipality ruling

#### 3. What is the framework for the environmental permitting regime in your jurisdiction?

As mentioned, the main legislation for the environmental permitting is the LGEEPA and therein can be found provisions regarding environmental impact, air pollution, hazardous wastes, etc.

Also there are other legislation that are key for the environmental permitting, such as the General Law of Sustainable Forestry Development (LGDFS); General Law of Wildlife (LGVS) related to the management and harnessing of wildlife; General Law for the Prevention and Integral Management of Waste (LPGIR) related to the management of the different types of wastes (hazardous, special management and urban solids); National Water Law (LAN), related to the use of such liquid and the harnessing of federal water bodies, General Climate Change Law (LGCC) related to the emissions into the atmosphere, and its regulations.

#### 4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Yes, according to the provisions that are in the LGEEPA. The main way to execute it, is by celebrating an agreement with the entity that is going to be the new owner and submit a request to the authority that issued the permit.

#### 5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

There are three main ways that a legal entity or a person could do in order to appeal the decision issued by the authority:

1. Submit a review resource before the authority

that issued the resolution seeking for a change that is positive to the person who is trying to obtain the permit, and,

2. Submit a nullity trial before the Federal Court of Administrative Justice in order to nullify the resolution issued by the authority in the matter.
3. Additionally in Mexico, we have a legal remedy known as *amparo*, which basically is a resource that seeks for constitutional protection against authority acts.

### **6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?**

Yes, the EIAs are required for certain projects, according to the articles 28 of the LGEEPA and 5 of its regulation in matter of environmental impact. As a reference the EIAs are required to develop projects in different matters, such as, electrical and hydrocarbons industry, mining, tourism, among others.

The main elements that a EIA must have, is a characterization of the environmental components present in the area, in order to identify the possible impacts that the project may have derived from its development and the proposed measures that will be implemented in order to minimize, mitigate and compensate those impacts.

The LGEEPA foresees that the EIAs can be challenged by the affected community where the project will take place and will be summited in process called public consultation. This becomes more relevant when dealing with indigenous communities.

### **7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?**

The liability is determined by the Chapter V of the General Law for the Prevention and Integral Management of Waste (LGPGIR) and by its regulation. There the responsibilities, procedures, and conditions for the remediation of sites contaminated with hazardous waste are set (See Title Five, Chapter V: "Responsibility for assessment and remediation of site contamination").

LGEEPA establishes the criteria for the prevention and

control of contamination to soil and national waters (defines "contamination" as the presence of one or more pollutants or any combination of them in the environment that causes an ecological imbalance).

LAN set the obligation to restore the environmental damage caused by wastewater discharges to national waters, including seas, lagoons, lakes, rivers or estuaries, and aquifers.

LFRA, regulates the obligation to restore (remedy) any environmental damage (e.g. contaminated soils or waters) until the baseline conditions are recovered (considering baseline conditions as the scenario before the damage occurred), or, if this is not possible, payment of compensation.

The applicable regulatory regimes are administrative procedures for liability for environmental damage, and, in specific cases, criminal charges may also be derived.

### **8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?**

In case that are being carried out activities such as: generation, handling or release, discharge, infiltration or incorporation of hazardous materials or waste into the environment.

There is a positive obligation to provide investigative reports in case that an event of contamination of soil and groundwater has been made in the site of the project.

Also, there is an obligation to provide investigation reports to the authority in the event of an inspection visit is determined.

### **9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?**

Yes, there is an obligation to report to the authority that the site has been contaminated in order to take the necessary measures preventing the advance to other sites and seeking to implement the clean-up.

**10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?**

Yes, according to the article 70 of the LGPGIR, the owner of the land is considered a jointly responsible, and has the right of action against the owner that cause the contamination.

**11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?**

The regime of waste in the jurisdiction is determined by the General Law for the Prevention and Integral Management of Waste (LGPGIR) that it is related to the management of the different types of wastes (hazardous, special management and urban) and its regulation. Also, the Official Mexican Standards are crucial for the compliance of the engagements in the matter.

**12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?**

No, according to the article 42 of the LGPGIR, the producers do not retain any liability after having transferred to another person for the treatment or disposal of the wastes The aforementioned in the scenario that the producer transferred their waste to a third party authorized by the authority in the matter.

In the case of special management and urban solid waste, they are governed by the principle of shared responsibility.

**13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?**

The producers have the obligation to agree and contract with authorized companies the take-back of waste such as packaging and electronic devices that are classified as special management waste, in case that it is not done, the producers must take those wastes to an

authorized site for the disposal.

Mexico has adopted the principle of Shared Responsibility (which recognizes that waste is generated from the performance of activities that meet the needs of society and, consequently, its integral management is a social co-responsibility) and under this principle, only the large generators of Special Management Waste and Urban Solid Waste are required to submit a Waste Management Plan, which must consider recovery, use and recycling policies.

**14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?**

AS per LGPGIR asbestos are considered a hazardous waste; thereupon owners/occupiers should have the obligation to report its existence to the authority in order to determine remediation activities if applicable.

Also, if the presence of asbestos exceeds the thresholds allowed by the Mexican Official Standards (NOM-010-STPS-2014 and NOM-125-SSA1- 2016), cleaning and sanitation actions must be carried out.

**15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.**

The regulation of products concerning the health risk they may imply for consumers is enforced by the Ministry of Health through the Federal Commission for the Protection against Sanitary Risks (COFEPRIS). The Mexican Official Standards and the faculty to authorize the imports, exports or circulation of pesticides, plant nutrients and toxic or dangerous substances and materials are two of the main mechanisms that COFEPRIS has to mitigate such risk.

The Mexican Official Standards issued by COFEPRIS establish the technical specifications for products, processes, facilities, systems, activities, services, or methods of production or operation that could potentially harm the consumer. In this regard, the topics regulated under Mexican Official Standards range from the sanitary requirements that the labelling of paints, inks, varnishes, lacquers and enamels must satisfy (NOM-003-SSA1-2006) to the test methods for the determination of cadmium, arsenic, lead, tin, copper, iron, zinc and mercury in food, drinking water and

purified water (NOM-117-SSA1-1994).

In contrast, the Regulation on Registration, Import and Export Authorizations, and Export Certificates for Pesticides, Plant Nutrients, and Toxic or Dangerous Substances and Materials empower COFEPRIS to authorize or deny registration and issue certificates of sale and export of pesticides and plant nutrients, as well as granting import permits for pesticides, plant nutrients and toxic or dangerous substances.

**16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?**

There are many provisions that are in the legal framework, specially in the Energy Transition Law (LTE) that are directed to promote the energy efficiency. These provisions are established on the Official Mexican Standards (NMX) according to the nature of the constructions or activities that are intended to do.

**17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?**

There are two principal regulations in Mexico, the first one is the General Climate Change Law (LGCC) that in its second transitory article establishes the obligation of the country to reduce the greenhouse emissions and the second one is the LTE, that in its third transitory article establishes the commitment of the country to increase the use of renewable energy.

**18. Does your jurisdiction have an overarching “net zero” or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.**

Yes, there is an overarching low-carbon target, and principally the legal measures that have been implemented is the creation of inventories in which the third parties register their greenhouse emissions seeking to reduce it every year.

Also there is an obligation to obtain a Unique Environmental License (LAU) in order to comply that the

project is within the maximum limits allowed by the Official Mexican Standards (NMX) and to report the emissions generated by the annual operating report (COA).

**19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as “green”, “sustainable” or similar terms? Who are the regulators in relation to greenwashing allegations?**

In Mexico there are many certificates that a product could have in order to be referred as a green or sustainable product that consigned in the regulation of the LGEEPA in matter of self-regulation and environmental audits, and the Official Mexican Standards (NMX).

In such matter there are several procedures in order to obtain those certificates, the main procedure is issued by the PROFEPA on subjects of clean industry and environmental quality.

Also, The Federal Consumer Protection Agency (PROFECO) is responsible for sanctioning misleading or abusive information or advertising. Sanctions include total or partial closure and fines of up to 10% of the offender’s gross annual income obtained from such advertisement.

**20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?**

There are no specific arrangements concerning anti-trust matters and climate change issues. However, the Federal Economic Competition Commission has ruled on various occasions on the importance of free competition in clean energy generation. For example, the Federal Economic Competition Commission filed a Constitutional Dispute against the Reliability Policy for preventing equal opportunity access to the transmission and distribution networks under the statement that intermittent clean energy affected the reliability and stability of the electrical system

**21. Have there been any notable court judgments in relation to climate change litigation over the past three years?**

Yes, there have been several judgements about climate change that were related to updates in the regulations of

industrial energy matters for the use of renewable energy. This becomes relevant due to the Mexican government energy policy adopted in the past years, which privilege fossil fuels.

In recent years there have been some court judgments concerning climate change litigation, most notably the *Amparo en Revisión* 610/2019 (January 15, 2020), where the Supreme Court declared that the modification of NOM-016-CRE was unconstitutional because the decision to increase the maximum permitted percentage of ethanol in gasoline should be assessed in the context of the goals to mitigate climate change under the Paris Agreement. That is, the economic interests that may benefit from the modification of the NOM-016 should be weighed against the potential risks that could be caused to the environment and the State's obligation to reduce greenhouse gas emissions.

**22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?**

During COP 26, Mexico joined the Global Methane Pledge, an initiative that aims to reduce global anthropogenic methane emissions by 2030 by 30%. Therefore, reforms should be expected to encourage the reduction of methane emissions for the sectors where it is mainly produced.

**23. Has the energy crisis/global events resulted in any impact on environmental regulations and/or change in approach to environmental and climate change policy?**

Yes, and the impact suffered by the energy crisis is related to the current political context, in the understanding that the actual government boost the activities related to the hydrocarbons sector generating a gap with the commitments established in the transitory articles of the LGCC and LTE and the promotion of use of renewable energy.

Other examples are, the Escazú Agreement (2018), which emerges as a response to the human rights violations of environmental defenders. For this reason, each Party commits to guarantee a safe and enabling environment for those who promote and defend human rights in environmental matters.

And, the Business and Human Rights Report: Inter-American Standards (2020), which arises from the concern for business activities regarding the enjoyment of human rights.

**24. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?**

The company itself. In case of breach of environmental obligations, the company may be penalized with the suspension of its activities, closure of the establishment(s), fines, or reparation of environmental damage.

The Shareholders and directors of the company; Under the LFRA, companies will be responsible for the damage to the environment caused by their representatives, administrators, managers, directors, employees and those who exercise functional control of their operations when they act in the exercise of their functions, on behalf of or under the protection or benefit of the company, or when the company orders or consents to harmful conduct.

A parent company. A parent company's liability is limited to the total amount of its capital contribution to the subsidiary.

Financial entities. Banks and financial entities' liability has focused on issues of money laundering, or financing of terrorism and organized crime. In this case, the company and the directors of the company are direct responsible for the pollution or breaches in the environmental matter, in this sense, the shareholders of the company, parent companies and the entities related are only indirectly harmed by the problems generated for the breaches made.

**25. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?**

A buyer can assume any pre-acquisition through an

agreement signed with the seller where the consent is perfected, and it is acknowledged of the pre-acquisitions in the asset.

A seller retains environmental liability in case that the asset has hidden defects or does not correspond to what was agreed.

When it is impossible to determine the damage contributed by each person accurately, all are jointly responsible, without prejudice, to take legal action among themselves.

**26. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?**

The seller has the duty to disclose all the important aspects of the environmental information in order to allow the buyer to know what the specific and special matters are related to the project or asset that is going to buy. This in the understanding, that the disclosure of the environmental information could represent a measure to prevent lawsuits in a future.

The damage caused to the environment would be attributable to those who omit to prevent them if they had a legal duty to prevent them. In these cases, it will be considered that the damage is the consequence of omissive conduct when it is determined that those who omitted to prevent it had the duty to act under the Law, from a contract, from its capacity as guarantor or its actions.

In such matter, due diligences are fundamental to acknowledge all the environmental information that represent the basis for the transaction.

**27. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?**

Under LGEEPA is mandatory to obtain insurance when a regulated party carries out certain activities that could harm the environment. That is, high risk activities. There are different kinds of insurance. For example, Environmental Liability and Civil Liability. The aforementioned cover the incidents that could harm third parties and its infrastructure as well as the

environmental components present in the project area.

**28. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?**

There is a National System of Environmental Information and Natural Resources (SNIARN) that concentrates statistical information on issues related to the environment, where you can consult the public records of contaminated sites, water quality, air quality, environmental information, etc. Access is public through the SNIARN website.

Every authority in our jurisdiction is obligated to keep the environmental information in their files for at least 5 years, in that sense, third parties can access the information by two assumptions: 1) That the third parties have a legitimate interest on the matter that could represent a risk for their rights, and 2) By summiting a request on the National Transparency Platform (PNT).

**29. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?**

According to the General Law of Transparency and Access to Public Information the authorities are obligated to disclose the environmental information in public versions safeguarding the personal and sensitive area of the documents that are being given to the person that requested it.

**30. What impact, if any, has COVID-19 had in relation to environmental regulations and enforcement in your jurisdiction?**

Although the effects were considerable, since the activities of the regulatory authorities were suspended for almost 2 years and the inspection was only implemented in urgent cases, there was no impact made in the regulations by COVID-19.

**31. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant**

**updates or reforms in the near future?**

Yes, several reforms have been issued in the last 3 years (the environmental law is constantly updated), at least the new LGDFS and its Regulations, or the new

NOM-001-SEMARNAT-2021. Two relevant proposals, for example, is the General Water Law which is under discussion at the Congress and the one of the Federal Environmental Liability Law (LFRA) that could represent a significant update.

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