

## *Dear Friends and Clients,*

With our newsletter we would like to inform you of recent and significant legal developments in the field of energy law in Argentina.

Best regards,

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### EXEMPTIONS FOR NEW HYDROCARBON PROJECTS IN THE PROVINCE OF TIERRA DEL FUEGO

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By means of Decree No. 1049/2018 (the "Decree"), published in the Official Gazette on November 14, 2018, the Executive Branch restored custom and tax exemptions for new hydrocarbon projects to be carried out in the Province of Tierra del Fuego, Antártida e Islas del Atlántico Sur (the "Province"). The Finance Ministry still needs to define which "new hydrocarbon projects" will be eligible.

Originally, these benefits were granted by Law No. 19,640 on 1972 (the "Law") and subsequently revoked by Decree No. 751/2012. The Law granted tax exemptions (mainly Income Tax) to every activity and operation conducted in the

Province and; it also declared the Province as a Free Trade Zone.

The Decree No. 751/2012 revoked the benefits granted by the Law for those activities related to the production of oil and gas, except for Value Added Tax (VAD) in the marketing of natural gas and liquefied petroleum gas, which remained exempted.

The Decree has the purpose of increasing investments in the production of hydrocarbons, and promoting the development of new oil and gas projects.

# REGULATION OF THE PROMOTIONAL REGIME FOR RENEWABLE ENERGY PROJECTS LOCATED IN THE PROVINCE OF BUENOS AIRES

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By means of Decree No. 1293/2018 published in the Official Gazette of the Province of Buenos Aires on November 12, 2018 (the "Decree"), the Executive Branch of the said province regulated Law No. 14,838, which establishes a promotional regime applicable to projects for the generation of electricity from renewable sources (the "Promotional Regime").

The Decree (i) designates the Ministry of Infrastructure and Public Utilities as the enforcement authority of the Promotional Regime (the "Enforcement Authority"), (ii) creates the Registry of Renewable Energy Projects (*Registro Único de Proyectos de Energías Renovables*, hereinafter "RUER"), and (iii) establishes that registration with the RUER shall be compulsory for any project looking forward to benefitting from the Promotional Regime.

## BENEFICIARIES

Both human and legal persons may be beneficiaries of the Promotional Regime as long as they hold title for investment projects or concessions for the setting up of plants for the generation, self-generation or co-generation of electric energy from renewable sources, and/or the improvement of existing generation plants whose production is allocated to the Wholesale Electricity Market (*Mercado Eléctrico Mayorista*, hereinafter "MEM") and/or the rendering of a public service, located within the Province of Buenos Aires (a "Project"). Whomever wishes to benefit from the Promotional Regime must set up a legal domicile in the Province of Buenos Aires.

## TAX EXEMPTIONS

All tax exemptions obtained pursuant to the Promotional Regime shall be in force as from the date of the approval of the Project by the Enforcement Authority, and shall remain subject to the guidelines established by the Fiscal Agency of the Province of Buenos Aires Province (*Agencia de Recaudación de la Provincia de Buenos Aires*, hereinafter "ARBA").

The Decree clarifies certain aspects pertaining specific tax exemptions:

- Regarding Real Estate Tax exemptions, these shall be established according to the percentage of the surface of the property allocated to the Project;

- Regarding Stamp Tax, an exemption will be applicable to:
  - \_acts, contracts and operations directly linked to the execution and financing of infrastructure for the Project, including the acquisition of capital goods and civil, electromechanical and assembling works in new generation plants or existing plants;

- \_acts and contracts for the acquisition of goods and services directly linked to the operation, maintenance and normal functioning of the Project;

- \_acts, contracts and operations for the sale of energy generated from the Project through the MEM or to agents listed in Article 4 of Law No. 24,065 (as amended from time to time); and

- \_contracts for the lease, sale or setting up of in rem rights of usufruct or surface ownership over real estate property on which Projects are located. For this exemption to be applicable, the property shall be allocated to an approved Project, which should be stated in the relevant title.

In all cases, the tax exemptions listed in this Section (ii) shall be applicable as long as at least one of the parties to the act, contract or operation is registered in the RUER, and provided this circumstance is specified in the relevant title. The benefit will be applicable with respect to all the intervening parties.

- Regarding Gross Income Tax exemptions, these shall be applicable in relation to income obtained from the activities related to energy generation, including energy generation from biomass and hydraulic energy, provided such electricity is generated from renewable sources.

## PRIORITY

Projects awarded through national tenders that are permitted to execute a Power Purchase Agreement ("PPA") with CAMMESA or that already have executed a PPA, shall receive priority treatment in the Province of Buenos Aires, in accordance with the requirements and conditions set forth by the Enforcement Authority.

## FISCAL STABILITY

Law No. 14,838 establishes that the beneficiaries of the Promotional Regime may benefit from fiscal stability. The Decree clarifies that this entails a limitation to the increase of the tax burden existing as of the date of the approval of the Project by the Enforcement Authority. It also indicates that this fiscal stability shall prevent the application upon the beneficiaries of:

- an increase of the tax rates applicable to the activities;
- the modification of the tax base, or the parameters for its establishment that entail an increase in such tax base;
- the abrogation of any exemptions that have been granted;
- the inclusion of new situations within cases levied with Gross Income Tax; and
- the creation of new taxes that specifically levy the activity of generation of electricity from renewable sources.

## LEGAL FOUNDATIONS FOR THE IMPRISONMENT OF OIL COMPANY DIRECTORS

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On October 12, 2018, the Federal Criminal Court of the Province of Mendoza (the "Court") articulated the legal bases for the condemnation of three former directors of an oil company, for environmental contamination.

According to the court, the evidence successfully proved two oil wells of property of an oil company had been discharging formation water into local streams for a sustained period of time. One of them was being used for the injection of formation water without the prior authorization of the competent authority and in a way that it exceeded its full capacity. Moreover, a pipe was directed to drain directly into a dry stream. Regarding the other oil well, the directors did not comply with the obligation to inform its annual state showing their lack of interest in the matter.

The Court understood that the actions undertaken by the directors qualify under Section 55 of the Law of Hazardous Waste No. 24,051 (the "Law"): "(...) *the person who, utilizing the waste refer to by the present law, poisons, alters or contaminates in a dangerous way for the health, the land, the water, the atmosphere or the environment in general.*"

In arriving at such reasoning, the Court first analyzed whether hazardous waste was engaged. It explained that formation water, also known as production water, is commonly extracted while pumping oil out of the ground and it characterizes for its high salinity and its direct contact with hydrocarbons. Therefore, it becomes clear that formation water has great potential to cause severe environmental damages. In the same vein, Annex I of the Law sets out a list of hazardous residues in where, according to the administrative file of the case, formation water can be framed.

Then, the Court established that the behavior carried out by the directors lies within the typified action 'to contaminate' under Section 55 of the Law since it has been proved that a substance not naturally found has been inserted in the environment by human action that provoked alterations and damages to the native flora and fauna.

Regarding the damage of health, the Court stated it is sufficient to demonstrate the existence of risk, not being necessary to prove the effective damage to the legally protected interest. In this respect, the discharge of formation water has enough aptitude to endanger human health as well as the natural environment.

Lastly, the Court assessed the existence of the subjective element of the crime: deceit. It understood the directors were competent to recognize the contaminant incidents they were causing by their actions and were, however, indifferent to the probability of harming the public health and the actual harm of the environment. The three directors occupied the highest positions in the company connected to the incidents, making it impossible to deny their involvement: company man, field production engineer, and head of the Health, Safety and Environment area.

The determination of the willful intent became clearer with the fact that the contamination was evident and easy to perceive even for third parties outside the oil exploitation activity. Despite the manifest contamination, it was not reported to the authorities in accordance with the applicable regulations nor actions were taken to cease the damages.

Consequently, the directors were found guilty of environmental contamination and sentenced to three (3) years of probation.

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## ENRE'S SETS FORTH FURTHER CONTROLS TO CARRIERS' INVESTMENT PLANS

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By means of Resolution No. 342/2018 published in the Official Gazette on January 3rd, 2019, the Federal Electricity Regulator ("ENRE"), approved the physical control proceeding applicable to the annual investment plans submitted by the Energy Transport Concessionary Companies (the "Carriers").

Pursuant to the Resolution, apart from the five-year investment plan already approved in the Full Tariff Review, the Carriers are requested to submit annual investment plans as well as quarterly reports stating the investments' progress. Such plans entail programmed investments in assets and goods related with the utility service. In case there any changes to the planned investments, the Carrier is expected to inform ENRE of any and all of them and reasons or justifications for such change.

ENRE is expected to carry out on-site inspections in order to assess the compliance of such advances and the status of the planned investments. And at the end of the calendar year, the Carrier is expected to submit a report stating the advances and developments performed through that year.

Furthermore, by means of the Resolution, the ENRE approved the penalties regime applicable to those Carriers not complying with the planned investments. According to the Resolution, such penalties would be informed to CAMMESA, the wholesale electricity market administrator, who shall discount such amounts from Carrier's fees.

## THE SECRETARIAT OF GOVERNMENT OF ENERGY APPROVES THE REGULATION FOR THE PAYMENT OF THE CONTROL RATE.

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By means of Resolution No. 263/2018 issued by the National Secretariat of Government of Energy, and published in the Official Gazette on December 12, 2018 (the "Resolution"), the Secretariat of Energy (i) approved the regulation for the registration and payment by specific subjects of the transportation and hydrocarbons' gathering control rate prescribed by Article 98, Section c) of Law No. 11,672, and so revoked Resolution No. 77/2002; and (ii) created the Registry of Responsible Subjects for Payment of said control rate (the "Registry").

Pursuant to the Resolution, holders of facilities under national jurisdiction such as, (i) transportation concessions within the framework of Law. No. 17,319 that use boarding buoys and disembarkation of crude oil; (ii) pipelines dedicated to the gathering of hydrocarbons beyond the limits of its concession; and (iii) Underwater pipeline systems for off-shore exploitation reached by Resolution No. 951/2015; are obliged to register before the Registry and pay the control rate established under the Resolution.

Registration before the Registry shall be made by submitting before the National Secretariat of Government of Energy the following documentation:

- Form No. 1, incorporated as Annex I to the Resolution.
- A copy of the company's CUIT.
- Copy of bylaws and its amendments, together with the Registry of Commerce's approval.
- Board's minutes appointing authorities.

As regards the calculation of the control rate, the Resolution establishes that the amount to be paid in concept of control rate will be determined by multiplying an aliquot of 0,35%, – or other aliquot depending on what the annual budget law establishes –, and the product of the taxable base which shall be calculated according the following rules:

- In case of transportation concessions with an approved tariff by the enforcement authority the taxable base will be determined in one or other way depending if the transportation concession refers to pipelines or off-shore terminals:

a. For the transportation concessions regarding to pipelines, the taxable base will be equal to the product between the total volume carried through the pipelines in

the immediate previous year and the tariffs in the effect at the moment of payment of the control rate.

b. For the transportation concessions regarding to off-shore terminals the taxable base will be equal to the product between the total loaded or unloaded volume in the immediate previous year, and the usage fee current in the moment of payment.

- In case of transportation concessions with a non-approved tariff by the enforcement authority the taxable base will be determined by multiplying the total volume effectively carried/loaded-unloaded during the immediate previous year in each oil pipeline, liquid pipeline, hydrocarbons' gathering line, loading and unloading pipeline; with the reference values established for each case, according to the following:

a. For oil pipelines and other liquid pipelines, the reference value will be calculated according to Section II of the Appendix of Resolution No. 5/2004 issued by the former Secretariat of Energy.

b. For gas gathering lines, the reference value will be determined according to Article 3, Section c) of Resolution No. 188/1993 issued by the former Secretariat of Energy.

Payment of the control rate shall be made within the first five days of March. In case of delay on payment, the default will be automatic and the amount due shall bear compensatory interests at the interest rate established under Article 37 of Law No. 11,683 and its amendments. In this case, if the delayed payment does not include the accrued interests, payment must be imputed, first to the accrued interests and later to the capital. The amount due after said imputation will as well bear interests.

Moreover, the new regulation establishes that companies that have already cancelled payment of the respective rate for 2018 will be granted a term of 30 days to pay the difference that may exist between the amount paid according to the rate established for 2018 and the amount that would have been paid according to the new rate established by the Resolution. The same applies to those companies that, prior to the issuance of the Resolution, were not obliged to pay the control rate. In this case, those companies are granted with a 30 days term to calculate and cancel the appropriate amount, calculated according to what is established to each case under the Resolution.

## THE PROVINCE OF JUJUY CALLS FOR BIDS FOR LITHIUM EXPLORATION IN THE PROVINCE AND SEEKS FOR INVESTMENTS HIGHER THAN USD 500,000,000.

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The provincial State-owned company, Jujuy Energía y Minería Sociedad del Estado ("Jemse"), called for national and international bids for the exploration of lithium in Salinas Grandes and Laguna de Guayatayoc, in the west of the Province of Jujuy and on Salar de Jama on the border with Chile. The mentioned areas occupy an amount of approximately 35,000 hectares of land.

The Bidding Terms and Conditions should be published between January 14th and January 25th, 2019 and it would have a price of approximately USD 5,000.

According to Carlos Oehler, President of Jemse, the Bidding Terms and Conditions establish certain important

requirements. The first, that the awarded companies should respect and seek for the integration in the project of native communities. The second, that the awarded companies shall strictly respect all the applicable environmental regulation. The third and last requirement, is that Jemse will allow private companies to decide how to involve Jemse in the exploration of lithium, this means, through overriding royalties or with a share participation, among other alternatives.

The Province of Jujuy has higher expectations on the bid as the Province is located in the "triangle of lithium" conformed by Argentina, Bolivia and Chile which concentrates 60% of the global production of lithium.

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## MENDOZA CREATES NEW HYDROCARBON REGISTRIES AND FINANCING FUND

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By means of Law No. 9,137, enacted on December 19, 2018 (the "Law"), the Province of Mendoza created the Provincial Registry of Hydrocarbon Companies and the Provincial Registry of Hydrocarbon Blocks (the "Registries"), within the framework of the Directorate of Hydrocarbons, under Undersecretariat of Energy and Mining of the provincial Ministry of Economy, Infrastructure and Energy (the "Directorate").

Pursuant to the Law, all companies engaged in hydrocarbons exploration, exploitation and transportation activities within the Province of Mendoza must pay a control fee (the "Fee"), which shall be established by the Enforcement Authority, and shall not exceed an 0.8% of the aggregate royalties

and fees applicable to the relevant exploration, exploitation or transportation concession. All funds collected from the Fee will be used to provide equipment and fund the control of the hydrocarbons sector and the Registries.

Additionally, the Law creates the Hydrocarbon Activities' Financing Fund (the "Fund"), which shall operate within the Directorate, and may be exclusively used to fund research, control and auditing activities.

Finally, the Law establishes that the provincial Executive Branch must issue supplementary regulations within 180 days as from its publication.

## THE PROVINCE OF MENDOZA SETS FORTH FURTHER REGULATIONS FOR OIL SECONDARY RECOVERY

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On March 12, 2018, the Irrigation Agency of the Province of Mendoza (the “Agency”) issued Resolution No. 81/2018 (the “Resolution”), by means of which it established a new regulation with regards to the control of water injection wells -whether active or inactive- used as a means of secondary recovery or final disposal in the context of oil exploitation activities (the “Water Injection Wells”), in both productive and non-productive formations (*See MHR Energy Newsletter April 2018*).

By means of Resolution No. 1186/2018, published in the Official Gazette of Mendoza on January 3rd, 2019, (the “Supplementary Resolution”), the Agency set forth supplementary measures regarding the control of the Water Injection Wells.

The Supplementary Resolution appointed the Engineering Faculty of the National University of Cuyo (the “Engineering Faculty”) as (i) competent authority to carry out the environmental classification of the Water Injection Wells, and (ii) auditor of the leakage tests of the Water Injection Wells.

Additionally, the Supplementary Resolution sets forth the applicable fees to the services provided by the Engineering Faculty.

The Supplementary Resolution also provides that companies subject to this regime shall submit digital copies of the documents detailed in Annex I of the Resolution and of each Water Injection Well within a maximum period of sixty (60) days as of the date they are requested to do so. Besides, such companies shall carry out at least one leakage test within the first year of enforceability of the Supplementary Resolution.

The Supplementary Resolution also creates a Services Suppliers Registry created for the mandatory enrollment of all those companies interested in carrying out leakage tests. The non-compliance of the terms and conditions set forth in the Supplementary Resolution shall be subject to sanctions.

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