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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,

José A. Martínez de Hoz (Jr.)
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IN THIS ISSUE

NEW REGULATIONS FOR THE ENROLMENT IN THE REGISTRY OF COMPANIES TRANSPORTING LIQUID HYDROCARBONS BY PIPELINES AND THROUGH MARITIME TERMINALS

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On May 7, 2021, by means of Resolution No. 385/2021 of the Secretariat of Energy ("**Resolution 385**"), new regulations were published regarding the procedure and requirements for enrolment in the in the Registry of Companies Transporting Liquid Hydrocarbons by Pipelines and through Maritime Terminals (the "**Registry**"). Resolution 385 replaces the previous rules set forth in Resolution No. 29/2010 (**Resolution 29**).

Resolution 29, which governed enrolment in the Registry, referred to the requirements established in Resolution No. 407/2007, which was repealed in 2019 by Disposition No. 337/2019. That is why a new regulation governing enrolment was needed.

Resolution 385 introduces the following changes to the previous regulatory framework: **(i)** specific requirements regarding technical capacity; and **(ii)** changes to the requirements for evidencing financial capacity (by means of reference to Disposition Nº 335/2019 ("**Disposition 335**") of the Under-secretariat of Hydrocarbons and Fuels)

1. APPLICATION OF RESOLUTION 385

Entities which must enrol in the Registry are those that transport liquid hydrocarbons by land or offshore, by means of oil pipelines, gas pipelines, polyducts and/or any other permanent and fixed installation for the transportation, loading, dispatch, collection infrastructure, compression, conditioning and treatment of hydrocarbons that have or intend to obtain a transportation concession at the national or provincial level.

Entities already enrolled in the Registry pursuant to Resolution 29 shall be automatically enrolled by the Secretariat of Energy ("**SE**", and together with any superseding enforcement authority, the "**Enforcement Authority**").

2. INITIAL ENROLMENT

Applicant Documentation. Applicants requesting initial enrolment in the Registry must submit documentation regarding their corporate structure, legal representatives, assets, financial capacity, technical capacity and certain affidavits provided in Resolution 385.

Technical Capacity. Technical capacity must be evidenced in accordance with the category in which the Applicant seeks enrolment.

- Non-Operator. Applicants are required to evidence technical capacity by submitting an operation agreement where the operator is recognized by the Enforcement Authority. In addition, Applicants must appoint a person responsible for environmental matters, and technical professionals responsible for the operation, maintenance and integrity of the pipelines and/or maritime terminals.

- Operator. Applicants must evidence technical capacity, either: (i) from their own technical team attaching a technical chart with the relevant responsibilities; or (ii) by furnishing a letter of technical support by a third party (the "**Technical Support Letter**"). Resolution 385 sets out certain documentation that must be submitted for purposes of evidencing an Applicant's own technical capacity as set out in (i) above; in case of (ii) above, such documentation must be furnished by the company providing technical support. Applicants must inform to the Enforcement Authority the person responsible for (i) environmental matters; and (ii) technical professionals responsible for the operation, maintenance and integrity of the pipelines and/or maritime terminals, among other relevant information related to the pipeline.

3. REENROLMENT

Deadline. Renewal of enrolment in the Registry must be requested annually between July 1 and July 31. Applicants who do not submit the required documentation and/or affidavits timely and in proper form shall have an automatic extension of an additional 10 business days. Non-compliance with these deadlines may result in sanctions by the Enforcement Authority.

Documentation. Applicants must submit certain corporate documentation and evidence that they maintain their financial and technical capacity, as applicable.

4. COMMON PROCEDURAL RULES FOR INITIAL ENROLMENT AND RENEWAL

Submissions. Information and documentations must be submitted through the online platform *Trámites a Distancia* ("**TAD**").

Evaluation and clarifications. Submissions shall be evaluated according to the category in which the Applicant seeks enrolment.

Prohibitions and affidavit. Applicants must submit an affidavit within the terms of Annex II and Annex III of Resolution 385, stating the following: (i) that they are compliance with the prohibitions set out in Law No. 26,693 regarding hydrocarbons activities in the Argentine Continental Shelf; (ii) a description of all hydrocarbons transportation facilities on land or offshore, whether under concession or not, in operation, under construction or to be constructed, and those

out of service, both under national and provincial jurisdiction, with their respective technical data, in the midstream companies system, in the official website the SE.

5. FINANCIAL SOLVENCY

Disposition 335 establishes the financial and solvency requirements for companies that hold an interest in exploration permits, exploitation concessions or transportation concessions (the "**Title Holders**"). Pursuant the issuance of Resolution 385, theses requirements are also applicable for the enrollment within the Registry.

The criteria for evaluating the solvency of Title Holders is set forth in Annex I of Disposition 355 for the purpose of: **(i)** issuance of permits or concessions; **(ii)** enrolment in the Upstream Companies Registry (governed by Disposition N° 337/2019 of the Under-secretariat of Hydrocarbon and Fuels, described in this MHR's Newsletter of December 2019); and **(iii)** evaluation of the financial capacity of any assignee pursuant to Section 72 of the FHL.

In essence, Disposition 335 establishes the minimum net worth requirements (the "**Financial Requirements**"), measured by reference to the value of the crude oil barrel, in order to avoid having to update Argentine Peso ("**Peso**") figures, which devalue due to inflation.

Disposition 335 distinguishes the Financial Requirements that apply to Title Holders depending on whether they purport to operate in onshore or Offshore Blocks: **(i)** in the case of operations in onshore blocks, the net worth requirement is the Peso equivalent value of 27,000 barrels; and **(ii)** in the case of operations in Offshore Blocks, the net worth requirement is the Peso equivalent value of 270,000 barrels.

For such purpose, the reference value of crude oil barrels shall be determined on the basis of the average price reported by the enforcement authority for the immediately preceding year. Dollar values shall be converted into Pesos by applying the average official exchange rate reported by the Argentine Central Bank "*Circular Comunicación 'A' 3,500"* for the preceding year.

Fulfillment of the Financial Requirements may be replaced by a corporate guarantee (the "**Guarantee**") issued by an Argentine or Non-Argentine company (the "**Guarantor**").

Disposition 335 requires that the Guarantor evidence a net worth at least three times higher than the net worth that would apply to the Title Holder, by means of its audited and certified financial statements. The Guarantor must issue an unconditional and irrevocable Guarantee as per a template contained in Annex II of Disposition 335 and waive any right it may otherwise be entitled to require a distribution of liabilities with the Title Holder and the prior exhaustion of the latter's assets. Disposition 335 does not limit the Guarantee to parent companies; thus, a financial institution or insurance company could potentially become a Guarantor.

Pursuant to Section 10 of Disposition 335, the Guarantee must meet different requirements, which vary depending on whether the Guarantor is an Argentine or Non-Argentine entity.

THE GOVERNMENT EXTENDS THE TERM OF THE FRAMEWORK FOR THE PROMOTION AND SUSTAINABLE USE OF BIOFUELS

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By means of Decree No. 322/2021 (the "**Decree**"), published in the Official Gazette on May 10, 2021, the Federal Executive extended the term of the Framework for the Promotion and Sustainable Use of Biofuels (the "**Promotion Framework**") until the earlier of July 12, 2021, or until a new biofuels regulatory framework goes into force.

Established by Law No. 26,093 (the "**Biofuels Law**") in 2006, the Promotion Framework aims to promote the production and use of biofuels in the national territory. For this purpose, the Biofuels Law created tax benefits for biofuels and set a blending mandate for all liquid fuels.

The recitals of the Decree state that a bill to approve the new biofuels regulatory framework, which will define the new strategic direction of the sector in line with the country's energy needs, has already been introduced in Congress. In view of this, the authorities decided to extend the validity of the Promotion Framework to guarantee an adequate analysis and legislative debate of the new bill.

CALL FOR AN INTERNATIONAL PUBLIC TENDER FOR OIL EXPLORATION AND EXPLOITATION WITH EXTENSION OF JURISDICTION IN FAVOR OF FOREIGN COURTS, CONSTITUTIONALLY CHALLENGED. COLLECTIVE ACTION.

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Marcelo Jorge FUENTES, in his capacity as citizen and National Senator and Mr. Federico BERNAL, in his capacity as citizen and specialist in energy and public policies and Director of the Observatory of Energy, Technology and Infrastructure for Development (OETEC), filed a collective action identified as "**NATALIZIO JUAN Y OTROS c/**

EN - SECRETARIA DE GOBIERNO DE LA NACION s/ AMPARO LEY 16.986" (Docket No. 30911/2019) against the Federal Executive, challenging the constitutionality and requesting the annulment of:

i. Decree No. 872/2018 ("**Decree 872**") and Secretariat of Energy Resolution No. 65/2018 ("**Resolution 65**"), insofar as they call for an international public tender for oil exploration and exploitation with a waiver of jurisdiction in favor of foreign courts; and

ii. Resolution No. 276/2019 of the Secretary of Energy ("**Resolution 276**" and together with Decree 872 and Resolution 65, the "**Challenged Regulations**"), plus any other regulation that supplements, replaces or modifies it, insofar as it awards ten (10) hydrocarbons exploration and exploitation permits over the southern Argentine Sea to companies that are allegedly linked to the Kelper regime and that illegally exploited resources in the Malvinas Islands.

On March 29, 2021, the National Court of Appeals on Federal Administrative Matters (the "**Court**"), formally accepted the action as a collective action.

In order to decide, the Court analyzed whether the plaintiffs' claim met the requirements for admission of a so-called "collective" action. With respect thereto, it stated the following:

• It identified three categories of rights: (i) individual rights; (ii) collective rights that pursue collective goods; and (iii) collective rights referring to homogeneous individual interests.

• It stated that "*The National Constitution establishes in the second paragraph of Article 43 a third category of rights, referring to homogeneous individual interests. Such would be the case of personal or economic rights derived from environmental and competition effects, the rights of users and consumers as well as the rights of discriminated persons*".

• It mentioned that the Federal Supreme Court has concluded that the admissibility of collective actions requires the verification of a common factual cause, a procedural claim focused on the collective aspect of the effects where the individual exercise does not appear to be fully justified.

Therefore: (i) the first element to prove is the existence of a single or complex fact that causes an injury to a relevant plurality of individual rights; (ii) the second element is that the claim must be concentrated on the common effects and not on what each individual may request. Thus, the existence of cause or controversy, in these cases, is not related to the differentiated damage that each subject suffers, but to the homogeneous damage that this plurality of subjects suffered, when affected by the same fact; and (iii) as a third element, it is required that the individual interest, considered in isolation, does not justify the filing of a lawsuit, which could affect the access to justice.

On this basis and considering the procedural status of the case, the Court admitted it as a collective action.

The Court considered that the claim is based on the exercise of collective rights and collective goods. It held this on grounds that the plaintiff stated that the collective action filed is aimed at extending its claim to the class whose representation is invoked in the proceedings, in view of the violation of the collective good of national sovereignty.

The existence of a common factual cause that causes injury to a relevant plurality of individuals was met by the Challenged Regulations, insofar as they awarded areas for oil exploration and exploitation to the companies Tullow Oil and Equinor, which are allegedly linked to the Kelper regime and/or that illegally exploited national natural resources in the Malvinas Islands, with a waiver of jurisdiction in favor of foreign courts (section II, paragraph 2 "a" of CSJN Agreement No. 12/2016).

Regarding the identification of the class involved, includes all the nationals who claim that their national sovereignty is affected by the decision of the Federal Executive with the enactment of the Challenged Regulations.

Finally, the adequate representation of the class is justified, by virtue of the trajectory and experience invoked by Mr. Juan NATALIZIO in relation to the subject under debate (Art. II, sub. 2 ap. "b" of the Agreed CSJN No. 12/2016).

A NEW MINIMUM NET WORTH REQUIREMENT TO EVIDENCE FINANCIAL CAPACITY FOR THE OIL COMPANIES REGISTRY

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Companies enrolled in the Federal Upstream Registry are required to renew enrolment in such registry and evidence that they comply with a minimum net worth requirement evidencing financial capacity.

This minimum net worth requirement is updated every year according to the price of crude oil of the previous year.

By means of note NO-2021-37489749-DNEYR#MEC, the National Directorate of Regulation and Economy informs that this year's minimum net worth requirement (in ARS) is:

• Offshore blocks: 787,329,599.19
• Onshore blocks: 78,732,959.92

We note that, pursuant Resolution No. 385/2021, analyzed in this Newsletter, the minimum net worth is also applicable

to companies enrolled in the Registry of Companies Transporting Liquid Hydrocarbons by Pipelines and through Maritime Terminals.

Also, this Newsletter provides other alternatives to evidence financial capacity pursuant Disposition No. 335/2019 (please see the newsletter identified as "New Regulations for the Enrolment in the Registry of Companies Transporting Liquid Hydrocarbons by Pipelines and Through Maritime Terminals")

NEW HYDROCARBONS PROMOTIONAL PROGRAM IN CHUBUT

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Decree No. 281/2021 (the "**Decree**"), published in the Official Gazette on April 21, 2021, created a Hydrocarbons Promotional Program (the "**Program**") for concessionaries and operators who are exploiting hydrocarbons in the Province of Chubut.

In the context of the global economic crisis and the COVID pandemic, there was a substantial decrease in global demand for hydrocarbons, which resulted in a drop in levels of crude oil and natural gas prices, which in turn caused serious damage to the provincial hydrocarbons activity, causing a deterioration in the production levels of crude oil and natural gas.

As a result, the Province of Chubut decided to implement a plan to diminish its effects, establishing a framework for the development of the activity and investment opportunities with a multiplier effect on the region's economy. The Program set forth in the Decree aims to increase the production and the level of activity by reducing the royalties payable to the Province of Chubut on the incremental production amounts obtained by the operators above the production base curve. The reduction of royalties will consist of up to a 5% decrease for most projects, and up to 50% in case of Tertiary Production, Extra Heavy Oil and Offshore production projects due to their productivity, location and other unfavorable technical and economic characteristics.

The benefits of the Program will vary in extension and royalty discount percentage according to each project's characteristics, considering mainly: the increase in production, the generation of hydrocarbons reserves and employment creation, as well as potential productivity, location, maturity of deposits and other technical and economic characteristics.

Those concessionaires/operators interested in joining the program must present the projects with the minimum contents established in Appendix A of the Decree, before the local Hydrocarbons Application Authority by September 30, 2021.

SECRETARIAT OF ENERGY APPROVES PROCEDURE FOR GAS EXPORT

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By means of Resolution No. 360/2021 (the "**Resolution**"), published on the Official Gazette on April 23, 2021, the Secretariat of Energy (the "**SE**") approved the new procedure governing the export of natural gas. In its recitals, the Resolution sets out that, under the "Gas Plan for the Promotion of the Production of Natural Gas" (the "**Gas Plan**"), the Federal Executive declared the promotion of natural gas production of national public interest and a priority for Argentina.

Due to the seasonal nature of the demand for natural gas, with surpluses during the summer months, Argentina faces a challenge with respect to the economic viability of exploitation projects.

By means of the Resolution, Producers or Producers Signatories to the Gas Plan will have the right to export their surplus production in a preferential firm condition, replacing the regulatory framework for natural gas exports provided by Resolution No. 417/19 as amended.

The new regulatory framework authorizes four types of exports:

i) **Firm exports:** are those offers/agreements for the sale of natural gas that contain obligations of delivery and receipt for the parties that can only be exempted from compliance in the event of force majeure.

ii) **Interruptible:** are those that are supported by offers/purchase agreements for natural gas that do not contain delivery and receipt obligations or, if they do, they are discretionary for the parties. The Subsecretary of Hydrocarbons may temporarily restrict interruptible export authorizations which may be operationally useful in case of a lack of supply in the domestic market.

iii) **Operational Exchanges:** are those exports that are granted to meet operational needs for support, operational emergencies or others up to the extent that the Enforcement Authority considers necessary, under the condition that the applicant assumes the obligation to re-

enter the domestic market equal volumes of natural gas, or quantities energy equivalents - in accordance with the equivalence established by the Enforcement Authority at the time of granting the authorization - within a period that does not exceed 12 months as from the date of the first shipment abroad.

iv) **Assistance Agreements:** are those exports that are granted within the framework of international treaties or in the presence of a national public interest to attend critical and / or emergency situations in the supply of natural gas, declared by the competent authority of neighboring or bordering countries, which requires extraordinary and immediate actions and measures to control, minimize or mitigate the emergency, with the condition that the applicant assumes the obligation to re-enter the domestic market equal volumes of natural gas, or quantities energy equivalents. These exports will be subject to a case by case basis, but are exempted from the regime of this procedure.

The Resolution establishes that companies that wish to make firm exports will not be able to set a sale price at the point of entry to the system (PIST) that is lower than the price they submitted to the Gas Plan, this price being also adjusted by an annual average per basin for the summer season.

In addition, the offers must set forth a three-day period in which they will be open to interested third parties. The volume finally authorized for export in firm condition will be discounted from the total volume committed for the country's priority demand within the Gas Plan, for which the company must have a surplus production that allows it to comply with the local program.

Companies must place their export orders by April 30 of every year, except for this year in which they have been granted an extended period until May 10th.

The priority to access exports will be given first to the companies that have submitted the lowest bids under the Gas Plan.

HYDROCARBONS COMPANIES PARTICIPATION IN THE SEISMIC MONITORING PROGRAM OF THE PROVINCE OF NEUQUÉN

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By means of Provincial Resolution No. 54/2020, published in the Provincial Gazette on May 14, 2020 (the "**Resolution 54**"), the Ministry of Energy and Public Resources of the Province of Neuquén (the "**Provincial Ministry**") validated the Cooperation Framework Agreement for the improvement of the scientific knowledge of the national and provincial seismic activity (the "**Agreement**") entered into between the Provincial Ministry and the Secretary of Territorial Planning and Coordination of Public Works of the National Ministry of Interior.

Furthermore, through Resolution 54, the Provincial Ministry created the Seismic Monitoring Program of the Province of Neuquén which aims to implement a network of seismographs to take real-time readings of seismic activity in the subsurface of the provincial territory and issue public reports (the "**Program**").

The Program will include the possibility of private companies settled in the Province of Neuquén and directly related to hydrocarbons, hydroelectric or mining production, which carry out operations in the provincial territory, to adhere to the Program -within thirty (30) days as of the entry into force of Resolution 54- and make contributions (in the form of donations, provision of new and nationalized equipment, provision of used equipment or money contributions, among others).

Companies that do not adhere to the Program, in whose areas of activity earthquakes are detected by the network of seismographs, must provide technical and operational information to the Provincial Ministry within twenty-four (24) hours of being notified. The non-compliance will be considered a breach of the information duties pursuant National Law No. 17,319 and Provincial Law No. 2,453.

THE FEDERAL SUPREME COURT OF JUSTICE RULED AGAINST ITS ORIGINAL JURISDICTION TO HEAR AN ENVIRONMENTAL CASE

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On May 27, 2021, the Federal Supreme Court of Justice (the "**Court**") – following the General Attorney's Office's opinion – ruled against its original jurisdiction to hear on an *amparo* action filed by the Province of Mendoza (the "**Province**").

The Province filed a collective environmental *amparo* action before the Court against Valle de Las Leñas S.A., Valles Mendocinos S.A., Altos Cerros S.A., Nieves de Mendoza S.A., Nibaldo Baigorria, Ramón Rojas Navarro, Víctor Armando Baigorria and Eduardo Daniel Valentini, seeking the

environmental remediation or, in its absence, a substitute compensation, for the damages caused to the Andean Condor in Los Molles, Malargüe, an endangered species which was catalogued as a Provincial Natural Species by Provincial Law No. 6,599. The *amparo* action was filed due to the death of an important number of specimens by allegedly man-made causes.

The Court considered that the case did not fall under Section 117 of the Argentine Constitution as it was not based directly and exclusively on national constitutional provisions, laws of Congress or treaties with foreign nations.

On the contrary, the Court found that the case required the interpretation and application of local environmental statutes and that the harmful event was located within the territory of the Province. Therefore, as the case was governed essentially by the public law of such province, the case presented no dominant or evident federal matter so the action should be heard by local courts.

BILL TO INCORPORATE ENVIRONMENTAL CRIMES IN THE CRIMINAL CODE

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On March 10, 2021, national senators of the political party Frente de Todos (the "**Senators**") filed before the National Congress Bill of Law No. 343 (the "**Bill**") to incorporate environmental crimes into the Argentine Criminal Code.

The Senators consider the enactment of the Bill to be essential to provide a direct protection to the environment, claiming that there are certain behaviors that endanger the environment and are currently not punishable.

The Bill penalizes the following actions:

- The poison, alteration, radiation or noise emission, or contamination of the land, water, atmosphere, to the detriment of the environment in general.

- The destruction or significant damage, in whole or in part, of legally protected forests, glaciers or wetlands.

- The falsification or concealment of information within an environmental impact evaluation.

The applicable penalties for the first two mentioned actions will be higher when they result in the death of a person, serious injuries, or when they concur with a series of circumstances established by the Bill. Likewise, these actions will be penalized when they are committed due to imprudence or negligence.

Furthermore, the Bill penalizes public officers who: (i) knowingly grant environmental permits to industries or activities in violation of the regulations in force; (ii) approve the environmental impact studies with full knowledge that the information is total or partially false or that it conceals information; or (iii) improperly approve environmental impact studies due to imprudence or negligence.

Lastly, the Bill provides that if any conduct is carried out by a company, its directors, managers, trustees, members of the supervisory board, administrators, agents or representatives who have been in duty by the time of the event, shall be penalized.

The Bill establishes prison and disqualification as the possible penalties for the mentioned actions.

SUPREME COURT ACCEPTS ORIGINAL JURISDICTION

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On May 27, 2021, the Federal Supreme Court of Justice (the "**Court**") – following the General Attorney's Office's opinion – ruled in favor of its original jurisdiction in an action filed by the Province of San Luis (the "**Province**") against the Federal Government (the "**Government**"). The Province seeks to declare unconstitutional and annul Decree No. 566/2019 (the "**Decree**"), issued on August 16, 2019 by the Government.

By means of the Decree, the Government froze oil prices within the Argentinian local markets. The Province claims that this had a direct effect on its tax revenues, as oil products are subject to Value Added Tax, which constitutes a robust source of co-participable income. The Province states that, if the prices had naturally increased, so would have their tax revenues.

Consequently, it urged the Government to pay a compensatory sum for the loss suffered as a result of the Decree. It requested an injunction in order to transfer the claimed funds from the Federal Accounts at the National Central Bank to the provincial ones. The injunction was not taken into account considering the period of validity established in article 1 of the Decree (i.e. November 13, 2019).

It also argued that the Federal Government had no jurisdiction to issue this regulation.

The Court and the General Attorney considered the matter fell within the Court's original jurisdiction pursuant to Article 117 of the Federal Constitution.

THE CREXELL BILL: A NEW CRIMINAL APPROACH TO ENVIRONMENTAL DAMAGES

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Congresswoman Crexell has presented a bill to criminalize certain actions that damage the environment. Currently, the environment is not a legally protected asset under the Argentine Criminal Code ("**ACC**").

In the Argentine legal system, wrongful conduct that causes harm to the environment is sanctionable under Administrative Law, and, as the case may be, it may entail torts or damages under the civil liability framework.

As described on the bill, Crexell seeks an amendment of the ACC to include a chapter titled "Crimes against the Environment". Under this chapter, the following actions would be subject to the *ius puniendi* of the Argentine State:

• Causing severe damage to the environment by infringement of applicable national or provincial laws, or excess on a legal permission. A "severe damage" means any relevant change that negatively affects the soil, subsoil, surface and underground waters, the sea, the air, the flora or the fauna. This crime entails prison from one month up to five years. Further, the judge must order and determine the reach of environmental redress.

The foregoing scale of penalties is aggravated in case of (a) the severe damage is caused by means of legally qualified and forbidden radioactive, dangerous or toxic substances, (b) the severe damage is caused by a project that had been granted a favorable environmental impact statement based on a falsified environmental impact study, (c) the severe damage causes the area to be uninhabitable, prevents use of public lakes, rivers or lagoons, occurs over a natural protected area, or causes damage to human health, or (d) the unintended consequences of the severe damage cause the death of a person.

• If any of the abovementioned actions is carried out under the name of, by means of or for the benefit of a legal entity, the legal entity will be subject to (a) a fine, (b) suspension of its activities, (c) inability to participate in public tenders, public services or any other state related activity, (d) dissolution and liquidation of the entity, (e) suspension or loss of any benefit, and/or (f) publication of an extract of the court sentence.

• The public officer that grants authorization against any applicable laws and/or regulations, for any project or activity that has environmental impact, will be subject to prison from one to five years and special disqualification. If the grant of the authorization was based on bribery, the scale of penalties will be aggravated.

Section 59 subs. 6 regarding the extinction of criminal prosecution in case of conciliation or full redress shall not be applicable to crimes against the environment.

ARGENTINE SUPREME COURT REASSURES THAT THE SALE OF ENERGY IS EXEMPT FROM TURNOVER TAX

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On May 6, 2021, the Argentine Supreme Court issued a decision in a case brought by Central Puerto S.A. (henceforth "**CEPU**") against the Province of Buenos Aires (the "**Province**") to resist the payment of turnover tax on the revenue from sales in the wholesale electricity spot-market and term market.

The case began in 2012 when the Province claimed from CEPU the payment of turnover tax for the sale of energy during the 2005-2009 period. CEPU rejected the claim and requested the Supreme Court, among others, to rule that the claim violated the Argentine Constitution and applicable energy laws (including, among others, Federal Laws No. 15,336 and No. 24,065 and Resolution 61/1992 of the Secretary of Energy, as amended).

The Argentine Supreme Court ruled in favor of CEPU. In doing so, it held that Section 12 of Federal Law No. 15,336, by which generation facilities and generated electricity may not be taxed with local taxes or contributions or affected by local measures restricting its free production and marketing, prevents the Province from levying turnover tax from the revenue from sales in the electricity spot-market and term market.

This decision reaffirms the Supreme Court's position in the precedent "Centrales Térmicas Patagónicas", where it held that federal electricity regulations prevent Provinces from charging power generators, taxes that are not factored in the prices payable to such power generators supplying to the Argentine wholesale electricity spot-market, but it is the first case in which the Supreme Court holds that turnover tax is not applicable to the revenue coming from sales pursuant the electricity term-contracts.

The Argentine Supreme Court pointed out that even though the prices in the term market are freely negotiated between parts, the regulation established that the Agency in Charge of the Dispatch should only include in the invoices and/or settlement the taxes authorized by the Secretary of Energy, and such Secretary established that local taxes should not be included among the costs of the generators. Additionally, the Argentine Supreme Court ratifies that the Secretary of Energy had the powers to issue such regulation as it "*constitutes the exercise, by the national authority, of clear constitutional powers granted to the Nation and exercised by the legislator in section 12 of Law 15336 (section 75, subsection 18, National Constitution; Precedents: 68:227;*

183:181 and 190; and 336:1415)". Furthermore, the Supreme Court ruled that "*it should not be understood that provincial powers are infringed, but rather that in this case the electric energy legal framework, whose regulations were issued by the federal authority and that are included among those in the energy field as demonstrative of the determination of the appropriate means to achieve the purposes of national interest, prevails*".

NEW VALUES FOR JUS AT NEUQUÉN

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By means of Provincial Law No. 3287 published in the Official Gazette on June 4, 2021, and Resolution No. 6046/21 by the Provincial Superior Court, the total salary allocated for lower court judges was updated. To that end, the value for "JUS" was also updated.

The "JUS" was updated from AR$ 2,361.36 to AR$ 2,951.70 which represents a 25% increase.

FEDERAL SENATOR ANTONIO RODAS PRESENTS A BILL TO INCLUDE CRIMES AGAINST THE ENVIRONMENT IN THE FEDERAL CRIMINAL CODE

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The Federal Senator, Antonio J. Rodas (*Frente De Todos*) filed a bill to incorporate certain environmental crimes to the Argentine Criminal Code, based on the principle of intergenerational equity which is expressly recognized in the 1992 Río De Janeiro Earth Summit (the "**Bill**").

In that regard, the Bill has six (6) chapters as follows:

I. Pollution and others environmental damages;
II. Biodiversity offenses;
III. Wildlife offenses;
IV. Native forests offenses;
V. Genetic heritage offenses; and
VI. Complementary provisions.

Regarding pollution and other environmental damages (Chapter I), there must be a concrete and serious danger to human health, animals or the significant alteration or destruction of the flora.

The Bill seeks to incorporate the "aggravated" and "guilty" figures, together with the liability of legal entities through their directors. It also makes public officers legally liable. The penalties for such offenses range from up to 30 years prison time, depending on the entity of the offenses.

In terms of biodiversity offenses (Chapter II), the Bill imposes penalties to anyone who, without authorization and in violation of local laws and implementing regulations, introduces or releases into the environment an invasive specimen of exotic flora or fauna, or genetically modified organisms or micro-organisms. The penalties for these offenses range from 12 days to 6 years' imprisonment.

Also, the Bill establishes penalties on anyone who (a) removes waterways or lakes, (b) extracting soil aggregates from watersheds or other wetlands in such a way pose a risk to the environment.

Moreover, the Bill provides punishes those people who facilitate or instigate to commit arson against woods and forests shrubs or grasslands causing serious damage to natural resources, flora, fauna or the environment in general.

Regarding wildlife offenses (Chapater III), the Bill highlights the need to establish an ethical limit to the treatment of unprotected animals in order to end ill-treatment and cruelty.

Likewise, regarding crimes related to native forests (Chapter IV), it provides penalties for removal, destruction, logging, uprooting, or felling of trees or specimens of flora of a protected or threatened species. In particular, the extraction or exploitation of subsoil resources or other soil components in forest areas is penalized on the condition that it represents a danger to the environment.

Finally, it establishes a new criminal definition regarding the damage to the genetic heritage understood as the *variability of living organisms from any source within each species, amidst species and ecosystems.*

FEDERAL SENATOR GLADYS GONZÁLEZ PRESENTS A BILL TO INCLUDE CRIMES AGAINST THE ENVIRONMENT IN THE FEDERAL CRIMINAL CODE

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Within the framework of the Justicia 2020 program, Decree No. 103/2017, and the Criminal Code Reform Bill presented in 2019, Federal Senator Gladys Gonzalez submitted a new bill for the creation of several criminal offenses regarding the production of negative effects on the environment.

The bill sets forth the incorporation of an entire new chapter in the Argentine Criminal Code, aimed at deterring activities which damage the environment. The new criminal offenses would include:

(i) pollution and other damages to the environment and natural resources by means of the infringement of applicable regulations, either by willful misconduct or negligence, for which penalties range from fines to prison according to the damages caused to the environment or community (Chapter 1);

(ii) crimes against biodiversity (Chapter 2);
(iii) crimes against wildlife or other animals (Chapter 3);
(iv) animal abuse and cruelty (Chapter 4);
(v) crimes against native and protected forests (Chapter 5);
(vi) crimes against genetic heritage (Chapter 6); and
(vii) crimes against archaeological and paleontological heritage (Chapter 9).

The project typifies environmental crimes by broadening the spectrum of existing figures, exceeding the restrictive criteria established in Law No. 24,051 of Hazardous Wastes.

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