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Colombia

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Posse Herrera Ruiz

Legislation

1 Main environmental regulations

What are the main statutes and regulations relating to the environment?

The main statutes and regulations relating to the environment are the following:

- Political Constitution: there are numerous articles of the 1991 Colombian Political Constitution addressing the environment. Among them, article 79 established the right of all the persons to a healthy environment. This right has been considered a collective right, so it can be enforced through collective actions. In addition, article 80 establishes the duty of the state to plan the management of natural resources and the environment to ensure sustainable development, their conservation and restoration, and to prevent and control factors of environmental deterioration.
- Code of Natural Resources – Decree-Law 2811 of 1974: this code establishes detailed norms about the management of certain natural resources such as the forests, the soil, the water and the atmosphere. According to this code, anyone who uses or affects the renewable natural resources must have a previous permit granted by the competent environmental authority.
- Law 99 of 1993: this law is the basic Environmental Statute. It also created the Ministry of Environment and Sustainable Development (MADS) and reorganised the national environmental system including the Regional Autonomous Corporations.
- Law 1450 of 2011: establishes the National Development Plan for 2010 to 2014, and modifies certain important environmental regulations.
- Decree 2820 of 2010: regulates environmental licensing.
- Law 1333 of 2009: establishes the environmental sanctions regime.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

In Colombia, certain projects, activities and facilities are subject to environmental licensing requirements, which are indeed designed to promote an integrated approach to pollution control at the project or facility level.

In brief, certain projects, facilities and activities, which are deemed to have the potential to cause significant deleterious effects on the environment and renewable natural resources are required to obtain an environmental licence prior to beginning operation.

The environmental licence is granted on the basis of an environmental impact assessment (EIA) prepared by the operator using pre-established terms of reference for each sector or activity and reviewed by the competent environmental authority. The EIA must contain an environmental management plan that will be monitored by the environmental authority during the life of the project or activity.

Typically the environmental licence will be granted for the duration of the project and will include all necessary environmental permits, although because of weak institutional coordination this is not always the case.

However, there are also separate resource-based regulations so that if a given project or activity is not subject to an environmental licence the operator of such project or activity must obtain discrete permits for the use or impairment of specific natural resources. These include:

- water concessions;
- emissions permits;
- effluent discharge permits; and
- forest use permits.

3 Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

Soil pollution is mainly addressed in regulations related to integrated management of hazardous wastes and substances (including pesticides), including Decrees 1443 of 2004 and 4741 of 2005 as well as by administrative and civil environmental liability provisions contained in Law 1333 of 2009.

The general principle is that persons who are responsible for the contamination of a site because of their improper management of hazardous wastes or substances (including pesticides) are liable for the assessment, remediation and reparation of damage caused to the environment. There is ambiguity in regards to the scope of remediation obligations, especially with respect to soil contamination considering that there are no quality standards established under Colombian law. Moreover, under the current regime of administrative liability, the fault of the alleged infringer is presumed and the alleged infringer has the burden of proving that it was not at fault in order to escape administrative liability.

4 Regulation of waste

What types of waste are regulated and how?

Hazardous waste is mainly regulated by Decree 4741 of 2005. Waste is defined as any object, material, substance, element or product, in solid, semi-solid, liquid or gaseous form, that is discarded or rejected by its generator because its properties do not allow it to be reused in the activity that generated it.

Hazardous waste is waste that due to its corrosive, reactive, explosive, toxic, inflammable, infectious or radioactive properties may cause risk or damage to human health and the environment. Likewise, containers and packages that have been in contact with them are hazardous waste. Waste is classified as hazardous if it is included in Annex I or II of Decree 4741 of 2005 and has the hazardous characteristics established in Annex III of the same decree.

The generators or importers of hazardous waste are liable for all environmental damage caused by such waste, including their effluents, emissions, products and by-products. Such liability subsists until the final and adequate disposal of the wastes or until the moment they are used in other industrial production processes. The generator will also be liable for damage caused by any chemical content not declared to the recipient or to environmental authorities. Generators of hazardous waste in excess of 10 kg/month must register with the competent environmental authority as generators of hazardous waste.

As indicated above, if a party is declared responsible for contamination of a site as a result of their inadequate management of hazardous waste or materials, it shall be liable for the assessment and remediation or reclamation of the site. The manufacturer of products containing hazardous waste or materials is subject to the same liabilities as the generator and is also liable for the disposal of packaging materials that may contain or be contaminated with hazardous waste or materials. The transporter is jointly and severally liable with the issuer of the cargo for damage caused during transportation. Finally, when a third party receives hazardous waste for processing or disposal, it becomes jointly and severally liable with the generator until its final and adequate disposal or until the moment it is used in other industrial production processes.

Also, according to Decree 4741 of 2005, if the generator is unknown, the party in possession of the waste or materials may be liable. There have been cases in which the MADS has held that if waste is found on a site, even if the owner of the land was not aware of its existence, such owner is considered to be in possession of the waste and is therefore liable for restoration of the site.

According to article 358 of the Criminal Code, the illegal import, export, trade, production, possession or transport of hazardous waste is a crime and it is punished with prison and fines.

There are also extensive regulations on solid, non-hazardous waste, which fall under the scope of domestic public service or utilities law.

5 Regulation of air emissions

What are the main features of the rules governing air emissions?

Decree 948 of 1995 is the basic regulation concerning air emissions.

Decree 948 identifies and classifies regulated air pollutants and requires environmental authorities to establish:

- air quality or emission standards: these standards were adopted by Resolution 601 of 2006 of the MADS (modified by Resolution 610 of 2010 of the MADS) for the whole Colombian territory. Regional or local environmental authorities may issue stricter standards;
- air emission or discharge standards for stationary (point) sources: these standards were adopted for different sources through MADS Resolution 909 of 2008;
- air emission or discharge standards for mobile sources: these standards were adopted for different sources through MADS Resolution 910 of 2008;
- noise emission standards: adopted by MADS Resolution 627 of 2006; and
- standards for the emission of offensive odours: the MADS has issued a draft regulation which is currently in consultation with industry and civil society.

In order to carry out emissions into the atmosphere from fixed or point sources, the environmental authority must grant an emission permit, only if the concentration of contaminants in the atmosphere is within permitted levels. Emissions permits are required to carry out certain activities such as open controlled burns in rural areas; discharges of smoke, gas, vapours, dust or particles by chimneys or ducts in industrial establishments; waste incineration; and others.

The main regulated contaminants are industrial contaminants, dioxins and furans, particulate material, SO2, NOx, NH3, H2S, CO, COT, HCI, HCF H and HCT.

6 Climate change

Are there any specific provisions relating to climate change?

Colombia is a non-annex I party to the United Nations Framework Convention on Climate Change and to the Kyoto Protocol. As such, it does not have binding commitments to control greenhouse gas emissions. Furthermore, in Colombia there is no legal regime regarding emissions and there is no cap and trade system in force.

However, Colombia participates actively in the clean development mechanisms (CDM). Currently it has approximately 154 CDM projects, of which 29 are registered before the UNFCCC.

7 Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

The only water that is subject to private property rights is the water that springs naturally and disappears naturally within a single private property.

All other freshwater resources are property of the nation, and therefore imprescriptible and inalienable. This means that public water resources are not subject to sale or transfer and that private uses of water other than those expressly authorised by the law (drinking, bathing, washing and other similar subsistence activities) require a concession and the payment of certain water use charges. In addition, the permanent occupation of watercourses or riverbeds (including for the collection of water pursuant to a concession) require a riverbed occupation permit.

Furthermore, environmental regulations prohibit the discharges of effluents into superficial, sub-surface or marine waters unless an effluent permit is obtained, subject to compliance with applicable effluent standards contained in Decree 3930 of 2010. Discharges into public sewage systems are subject to some uncertainty as a result of the suspension by the Council of State (which is Colombia's supreme administrative law court) of an article of the aforementioned decree that exempted such discharges from the obligation to obtain a permit.

Finally, it should be noted that projects that require the use of water taken directly from natural sources and are subject to environmental licences are subject not only to the payment of water use charges but also to a mandatory investment of 1 per cent of the value of the project in the protection and preservation of the water basin that feeds the natural source of water.

On the other hand, there is no particular regulation regarding seawater. However, the territorial sea, its beaches and the seabed are goods of the state, which also are inalienable and imprescriptible. In addition, to extract drag materials from the beaches, a beach occupation permit is required.

8 Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

Under Colombian law there are numerous conservation categories to protect the natural spaces and the landscape. Each conservation category has different conservation purposes, and the permitted activities within these areas depend on their category.

The National Protected Area System (SINAP) was reorganised by means of Decree 2372 of 2010 issued by the MADS. The areas that are part of the SINAP are:

- areas of the National Natural Parks System established the Code of Natural Resources, and are defined as the areas with exceptional value for the national patrimony. They are divided into six types and have specific permitted activities;

- protective forest reserves;
- regional natural parks;
- integrated management districts;
- soil conservation districts;
- recreation areas; and
- natural reserves of the civil society.

Because private property has an 'inherent ecologic function' according to the Colombian Political Constitution, it is possible to create new SINAP areas in public or private properties. If such is the case, certain limitations or restrictions over the private or public property can be imposed depending on the category in which the new SINAP area is included and the owner may have the right to compensation.

In addition, Law 2 of 1959 declared as forest reserves several large extensions of the Colombian territory which are not part of the SINAP.

In the event that public utility activities (including power generation, transmission and hydrocarbon exploration and production) are to be conducted in areas declared as forest reserves, the relevant area has to be excluded from the reserve before the public utility activity can take place.

Although regarded as a public utility activity, mining is prohibited in certain types of forest reserves and the exclusion of the mining area from such reserves is also expressly prohibited by law.

Certain ecosystems have a special protection due to their environmental importance. They are the following:

- paramo (high mountain moorland);
- wetlands;
- Ramsar Convention wetlands;
- coral reefs;
- mangroves; and
- submarine grasslands.

9 Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

Please see question 8.

In addition, the Code of Natural Resources establishes that the environmental authorities may determine temporary or permanent bans to the hunting or fishing of numerous species.

In order to protect its biodiversity, Colombia is also a party to several international treaties including the Convention on Biological Diversity, the Convention on Trade in International Endangered Species and the Ramsar Convention on Wetlands.

10 Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

Noise

According to the environmental regulations described above, noise may only be emitted within the standards permitted by MADS Resolution 627 of 2006.

The resolution establishes four noise zones with varying standards: sector A for tranquillity and silence; sector B for tranquillity and moderate noise; sector C for restricted intermediate noise; and sector D suburban zone or tranquillity rural and moderate noise.

In order to use amplifiers and speakers in public spaces and to carry out construction activities on the roads between 7pm and 7am, a permit issued by the competent environmental authority is required. Also, there are schedules and conditions for noise emissions fixed by the environmental authorities.

Odours

Pursuant to Decree 948 of 1995, the MADS is required to issue standards for offensive odours (on a statistical basis), procedures to determine permissible levels and regulations of activities that produce them. Currently there is a regulation of this matter under consultation.

11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

The current regime on liability for damage to the environment establishes three types of liability, namely administrative, civil and criminal. The three types of liability are fault-based, although recent Colombian jurisprudence has shown a tendency to regard civil liability for environmental damage as almost objective to the extent that courts have held that it is sufficient to prove damage to the environment and a causal relationship between the party's conduct and such damage to make a party liable.

Administrative or sanctionatory liability may arise from the violation of applicable laws and regulations and may result in fines, suspension or termination of environmental permits or licences and closure of facilities. Under Law 1333 of 2009, the alleged infringer is presumed to be at fault and has the burden of proving diligence to avoid liability.

Civil liability arises from: damage to the environment considered as a common good; and from damage to persons or property resulting from damage to the environment or renewable natural resources. In the first case, redress for damage to the environment must be sought through collective actions on behalf of the community. In the second case, redress may be sought through individual ordinary civil liability actions or through class actions whenever there is a plural number of affected parties.

Criminal liability arises whenever a natural person commits one or more acts defined under the Colombian Criminal Code as a crime. In addition to criminal liability, which may result in fines or imprisonment, the person responsible may also be liable for civil damages arising from its criminal conduct.

12 Environmental taxes

Is there any type of environmental tax?

In Colombia there are no environmental taxes. However, Law 99 of 1993 enables the government to establish fees for the direct or indirect use of the renewable natural resources, such as the atmosphere, water and soil.

So-called 'retributive' fees may be charged to anyone who executes activities that use directly or indirectly the atmosphere, water and soil to receive emissions, effluents or waste. The retributive fee is a payment for the deleterious effects of such use on the environment and the renewable resources. This fee will be invested in projects to decontaminate and monitor the quality of the affected natural resource.

So far, the government has only issued regulations enabling regional authorities to charge retributive fees for effluents. These are contained in Decree 2667 of 2012.

Under these regulations, the fee is calculated on the basis of a minimum rate determined periodically by the MADS for each parameter based on the direct costs of removing contaminants from effluents. Each regional environmental authority within its jurisdiction is required to determine a regional factor that incorporates the cost of depreciation of the relevant natural resource and will be targeted at achieving a given pollution reduction level in the relevant watercourse. The rate to be charged in each region will be the result of multiplying the minimum rate by the regional factor. Furthermore, the fees may be charged even if the allowed limits of contamination are exceeded, without prejudice to the sanctions that may apply. This implies that the collection of the fee does not generate the legalization of discharge.

Finally, there is a separate charge for the use of water, so that any person or legal entity that makes use of the public waters must

pay a fee for the use of that water. Such fees are regulated in Decree 155 of 2004.

Hazardous activities and substances

13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

In Colombia there is no specific regulation regarding hazardous activities as such. However, as indicated above, there is a strict regulation regarding the generation, transport and final disposition of hazardous wastes. In addition, any environmental damage caused may give rise to administrative, civil or criminal liability (see question 11).

14 Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

According to Decree 4741 of 2005 about hazardous wastes, the producer or importer of a substance that has the hazardous characteristics established in Annex III of such decree, is treated in the same way as the generator of a hazardous waste. This means that this producer or importer has the same obligations and liabilities of the generator of a hazardous waste with respect to the hazardous substances he produces.

The persons who transport, use or dispose of a hazardous substance are responsible for any damage caused when such product is under their custody. Producers of chemicals with hazardous properties and of pesticides are liable for the safe disposal of the packages of their products. The products are subject to post consumption recovery programs. If any environmental damage occurs due to the hazardous substance, the responsible party is subject to an environmental sanctioning process.

The classification, designation and the general conditions for the transportation of hazardous merchandise must comply with the Colombian Technical Norm NTC 1692 – Annex No. 1.

In addition, projects whose purpose is to store hazardous substances require an environmental licence.

Furthermore, it is important to note that Decree 1609 of 2002 regulates road transportation of hazardous products, and establishes obligations for each of the participants of the transportation chain.

Industrial accidents

15 Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

Projects and activities that are subject to environmental licences must file an environmental management plan along with the EIA, which must include detailed measures oriented to prevent, mitigate, correct or compensate the environmental effects of the project. This means that, where applicable, it must have the contingency and abandonment plans in case any accident that affects the environment occurs.

There are also certain special regulations for certain types of facilities such as facilities which store, process or dispose of hazardous waste and substances which must have emergency contingency plans, and hydrocarbons facilities including storage terminals, pipelines, production fields and others which must also have approved contingency plans.

Environmental aspects in transactions

16 Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

The main environmental aspects in M&A transactions depend on the particular industry. However, main issues to be taken into account in most M&A transactions are:

- environmental due diligence, which should include:
  - verification that the target company or asset has obtained all necessary environmental licences and permits for the use of renewable natural resources, because some activities may not be carried out without these;
  - verification that the target company or asset is in compliance with applicable environmental regulations and standards and not subject to environmental administrative investigations or civil environmental liability actions; and
  - verification that the target company or asset has not generated site contamination through hazardous waste or other substances which may make it liable for remediation costs in the future;
- possible overlaps of environmentally protected areas with the areas where the business activity is taking place or is intended to take place, because some activities are restricted or prohibited within environmentally protected areas. This is particularly relevant for mining, oil and gas and other natural resource activities; and
- possible need for prior consultation with ethnic communities when the particular project is located in areas where there is presence of ethnic communities for the purpose of addressing the economic, environmental, social and cultural impacts that may be generated by the exploitation of non-renewable natural resources in their territories. The right to consultation has been declared by the jurisprudence of the Colombian Constitutional Court as a fundamental constitutional right of ethnic communities, susceptible to protection by means of constitutional injunctions. Prior consultation is not a veto right, but the jurisprudence of the Colombian Constitutional Court has recently recognised that large-scale infrastructure projects cannot be executed without the prior and informed consent of the ethnic communities due to the projects' potential to destroy them completely.

The issues involved in acquisitions of shares or assets are not very different. Although it is clear that the acquisition of assets does not transfer the personal liability of the seller for environmental infringements, it may transfer liability for environmental contingencies directly related to the assets (eg, site contamination), and it is usually necessary to transfer environmental licences or permits required to operate the assets which will normally require that the assignee accepts liability for any outstanding obligations under such permits and for future environmental liabilities.

In the acquisition of a company via the acquisition of shares, these permits are transferred automatically along with all potential liabilities of the company.

Contractual indemnities are customary but they have an agreed duration which rarely exceeds five years, whereas the statute of limitations for administrative environmental investigations is 20 years.

17 Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

In general the main aspects to consider in any sort of transaction are those summarised above. Depending on the transaction and particularly its structure, it may be necessary to conduct a more detailed review of certain aspects.

In particular, in financing transactions the focus is on ensuring that the borrower has all necessary environmental licences and permits to operate and verifying that it is not subject to environmental investigations or lawsuits that may impair its ability to operate and generate cashflow.

In real estate transactions it is essential to verify that sites have not been contaminated, particularly with hazardous wastes so that there are no liabilities that could be transferred along with the property.

With respect to corporate restructuring transactions perhaps the key element is to determine what permits will need to be assigned as a result of the proposed reorganisation in order to determine what consents may be required from environmental authorities and be able to plan closing of the transaction accordingly.

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

Pursuant to article 49 of Law 99 of 1993, projects and activities (including facilities) that have significant negative effects on the environment, renewable natural resources or the landscape require an environmental licence. This licence, issued on the basis of an environmental impact assessment of the relevant project or activity presented by the interested party, will establish the environmental conditions under which the activity may be carried out. It is essentially a conditional approval of an activity that may cause harm to the environment or natural resources.

Article 49 has been regulated by Decree 2820 of 2010 and establishes a comprehensive list of projects and activities that require an environmental licence. It also indicates, based on specific variables related to the project or activity, if the competent authority to evaluate the project and issue the licences is the National Environmental Licensing Authority (ANLA) or a regional authority.

Projects and activities not included in this list are not subject to environmental licensing although they may require permits of the use or impairment of discrete natural resources, including emissions permits, effluent permits, water use concessions and others.

The main projects and activities subject to environmental licences (in some cases subject to certain thresholds and other variables) are:

- exploration (seismic acquisition is not subject to licensing unless new roads need to be built), production and transport of hydrocarbon projects;
- mining production (but no exploration);
- construction and operation of power generation and transmission infrastructure;
- nuclear energy generation;
- construction and operation of ports and dredging activities;
- construction of roads, railways and river infrastructure works;
- production and import of pesticides; and
- importation of substances controlled by international treaties, including genetically modified organisms.

The environmental licence must be granted before the beginning of the project or activity, and it is granted for the entire duration of the project or activity that is going to be carried out. It contains all the permits for the use and exploitation of renewable natural resources that are needed.

19 Environmental assessment process

What are the main steps of the environmental assessment process?

Article 224 of Law 1450 establishes the procedure to grant an environmental licence. According to this article, the procedure is generally the following:

- The interested party must request from the competent authority a determination of whether an alternative assessment is required. If not, such party may proceed with the preparation of an EIA.
- Normally, terms of reference of the preparation of the EIA have been published by the MADS which indicate what information should be included in the assessment, depending on the specific sector and activity.
- If terms for a particular activity are not available, the interested party must request the environmental authority to issue terms of reference for the specific activity.
- If there are indigenous or traditional African-Colombian communities permanently settled in the area of influence of the project to be licensed, the impacts of the project must have been consulted with these communities. This consultation is conducted during the process of preparation of the EIA and specifically its environmental management plan, which must include measures to mitigate potential social (including on ethnic communities) and environmental impacts of the project.
- If the area of influence of the project overlaps with environmentally protected areas that can be carved out, such carve-out must have been granted by the competent authority. However, the request for an environmental licence and for the carve-out of a protected area may be filed simultaneously and proceed in parallel, but the carve-out is a requirement for the environmental licence.
- Once the EIA is filed with the competent authority, it may request any additional information required form the applicant or form other government authorities.
- Third parties, including individuals and NGOs may ask to be recognised as interested parties in the administrative proceeding.
- The attorney general, the minister of environment, governors and local mayors, as well as 100 individuals or three NGOs may request a public hearing to be held with respect to the project.
- The total time available to the environmental authority to issue the licence is 165 business days, excluding any suspensions that may be caused by delays in consultations with indigenous communities or because of a public hearing.

Regulatory authorities

20 Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

Law 99 of 1993 creates the Environmental National System (SINA), which includes the following environmental authorities:

- the Ministry of Environment, today the Ministry of Environment and Sustainable Development (MADS). Its objective is to coordinate the SINA, secure the execution of the policies and plans, programmes and projects to guarantee the compliance with the environmental duties and rights of the people and of the state;
- the ANLA, which has the responsibility to review EIAs and issue environmental licences for projects of national relevance, which was formerly a responsibility of the MADS;
- regional autonomous corporations, whose function is to execute national environmental policies, plans and programmes. They are the maximum environmental authority in the area of their jurisdiction, so they should perform the evaluation, control and follow-up of the uses of the water, soil, air and other renewable natural resources, and charge the compensatory and retributive taxes. These entities do not have a hierarchic superior; and
- urban environmental authorities – municipalities, districts and metropolitan areas with more than 1 million inhabitants will have the same functions as the regional autonomous corporations in their perimeter.

21 Investigation

What are the typical steps in an investigation?

An investigation may be initiated ex officio or at the request of a party affected by an alleged environmental violation. Preventive measures may be imposed to avoid any harm to the environment and before the initiation of the environmental sanctioning process and include a written admonition, preventive impounding of products, implements or materials used to commit an infringement, or suspension of the work or activity, when the project or activity was initiated without required permits or is being conducted in violation of them. Preventive measures are not subject to appeal but they may be lifted ex officio or at the request of the affected party if the causes that originated them have disappeared.

The preliminary investigation stage has a maximum duration of six months for the authority to determine the existence of an alleged violation. After the six months, the authority will have to either initiate the formal sanctioning proceeding by formulating administrative charges against the alleged offender or definitely close the investigation.

The alleged offender has 10 working days to present a defence against the charges formulated by the environmental authority. The environmental authority will order the collection of evidence.

Once all necessary evidence has been obtained, the environmental authority must decide if the alleged offender is liable and must impose a sanction. The environmental authority may also impose compensatory measures in order to compensate and restore the damage caused to the environment.

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

In order to verify the facts leading to an environmental sanctioning process, the environmental authority may perform any administrative procedure necessary, such as a technical visit, sample taking, laboratory exams, and any other it deems necessary.

23 Administrative decisions

What is the procedure for making administrative decisions?

Administrative decisions are made by motivated resolution after the procedure described above has been completed.

24 Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

In addition to the preventive measures described above the penalties that may be imposed are: daily fines of maximum 5,000 current minimum monthly legal wages; definite or temporary closing of the business establishment, building or service; annulment of the environmental licence, management plan or permit; demolition of the construction or facilities; and community service.

25 Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

In an environmental sanctioning process, the preventive measures imposed on the alleged offender before the beginning of the process are not subject to appeal.

The decision declaring a party liable for environmental violations is subject to reconsideration or appeal before the minister of environment or the director of the competent authority.

If the liability or sanctions are confirmed, the interested party may challenge the relevant administrative act before the competent administrative law courts within four months following its entry into force. This challenge does not, in principle, suspend the enforcement of any measures or penalties imposed but the provisional suspension of the administrative act may be granted by the court as an interim measure if it finds it to be in manifest violation of the law.

Judicial proceedings

26 Judicial proceedings

Are environmental law proceedings in court civil, criminal or both?

There are different judicial actions that can be used to enforce the environmental laws, which are described as follows:

- collective actions, which are constitutional in nature and may be brought by any person acting for the protection of the environment as a collective right or common good;
- constitutional actions, which can also be invoked by any person, to claim the protection of his or her fundamental constitutional rights when they are being affected indirectly as a result of environmental violations (ie, the right to life or health);
- compliance actions, which are actions brought before administrative law courts to order the government to enforce environmental regulations or administrative acts. Any person can invoke this legal action;
- nullity actions, which are administrative law actions requesting the annulment of general administrative acts (for instance general decrees and resolutions) on the basis of violations of the law;
- nullity and redress actions, which are administrative law actions to challenge particular administrative acts (such as environmental sanctions) and obtain redress for damage caused by such acts; and
- criminal actions, which may be brought ex officio or ex parte and may result in criminal conviction and civil liability for damages.

27 Powers of courts

What are the powers of courts in relation to infringements and breaches of environmental law?

Regarding the environmental laws, the courts have the following powers:

- criminal courts have the power to impose fines or a prison sentence of 48 to 112 months on the person who breaches environmental law;
- civil courts have the power to declare any party liable for the damage caused to another person or the community. In such case, the court is empowered to order the payment of the costs of the damage caused. Also, the civil courts are empowered to order any private party to perform certain activities in order to protect the right to a healthy environment; and
- administrative courts are empowered to annul administrative acts that violate the law, to require the competent authority to enforce an environmental law, to impose fines and other sanctions, and to order the government to perform certain activities in order to protect the right to a healthy environment.

28 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

As indicated above, any person or legal entity may be liable for damage caused to another person or to the community due to a breach of environmental law under civil jurisdiction. In this case, the responsible company may be liable for the cost of the damage, as proven before a civil court.

29 Defences and indemnities

What defences or indemnities are available?

As indicated above, environmental liability may be fault-based or objective.

To the extent that environmental liability is fault-based, the main defences available are: absence of fault; force majeure; the act of a third party; and legal justification (state of necessity or similar arguments).

30 Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

Under Colombian Commercial law, directors or officers are in general not personally liable for the acts of the legal entity they represent. They may be liable to shareholders and exceptionally to third parties in case of negligence in the discharge of their duties. A common defence is not having participated or having opposed in the corporate decision resulting in damage.

The criminal code establishes environmental felonies that may result in individual criminal liability for the directors or officers of a company as a result of the actions of their actions on behalf of the company.

31 Appeal process

What is the appeal process from trials?

Please refer to previous questions.

International treaties and institutions

32 International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

Colombia is a party to different international environmental treaties, such as the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES), Ramsar Convention, United Nations Convention to Combat Desertification, the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer, Basel Convention, Rotterdam Convention about Previous Informed Consent, and the Stockholm Convention on POPS, among others.

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

Regulatory policy is significantly affected by these treaties as they have considerable influence in placing topics on the regulatory agenda. Frequently the implementation of international treaties requires specific regulations or policies.

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