

ABC on the law of environmental liabilities in Colombia

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POSSE | HERRERA | RUIZ

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A tax-free zone is a geographical area delimited within the National Customs Territory ("TAN"), where industrial activities of goods and services, or commercial activities are carried out.

On June 16, 2023, the Congress of the Republic issued the conciliation report of bill No. 226 of 2022 Senate - 117 of 2021 Chamber "whereby the definition of environmental liability is established, the guidelines are established for its management and other provisions are issued", which contains the final text of the project that will become a Law of the Republic (the "Environmental Liabilities Law"), for the enactment of which only the presidential sanction is pending.

1. What are the environmental liabilities ("Environmental Liabilities" or "Environmental Liabilities")?

According to the Environmental Liabilities Law, these are defined as:

"The environmental impacts caused by human activities directly or indirectly by the hand of man, authorized or not, cumulative or not, capable of being measurable, locatable and geographically delimitable, which generate an unacceptable level of risk to life, human health or the environment, in accordance with what is established by the Ministry of Environment and Sustainable Development and the Ministry of Health, and for the control of which there is no environmental or sectoral instrument" (Highlights inserted).

2. Public Policy for the Management of Environmental Liabilities

Within one year following the entry into force of the Law, different institutions must establish the guidelines for the formulation, implementation and evaluation of a Public Policy for the Management of Environmental Liabilities, with its respective action and follow-up plan.

In this sense and, with the purpose of formulating said Public Policy, the entities in question – among which we find the National Planning Department, the Ministry of Health and Social Protection and the Ministry of Environment and Sustainable Development ("MADS") – They will hold at least 4 hearings with a territorial focus in which citizen participation is guaranteed.

3. Creation of the National Committee for the Management of Environmental Liabilities (the "Committee")

This Committee, which will be part of the National Environmental Council, will be responsible for: (i) implementation and monitoring of the Public Policy for the Management of Environmental Liabilities; (ii) ensure the necessary inter-institutional coordination for the management of Environmental Liabilities, including the responsibilities that fall on the competent environmental authorities and territorial entities, among other entities; and (iii) follow up on the action plan regarding the prioritization of the management of Environmental Liabilities that are presented to it by the MADS and the competent environmental authorities.

Some aspects to take into account in relation to the creation of this new Committee include:

- a. The technical support table will be formed, made up of technical teams from the Ministries that make up the National Environmental Council, which will provide the elements required by the Committee for the management of Environmental Liabilities.
- b. The competent environmental authorities will participate when analyzing a case that is in their jurisdiction.

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- c. For each of the sessions held by the Committee, a socialization report of the issues discussed there will be prepared, which will be public and easily accessible to the public.
- d. The formation and operation of the Committee will be regulated by the MADS within the 3 months following the entry into force of this Law.
- e. The Committee will meet ordinarily every 4 months and extraordinarily whenever the MADS convenes it.
- f. The active participation of, the following, among other, will be guaranteed: (i) academia, (ii) civil society, through NGOs and/or Environmental Monitoring Offices; (iii) a representative of the region affected by the activity that configured the Environmental Liability; and (iv) associations that represent the productive sector and that carry out activities in the territories. These actors may participate with voice, but without vote.

4. Strategy for the Management of Environmental Liabilities.

The Strategy for the Management of Environmental Liabilities is understood as the set of activities related to:

- Identification by suspicion
- Characterization
- Risk assessment
- Declaration
- Registration
- Prioritization
- Intervention
- Monitoring
- Follow - up

of Environmental Liabilities.

This Strategy must be adopted by the MADS within 6 months after the entry into force of this Law.

5. Information Mechanisms and Mechanisms for the Management of Environmental Liabilities.

The Law establishes a series of mechanisms for information related to the management of Environmental Liabilities, including:

a. Environmental Liabilities Information System: Unique instrument for managing information on the Strategy for the Management of Environmental Liabilities.

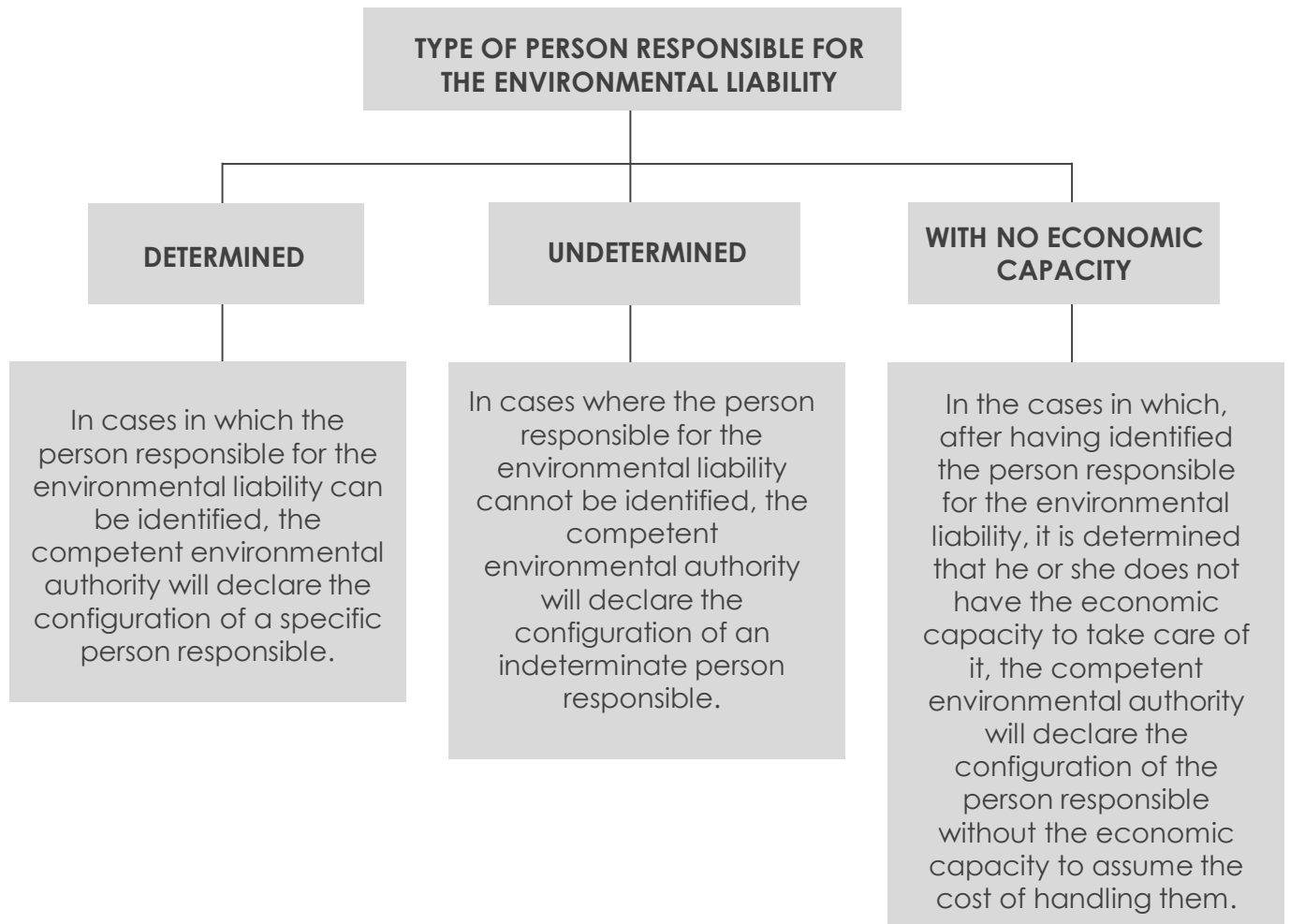
- This System will include the Environmental Liabilities Registry (REPA), which will contain, as a minimum, clear, complete, public and timely information on the location of environmental liabilities in the national territory, information on the person(s) responsible for their intervention, the activities defined in the Environmental Liabilities Intervention Plans, and their progress status. The MADS must regulate this System within 6 months from the entry into force of the Law.

b. Environmental Liabilities' Intervention Plans: They are environmental control and management instruments, subject to evaluation and monitoring by the competent environmental authority, for the management of Environmental Liabilities, and will contain intervention measures, aimed at the rehabilitation, remediation, restoration or isolation of the area.

c. Identification and verification of Environmental Liabilities: In the cases in which the environmental authorities identify the existence of an area suspected of having Environmental Liabilities, they will have to carry out the preliminary risk studies that are necessary to determine the configuration of the Environmental Liabilities, taking into account a technical methodology of reference and the criteria established by the MADS.

Below is a diagram that shows the different actors that may be present during the identification and verification of Environmental Liabilities :

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In any case, the competent environmental authorities will send official copies of the pertinent legal actions to the competent entities as the case may be, in the face of the refusal of those responsible for the determined or indeterminate Environmental Liabilities (e. g. Office of the General Prosecutor of the Nation).

If there are several people responsible for the Environmental Liability, the actions required to intervene will be established jointly and severally.

d. Attention measures: to attend to the configuration of Environmental Liabilities in those projects, works or activities without an environmental or sectoral instrument in force, the competent environmental authority may impose as an environmental management and control instrument, the Environmental Liabilities Intervention Plan on the areas in suspected of being configured as an Environmental Liability. The MADS must regulate this mechanism within one year following the entry into force of this Law.

6. Financing mechanisms for the management of Environmental Liabilities

FINANCING MECHANISMS

Within the framework of the Public Policy for the Management of Environmental Liabilities, the MADS and the Ministry of Finance and Public Credit will establish the system and method of financing and appropriation of resources for the management of environmental liabilities within a period of one year from the date in which the Law gains legal force.

The CARs will be able to use up to 10% of the non - committed investment transfers to enforce actions in relation to Environmental Liabilities.

The agreements entered into within the Works for Taxes framework mechanism may have as their object the direct investment of the Environmental Liabilities Intervention Plans by non - liable interested third parties. The foregoing without prejudice to the agreements referred to in the second paragraph of article 800-1 of the Tax Code.

For environmental liabilities that do not have a responsible party named, those responsible for the projects subject to the application of the 1% forced investment that are located in the same hydrographic basin, may carry out the formulation and execution of intervention plans for the management of Environmental Liabilities, with the prior approval of the environmental authority, within the framework of environmental licensing processes.

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This newsletter is informative. It cannot be construed as legal advice nor does it represent the firm's position on the issues discussed.

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