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Argentina’s demand for power has increased substantially in recent years and is expected to rise.

In order to continue to cope with ever-increasing levels of demand, Argentina’s power infrastructure must keep up with its expansion plans. This means that at least 1200 MW of installed capacity will be needed each year to meet the growing electricity demand.

However, Argentina’s energy matrix is highly dependent on fossil fuels and diversification through the promotion of energy generation from renewable sources has been presented by the new administration as a goal of its energy and environmental policies.

The country is currently facing the challenge of expanding its power generation capacity and achieving this by meeting renewable standards. This means that both conventional (large hydro power, natural gas combined cycles and nuclear) and renewable power projects will be welcomed in the coming years.

Argentina’s natural resources place the country in an excellent position to face this challenge. Patagonia has strong wind power potential, north and western deserts are well suited for developing solar facilities and Argentina’s agricultural and forestry resources position the country in ideal conditions for undertaking a vast array of biomass co-generation projects.

Previous administrations adopted several measures in recent years to tackle the issue as they called for several public bids for the construction of both conventional and renewable power facilities.

In 2016 the Argentine Congress enacted a law that amended the promotional regime for power generation from renewable sources. This law establishes a target for 2025, whereby 20% of electricity consumed in Argentina must be generated by renewable sources (wind, solar thermal, solar photovoltaic, geothermal, tidal, wave, marine currents, hydro — up to 50 MW installed capacity — biomass, exhaust gases, biogas and biofuels). By 2017, 8% of electricity consumption must be generated by renewable sources.

The private sector is also a key player in this new energy push. Companies have consulted our firm regarding the enforcement of the immediate targets set forth in the renewable energy promotional scheme and many of our clients are negotiating power purchase agreements.

**Meeting this challenge provides significant opportunities for investment, financing and partnership.**

At Marval, O’Farrell & Mairal we feel uniquely positioned to advise and support investors, developers, providers and financers eager to seize the opportunities that lie ahead.
The Ministry of Energy and Mining has launched a public auction called RenovAr Program (Round 1) to award Power Purchase Agreements (“PPA”) to be supplied by renewable sources.

The government aims to award a total power capacity of 1,000 MW divided as follows: wind 60%, solar 30% and the remaining 10% split between biomass, biogas and small hydro projects. However, the total power capacity and the maximums allocated to each source can be exceeded under certain conditions.

The bid documents (including the bidding terms and conditions and the PPA) were published on Wholesale Energy Market Administrator’s (“CAMMESA”) website and are currently subject to a 5-week consultation period (only parties who bought the bidding terms and conditions are allowed to submit comments). The offers are due on September 5, 2016 and the winning bids are expected to be announced on October 12, 2016.

Bidders must apply for the fiscal benefits pursuant to Law No. 27,191 by submitting the information required under the bidding terms and conditions and have to assume—for the purposes of their offers—that the benefits requested will actually be awarded.

Foreign and local investors will be entitled to participate in RenovAr auction through Special Purpose Vehicles (“SPV”).

Bidders will be required to have a minimum net worth of US$250,000 per MW of capacity offered and to post a guarantee bond of US$35,000 per MW of capacity offered.

Additionally, by the time offers are submitted, (i) SPVs must have applied for the registration as Wholesale Electricity Market agents, (ii) SPVs must evidence a valid title over the land where the project is located, by means of a title deed, usufruct or lease agreement; (iii) the project must have obtained an environmental license for execution and development as of the subscription of the PPA; and (iv) the Transportation or Distribution utility must have approved the feasibility of the project’s interconnection to the Argentine Interconnected Transmission Grid (SADI).

PPAs for each technology will be awarded taking into account offered price, local component and COD. CAMMESA, acting on behalf of the distribution utilities and large users, will be the off-taker and will be responsible, in the first stages, to make the monthly payments for the electricity delivered under the PPAs. PPAs will be denominated in USD and paid in Argentine Pesos. Payments under the PPAs will include the awarded prices and certain costs plus a variable incentive factor which progressively reduces over the PPA term. PPAs will have a maximum term of 20 years as from the commercial operation date.
Certain risks under the PPAs will be covered by a public trust fund (FODER). This trust will also be entitled to finance renewable projects through debt or equity. The FODER will be funded mainly by the Argentine Government and the trustee will be Banco de Inversión y Comercio Exterior (BICE). A guarantee from the World Bank Group will secure the Government’s obligation to fund the FODER.

Until August 22, 2016 interested parties can submit their queries to CAMMESA regarding the bidding terms and the documents comprising the RenovAr Program (Round 1) and until September 2, 2016 parties may acquire the Bidding Terms.

Between July 25, 2016 and August 29, 2016 CAMMESA will publish the answers to the inquiries received and the final version of the documents comprising the RenovAr Program (Round 1).

On August 8, 2016 the FODER Trust Fund Contract will be executed.

On September 5, 2016 the interested parties should submit their bids to CAMMESA.

On October 12, 2016 the PPAs will be awarded.

On November 11, 2016 the PPAs and the FODER Adhesion Contracts will be executed.
New Renewable Energy Promotion Law

A new law introduced amendments to the Federal Promotional Scheme of Power Generation with Renewable Energy Sources.

On October 21, 2015, Law No. 27,191 (the “New Promotional Scheme”) was published in the Official Gazette. The law introduced substantial amendments to the Federal Promotional Scheme for the Use of Renewable Energy for Power Generation, approved by Law No. 26,190.

The short and long term objectives of the New Promotional Scheme are for renewable energy sources to become 8% of the total power consumption in Argentina by December 31, 2017 and 20% by December 31, 2025, respectively.

The renewable energy sources included in the New Promotional Scheme are wind; solar thermal; solar photovoltaic; geothermal; tidal; wave; marine currents; hydro (up to 50 MW installed capacity); biomass; exhaust gases; biogas and biofuels (with the exception of uses established in Law No. 26,093).[1]

The promotional scheme based on Laws No. 26,190 and 25,019 provided for a feed-in tariff with a “premium tariff design” complemented with tax benefits for generation plants employing renewable energy sources, electromechanical assembly, the manufacture or import of components for integration into equipment manufactured locally, and commercial exploitation. In addition, it set a target for renewable energy sources to reach 8% of the total power consumption in Argentina by 2017. However, this target was not binding upon consumers.

As this promotional scheme was deemed insufficient to allow for the development of renewable energy projects, since 2009, the Federal Government has promoted the execution of long term PPAs between state-owned companies —acting as off-takers— and private developers —acting as suppliers. These contracts provide higher prices for the electricity supplied and additional benefits for the suppliers. Notwithstanding these additional benefits, lack of available financing for renewable energy projects in Argentina has contributed to the fact that the current installed generation capacity from renewable sources is lower than 1% of the country’s total capacity.

Highlights of the New Promotional Regime are:

1. Renewable Portfolio Standards

a. Large Consumers

Under the New Promotional Scheme, large consumers (i.e. consumers with a demand equal to or larger than 300 kW) are required to source a minimum level of their electricity consumption from renewable sources, as per the targets and respective dates established above (8% by December 31, 2017 and 20% by December 31, 2025, in a sequential manner). Failure to meet the applicable targets under the Renewable Portfolio...
Standard triggers a fine calculated on the basis of the variable cost of power generated using imported diesel oil.

In order to meet the target under the Renewable Portfolio Standard, large consumers may opt to self-generate or purchase power sourced from renewable energy either directly from generators or from marketers, distributors or CAMMESA.[ii] The New Promotional Scheme sets a US$ 113 per MW/h price-cap, applicable only to power purchase agreements (“PPAs”) entered into by large consumers with power generators. The New Promotional Scheme expressly states that any provision currently in force that restricts the execution of PPAs between private parties and power generators is not applicable to large consumers for the purposes established therein and further provides that no further restrictions will be established to the execution of such contracts in the future.

b. Small Consumers

The New Promotional Scheme does not establish a binding obligation for residential and small consumers (i.e. consumers which demand is below 300 kW).

Notwithstanding, it sets forth that the enforcement authority must instruct CAMMESA to diversify its energy mix in order to meet the targets under the New Promotional Scheme. In this sense, the PPAs entered into by CAMESELLA with power generation companies are not subject to the aforementioned price-cap and will allow the pass through to prices of any new or increased tax.
2. Tax Incentives and Exemptions

The New Promotional Scheme builds upon the tax incentives established by Law No. 26,190 including:

(i) Anticipated VAT refunds for VAT paid on acquisition or importation of assets or infrastructure works made during the construction of the project.
(ii) Accelerated depreciation for income tax purposes for depreciable movable assets acquired, manufactured or imported, and for infrastructure works,
(iii) Extension to 10 years of the term to offset tax losses carryfoward,
(iv) Exemption of the minimum presumed income tax for the goods that are affected to the project as from the effective execution of the works until the 8th exercise, inclusive, since the date in which the project is in stage of production and operation.
(v) Exemption of the 10% tax on dividends or utilities distribution conditioned to re-investment in new projects of infrastructure in the country.
(vi) Issuance of a Tax Certificate (fiscal bond) for a value of 20% of the Argentine made-components included in electromechanical installations – excluding civil works. The benefit is conditioned to a minimum percentage of Argentine-made components in the total electromechanical installations investments (minimum of 60% Argentine made-components unless those components are not available in the country, in which case the percentage of 60% can be diminished up to 30%) . The Tax Certificate can be applicable to the payment of national taxes or transferred once to a third party.
Exemption from import duties for capital goods, special equipment or parts necessary for the purposes of their projects until December 31, 2017.

The New Promotional Scheme also provides that the access to and use of renewable energy sources shall not be subject to specific taxes —including royalties— until December 31, 2025 in the local jurisdictions that adhere to the New Promotional Scheme.

Even though the New Promotional Scheme does not grant fiscal stability at a national, provincial or municipal level, it provides the possibility to increase the price due to new or more burdensome taxes, contributions or any other charges at a national, provincial or municipal level. Particularly, in the contracts executed with CAMMESA, the generator will have the “right to request the acknowledgment of a new price” and must submit to CAMMESA all the necessary information for the assessment of the value adjustment.

3. Public Benefit Fund (FODER)

The New Promotional Scheme introduces a federal trust fund (“FODER”, after its Spanish acronym) to act as a public benefit fund for purposes of granting loans, issuing securities, investing in renewable energy companies and providing guarantees to renewable energy producers.

FODER will be funded, among other sources, by the Federal Treasury, with sums equating to no less than 50% of the annual cash savings resulting from a reduction in fossil fuel imports as a consequence of the increase in renewable energy generation, and specific charges to be implemented in the future.

[i] Mixing with fossil fuels.
[ii] Cammesa is a state-owned company to which the administration of the wholesale electricity market (WEM) is entrusted. Cammesa is empowered to purchase electricity from renewable sources to supply the WEM.

http://www.marval.com/publicacion/?id=12687
Regulation of the New Renewable Energy Promotion Law:

Decree No. 531/2016 implements the Federal Promotional Scheme of Power Generation with Renewable Energy Sources, with CAMMESA in an essential role.

On March 30, 2015, the President of Argentina passed Decree No. 531/2016 (the “Decree”) which implements some of the amendments introduced by Law No. 27,191 to the Federal Promotional Scheme for the Use of Renewable Energy for Power Generation, approved by Law No. 26,190 (the “New Promotional Scheme”).

Although many aspects of the final implementation of the New Promotional Scheme are still pending and will require further regulation, the Decree grants CAMMESA an essential role in this sector. In principle, it is likely that CAMMESA will be appointed to manage an important quota of the purchases of electricity sourced from renewable energies.

In this context, chances are that those issues that the Decree left unregulated will be determined soon and that a public bid to be administered by CAMMESA will be launched within the next few days. The terms and conditions of this public bid would have to be determined by the Ministry of Energy and Mining. The different players of the New Promotional Scheme should take into consideration the following aspects of the Decree:

1. Renewable Portfolio Standards

   a. Large Consumers

   Pursuant to the New Promotional Scheme, large consumers (i.e. consumers with a demand equal to or larger than 300 kW) are directly obliged to source a minimum level of their electricity consumption from renewable sources, pursuant to the parameters provided for by Law No. 27,191 (8% by December 31, 2017 and 20% by December 31, 2025, in a sequential manner).

   We outline below the different options that large consumers have available to meet their Renewable Portfolio Standards, which were partially implemented by the Decree.

   i. Purchase power sourced from renewable energy either directly from generators, marketers or distributors

   Parties may freely negotiate the terms and conditions of their power purchase agreements (“PPAs”) which will be subject to a US$ 113 per MW/h average price-cap.
ii. Self-generate or co-generate
If large consumers decide to self-generate or co-generate they are not required to comply with CAMMESA’s rules with respect to dedicated backup capacity.

iii. CAMMESA’s joint purchasing system
Large consumers that fail to inform CAMMESA that they want to opt out of the joint purchasing system managed by CAMMESA (the “Purchasing System”) are automatically included therein. Over the next few days the Ministry of Energy and Mining will likely inform the deadline before which large consumers will be allowed to opt out of the Purchasing System and the conditions upon which this option may be instrumented.

CAMMESA will transfer pro rata the price per MWh that large consumers included within the Purchasing
System will have to pay; however, pursuant to the Decree this price will be subject to the USD 113 per MW/h average price-cap. In addition to the price, CAMMESA will charge large consumers a fee for administrative expenses.

The Decree established that the maximum term of supply agreements and preference clauses (pacto de preferencia) provided for by sections 1,177 and 1,182 of the Civil and Commercial Code will not be applicable to PPAs sourced from renewable energies. However, to reduce potential claims against the validity of this provision, it could be useful for the Federal Congress to ratify these exceptions.

b. Small Consumers

Pursuant to the Decree, the prices of the PPAs implemented in order to meet the Renewable Portfolio Standards applicable to consumers with a demand smaller than 300 kW will be transferred to them.

As mentioned above, CAMMESA will likely launch a public bid to meet the Renewable Portfolio Standards of both small consumers and large consumers included within the Purchasing System.

2. Tax Incentives and Exemptions

As explained in Marval News No. 155 published on October 30, 2015, the New Promotional Scheme builds on the tax incentives established by Law No. 26,190 Some of the conditions for these incentives have been regulated by the Decree. We refer to the main regulations:

(i) Anticipated VAT Refund: Credit lines with a special interest rate from the National Bank of Argentina as from the execution of the Project as of the entry to commercial operations to finance the Value Added Tax (VAT) paid on investments until refunded under the Anticipated VAT Refund benefit.

(ii) Accelerated Depreciation for income tax purposes: depreciable assets should not be sold for 3 years since “habilitation” (they can be replaced for other assets within that period - conditioned).

(iii) Exemption from import duties: The benefit will only be applicable if there is not Argentine made production of the similar goods or assets available.

(iv) Tax Certificate: To calculate the percentage of the Argentine-made component the costs of transport or assembly of equipment may not be included.

(v) Increase of the price due to new or more burdensome taxes, contributions or any other charges: According to the Decree, in contracts executed with a party different than CAMMESA, the increase can be “freely negotiated” between the parties. In contracts executed with CAMMESA, CAMMESA will determine the new price according to the “real” impact of the tax increase over the structure of costs of the beneficiary. Only certain tax increases are covered by the possibility to seek an increase of the price with CAMMESA.
**Business Opportunities in Argentina’s Renewable Energy Promotion Law**

<table>
<thead>
<tr>
<th>Costs increase covered by a price increase</th>
<th>Costs increase excluded from a price increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes, contributions or any other general or non-specific charges, or non-exclusive of the existing activity due to an extension of the taxable base, modifications of the exemptions and/or increase of tax rates.</td>
<td>Import duties or other charges, right or special tax or statistic rate after December 31, 2017.</td>
</tr>
<tr>
<td>New taxes, contributions or any other general or non-specific charges or non-exclusive of the activity.</td>
<td>Creation of specific taxes or royalties after December 31, 2025 in the jurisdictions that adhere to the New Promotional Scheme or in any period of time for the jurisdictions that do NOT adhere to the referred New Promotional Scheme.</td>
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The Decree also outlined the proceeding before the Ministry of Energy and Mining that interested parties would have to follow in order to request the available tax incentives and exemptions.

To begin with, developers would have to request a Certificate of Inclusion (Certificado de Inclusión en el Régimen de Fomento de Energías Renovables). The Ministry of Energy and Mining, jointly with the corresponding authorities, will analyze the projects and set up an order of merit.

Pursuant to the Decree, the Ministry of Public Finance will determine the global maximum amount of tax incentives and exemptions that would then be assigned to projects according to the order of merit provided in each Certificate of Inclusion.

Most of the requirements with respect to the Certificate of Inclusion are still pending and demand further regulation.

### 3. Public Benefit Fund (FODER)

The New Promotional Scheme introduces a federal trust fund (“FODER”, after its Spanish acronym) to act as a public benefit fund for purposes of granting loans, issuing securities, investing in renewable energy companies and providing guarantees to renewable energy producers (“FODER’s Instruments”). Holders of a Certificate of Inclusion may request the FODER’s Instruments.

The Decree established that the FODER will have two differentiated accounts:

**i. Guarantee Account**

The Guarantee Account is going to collect a renewable energy charge to be paid by small consumers and it will be used to secure CAMMESA’s payments under the PPAs subject to the New Promotional Scheme.

**ii. Finance Account**

The Finance Account will receive specific appropriations—to be transferred by the Federal Treasury—with sums to the equivalent of no less than 50% of the annual cash savings resulting from a reduction in fossil fuel imports as a consequence of the increase in renewable energy generation. Pursuant to the Decree, the amount to be transferred in 2016 will be AR$ 12,000,000,000. Amounts destined to Finance Accounts will be used to fund FODER’s Instruments.

[i] Cammesa is the company to which the administration of the wholesale electricity market (WEM) is entrusted.
Promotional Regime for Power Generation from Renewable Sources:

Regulation of the Procedure to Obtain the Certificate of Inclusion and Tax Benefits

Resolution No. 72/2016 issued by the Ministry of Energy and Mining regulates the procedure for obtaining the certificate of inclusion and corresponding tax benefits in the framework of the “Regime of National Promotion for the Use of Renewable Energy destined to the Electric Production”, as well as the subsequent procedure for the control of the committed investments and the application of the tax benefits.


The Resolution regulates the procedure for obtaining the certificate of inclusion and corresponding tax benefits under the Regime (“Procedure for Obtaining the Benefits”) as well as the subsequent procedure for the control of the committed investments and the application of tax benefits (“Procedure for the Control of the Investments and the Application of the Benefits”).

The Resolution

The Resolution regulates the Procedure for Obtaining the Benefits corresponding to the owners of investment projects and/or dealers of new works of electric power generation for projects to be developed under the framework of individual supply contracts executed directly with Large Users or Large Demands or for projects of self-generation or co-generation of electric power from renewable sources.

When requesting the grant of benefits, guarantees of implementation of the project linked to each of the benefits requested must be constituted (“Guarantees of implementation”), regardless of the ones that must
be constituted at the moment of applying or using the respective benefits (“Guarantees of Application”). Once the applications are submitted, the Under Secretariat of Renewable Energy will assess them, elaborate an order of merit according to the score derived from a formula established in the Resolution and indicate those to whom the tax benefits requested could be granted. Later, it will be up to the Ministry of Energy and Mining to approve the assessed projects and grant the corresponding benefits until the available tax quota is completed.

Regarding the owners of investment projects and/or dealers who submit bids under the Program of RenovAr, the grant of the Fiscal Certificate and the tax benefits (until the available tax quota is completed) will be done as a consequence of the adjudication of the bid and the execution of a supply contract of electric power with CAMMESA. Bidders will have to submit information similar to that requested under the Procedure for Obtaining the Benefits. In this case, the Guarantees of Implementation will not be requested since the bidder will cover the Guarantee for the Maintenance of the Offer, regardless of the applicable Guarantees of Application when using the benefits granted.

Regarding the Procedure for the Control of the Investments and the Application of the Tax Benefits, it will be applicable to those who: (i) execute supply contracts with large consumers with power generators, (ii) choose self-generation and co-generation projects, and (iii) bidders under the Program RenovAr.

The Certificate of Inclusion and tax benefits

According to the Regime, the tax benefits vary depending on the stage in which a project of renewable energy sources is approved with effective execution. The first stage refers to those projects approved with effective execution before December 31, 2017 and the second stage to projects approved with effective execution between January 1, 2018 and December 31, 2025. Both stages are related to the objectives of the Regime to achieve a determined consumption of electric energy derived from renewable energy sources: 8% for December 31, 2017 and (ii) 20% for December 31, 2025.

Anticipated Value Added Tax (VAT) refunds

The benefit will be applied over the amount of VAT that beneficiaries must pay with respect to their expenses from the purchase of goods, services and/or execution of infrastructure works included in the promoted project as from the award of the Certificate of Inclusion until the completion of the respective project (within the term provided for the entry into commercial operations), to the extent it is not absorbed by the VAT fiscal debt. The VAT will be offset against other national taxes collected by the Argentine Federal Tax Authorities (AFIP) or refunded in the way to be established by the AFIP.

The term for the offset or anticipated refund varies depends on the moment in which the investments are made (until December 31, 2017 inclusive, between January 1, 2018 and December 31, 2021 inclusive and between January 1, 2022 and December 31, 2025 inclusive). The offset or devolution would take place, at least, between 1 and 3 tax periods as from the time the investments were made and depending at which moment they were made.

At the moment of requesting the benefit, a Guarantee of Implementation for 10% of this benefit, quantified in the way provided for in the Resolution must be constituted, and it will be released at the time of: (i) the constitution of the Guarantee of Application for the first request of the anticipated VAT refund for 100% of the amount requested, that must be maintained for a period of 12 months as from the date of entry into commercial operation; (ii) the rejection of the application.

The Resolution states the application of the benefit is through the AFIP’s website.
Accelerated depreciation in Income Tax

The Regime allows the beneficiary to opt for an accelerated depreciation since the fiscal period of “habilitation” of the new depreciable capital goods –except for vehicles- or infrastructure works. The scale of depreciation depends on the moment of the investment (the benefit decreases over time) and the nature of the depreciable assets: (i) for Depreciable movable assets acquired, manufactured or imported, the depreciation varies at least between 2 and 5 equal, annual and consecutive installments; (ii) for infrastructure works, the depreciation varies in the installments derived from considering the estimated “useful life” of the infrastructure between 50% and 80%.

At the moment of requesting the benefit, a Guarantee of Implementation for 10% of this benefit, quantified in the way provided for in the Resolution must be constituted, and it will be released at the time of: (i) the verification that the investment project approved is at production and operation stage; (ii) the rejection of the application.

The Resolution states the application of the benefit is through the AFIP’s website with a prior notice of not less than 40 working days of the due date for filing the Income Tax Return detailing the information as regards “useful life” and the depreciation rate applicable.

Tax Losses carryforward

This benefit consists of the extension to 10 years (instead of 5 years) of the term to offset tax losses carry-forward. It is not necessary to constitute a Guarantee of Implementation for this benefit.

Exemption of Minimum Presumed Income Tax (MPIT)

According to the Regime, the goods that are affected to the project will not integrate the taxable base of this tax (at a tax rate of 1%) as from the effective execution of the works until the 8th inclusive, since the date in which the project is in stage of production and operation (“puesta en marcha”).

At the moment of requesting the benefit, a Guarantee of Implementation for 10% of this benefit, quantified in the way provided for in the Resolution must be constituted, and it will be released at the time of: (i) the verification that the investment project approved is at production and operation stage; (ii) the rejection of the application.

Tax Certificate

The Regime provides for the issuance of a Tax Certificate as an electronic bond to those that prove the following percentage of Argentine component in the electromechanical installations, excluding civil works, transport and assembly of equipment: (a) 60% where Argentine production exists; (b) 30% where Argentine production does not exist.

In these cases, the Tax Certificate can be requested by the beneficiaries as from the entry into commercial operation and it will be issued for an amount equivalent to 20% of the Argentine component demonstrated. This Tax Certificate can be applicable to the payment of the Tax Returns and payments in accounts of Income Tax, Minimum Presumed Income Tax, VAT, and Excise Tax.

The Tax Certificates granted shall be valid for 5 years from January 1 of the following year of the date of grant. Once that term elapses, they expire automatically and cannot be used by the beneficiary or the transferee (as the tax certificate can be transferred to third parties only once).
At the moment of requesting the benefit, a Guarantee of Implementation for the 10% of this benefit, quantified in the way provided for in the Resolution must be constituted, and it will be released at the time of: (i) the constitution of the Guarantee of Application for the first request of anticipated grant of the Tax Certificate for 100% of the amount of such Tax Certificate plus an additional 15%; (ii) with the delivery of the Tax Certificate for 100% of the benefit if it is requested fully at the time entry into commercial operations occurs; (iii) the rejection of the application.

**Exemption from the Tax on Dividends or Utilities Distribution**

The Regime takes into consideration a benefit that consists of the exemption from tax on dividends or utilities distribution to the extent such dividends or utilities are reinvested in new projects of infrastructure in the country within the term of 12 months as from January 1 of the following year when the distribution occurred.

For this benefit to become effective, the beneficiary must submit a note/affidavit before the Under Secretariat of Renewable Energy prior to the distribution, indicating the amount of dividends or utilities to be reinvested and the Under Secretariat will issue a certificate in duplicate with the authorized amount. One copy of said certificate will be delivered to the entity that distributes the dividend/utility so that it does not withhold 10% over the authorized amount.

Prior to the issuance of the certificate with the authorized amount, the beneficiary must constitute a guarantee for 100% of the amount of the exempted tax. The guarantee will be released once compliance with the reinvestment is accredited.

**Imports**

Regarding exemption from taxes on imports, the Resolution confirms that the benefit is applicable to imports performed as of December 31, 2017, setting that date as the limit of validity of the “authorizations to import with the application of the benefit”.

The exemption is granted to the definite imports of new goods, which are not produced locally, and entails the obligation to destine them to production and operation (“puesta en marcha”) and development of the investment project. This condition is subject to a “verification of destination” until the end of the “useful life” of each good or the conclusion of the cycle of activity for which they were imported.

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[i] It cannot be offset against: (i) obligations under substitute liability or under withholding or collection regimes or (ii) taxes whose exclusive destination is financing funds with specific affectation/purpose or (iii) Social Security debts.

[ii] It will be assigned by the Under Secretariat of Renewable Energy based on the submitted information and the analysis made.

[iii] In some cases, the partial and anticipated grant of this benefit related to the tax certificate according to article 7 of Annex II of the Resolution can be requested.

[iv] The exemption includes the import duties or other charges or “tasa de estadística” (except for “service fees” and VAT).
Joint Resolution N° 123-313 from the Ministry of Energy and Mining and Ministry of Production:

Joint Resolution N° 123-313 issued by the Ministry of Energy and Mining, and the Ministry of Production entered into force on July 11, 2016, when it was published in the Official Gazette. This Resolution regulates some aspects of the Tax Certificate and the exemption from taxes on imports of capital goods for the “Promotional Regime for the Use of Renewable Energy”

Joint Resolution N° 123-313 issued by the Ministry of Energy and Mining, and the Ministry of Production (the “Resolution”) describes in its Annex goods to be used in investment projects which are not manufactured in Argentina to determine the applicability of the following tax benefits provided in the Promotional Regime for the Use of Renewable Energy: (i) Tax Certificate and (ii) exemption from taxes on imports.

Notwithstanding the list of goods in the Annex of the Resolution, this list may vary because:

(i) The interested parties (including manufacturers that import the goods for the domestic or foreign market) are able to request the inclusion of new goods by duly demonstrating they are not produced in the country. This request must be done within the term of 15 business days as from July 11, 2016 or as from the acknowledgement that the good is not manufactured in Argentina.

(ii) The manufacturers are able to request the exclusion from the list of the goods they produce in the country or will start to produce in the future by due proof of such production in the country. This request must be done within the term of 15 business days as from July 11, 2016 or as from the date those goods start being produced.

In both cases, the request must be made before the Ministry of Energy and Mining which, in turn, will then involve the Ministry of Production. The request of inclusion or exclusion will be resolved jointly by both ministries.

The inclusion or exclusion of the goods list will be grounded on the following standards that certify the product is not manufactured in Argentina:

(i) When the product is neither manufactured in Argentina in a timely manner nor is it available for the project’s schedules; or

(ii) When the product manufactured in Argentina does not meet all the minimum requirements of quality, technicality and reliability according to Argentine or international acceptable guidelines.
Concerning the benefits, the Resolution establishes that:

**A) Tax Certificate.**

The benefit consists of the issuance of a Tax Certificate for the 20% of the Total Argentine Component as long as it is proved that 60% of components in the electromechanical installations are Argentine-made, excluding civil works, costs of transport and assembly of equipment, or less than 60% but always higher than 30% if it can be demonstrated that the product is not manufactured in Argentina.

“Electromechanical installations” are defined in the terms of the Resolution as “parts, fittings, assemblies and subassemblies of goods of the systems of developed technology that combine electrical, electronic and mechanical components to constitute the mechanism and generate electric power, excluding civil work”.

To calculate the percentage of the Argentine component in the electromechanical installations (“declared Argentine component” or “C.N.D.” after its Spanish acronym), the proportion that represents the “Total Argentine Component” (or “T.C.N.” after its Spanish acronym) over the total cost of the goods corresponding to electromechanical installations (Argentine component plus CIF value of goods imported until their arrival to an Argentine port) should be calculated.

In other words:

(i) In the numerator the “Total Argentine Component” (or “T.C.N.”) and

(ii) In the denominator the sum of T.C.N. and the cost of the imported goods plus the international insurance and freight calculated at the port of destination – Argentina- (total value CIF).

In graphic terms:

\[
\text{C.N.D.}= \frac{\text{T.C.N.}}{\text{T.C.N.} + \text{Total CIF}} \times 100
\]

To grant the Tax Certificate, the result of the C.N.D. must be 60% or 30% if in electromechanical installations are incorporated goods included in the Annex of the Resolution, that is, goods that are not manufactured in Argentina.

To calculate the T.C.N., the value of the Argentine component of all the parts, fittings, assemblies and subassemblies of goods (“Goods”) that meet the characteristics that are enumerated below (plus 15% as “miscellaneous” or small parts which are difficult to quantify such as screws, nuts, washers, etc. which must be deemed as “Argentine-made”) must be added:

(i) Goods whose maximum imported content does not exceed 40%;

(ii) Goods whose production is made from raw materials of Argentine origin;

(iii) Goods whose production is made from raw materials which are imported but have undergone a process of transformation that implies a change in the classification under the relevant chapter of the Mercosur Common Nomenclature. If the destiny is to generate electric power from solar photovoltaic energy, it must be accredited also that the Argentine component integrated is at least 25%.

Finally, the Argentine component of investment projects is also relevant for the purposes of allocating the resources of the FODER.
B) Exemption from taxes on imports.

The capital goods, special equipment, parts, elements, components, replacements, accessories and new inputs necessary for the implementation of a project included in the Annex, that is, the goods that will be imported (final import as of December 31, 2017) because they are not manufactured in Argentina, will enjoy exemption from import duties or other charges or statistical rate with the exclusion of the other “service fees”.
Our firm

Founded in 1923, Marval, O’Farrell & Mairal is the largest law firm in Argentina. A market leader at both local and Latin American levels, the firm has been providing sophisticated, high quality advice to international and local clients for more than 90 years. The firm comprises over 300 lawyers and has wide experience of international business issues and the complexities of cross-border transactions.

Our unmatched strength allows us to react quickly and to simultaneously handle large, complex and time-consuming transactions without compromising on quality. All our teams are led directly by highly experienced partners and carefully tailored to meet the specific needs of our clients.

We have a strong focus on high-end corporate and finance transactions and the largest, most active litigation and arbitration practice in Argentina. Our leading intellectual property department provides a comprehensive service and has unrivalled experience; the firm was originally founded as an intellectual property office. We are also a market leader in a wide range of other key practice areas including tax, labor and employment, competition/antitrust, energy and natural resources, administrative and public law, insurance and reinsurance, telecommunications and broadcasting as well as real estate and construction.

We are the Argentine member of Lex Mundi, the world’s leading association of independent law firms, comprising more than 160 members. We also have an office in New York, providing invaluable support on US transactions.

With a long history of advising multinational companies and international institutions, we have a unique understanding of the Argentine market and how to help our clients achieve their goals. Marval, O’Farrell & Mairal has a 90-year track record of being prepared to respond to any challenge, both in the country and in complex cross-border transactions.

You can find more information on Marval’s areas of practice and the individual background of its partners in our website at www.marval.com.

RANKING & AWARDS

“Marval, O’Farrell & Mairal is internationally renowned for its prowess in high-end corporate work. It is home to some of the most brilliant legal minds in Latin America and has proved immune to the difficult economic climate, going instead from strength to strength. It is a firm that can be relied on to engage actively and tirelessly on behalf of its clients, and which has consistently shown itself to be of the highest calibre.”

Latin America Law Firm of the Year 2013. Chambers Latin America

CHAMBERS LATIN AMERICA AWARDS
Latin America Law firm of the year 2013
Argentina Client Service Award 2015 / 2012 / 2010

IFLR

WWL AWARDS
Argentina’s Law Firm of the year Who’s Who Legal Ten consecutive years

CLIENT CHOICE 2014
Client Choice Award for Argentina International Law Office 2014 / 2012 / 2008 / 2005

MANAGING INTELLECTUAL PROPERTY
IP Law Firm of the year Argentina Managing Intellectual Property Ten consecutive years

In short, Marval has increased its leading role assisting local and international clients in Latin America and Argentina and presently Marval may be considered as the only Latin American law firm leading the charts in all areas of legal practice in the region.
Renewable Energy Practice

The Renewable Energy Practice is a part of the Natural Resources & Energy Department of Marval, O’Farrell & Mairal. This practice group benefits from the combination of a group of lawyers highly specialized in electricity and clean energies regulations that teams up with tax, environmental, administrative and finance law practitioners. This approach enables our Practice to render interdisciplinary and efficient advice and services to clients and provide tailor-made solutions.

Although the Argentine renewable sector is at an early stage of development, Marval, O’Farrell & Mairal has been advising developers in connection with renewable projects for more than 6 years. Our expertise in this sector was acquired mainly by advising the first developers in connection with public auction processes launched by different governmental entities or companies to enter into long term PPAs (i.e. GENREN).

We are currently advising clients in connection with the first public auction process called for the power sector by Cammesa since the current federal administration that took office in December 2015. Although this first auction is focused on thermal sources, it has given us the opportunity to be directly involved in negotiations with Cammesa’s officers.

All the Renewable Energy Practice’s team is bilingual in English and Spanish and renders services to clients from a wide range of sectors, including: electricity generation, transmission and distribution companies; technology and equipment suppliers; and companies developing clean and alternative energy solutions for their own power supply, such as biomass or conventional CHP projects or wind power projects.

All members of the Renewable Energy and Environmental Law Practices’ teams are highly qualified in regulatory, contractual, administrative, environmental and lands rights matters pertaining to renewable energy projects.

Our firm has developed a reliable network of correspondent law firms in each of the Argentine provinces which allow us a direct and efficient control of different local law issues pertaining to renewable projects such as environmental permitting and relationships with provincial authorities and landowners.
Our Team

Francisco A. Macías
Partner
fam@marval.com

Francisco specializes in electricity, public services, infrastructure, natural resources, environmental law and protection of foreign investment.

His practice is mainly focused on international and local infrastructure and power transactions. He also advises clients on gas and electricity regulatory matters and a wide range of oil & gas and power contracts.

The renowned legal publication Chambers Latin America recommends Francisco as a leading lawyer in Energy and Natural Resources, describing him as a “prudent adviser who provides well-founded legal opinions.”

M. Lorena Schiariti
Partner
mls@marval.com

Lorena advises local and international private companies and public entities in matters related with public utilities’ regulation, regulated activities such as electricity, oil & gas, mining, pharmaceutical industry, banks, ports and agribusiness, administrative contracts, project finance, procurement proceedings and infrastructure projects (banks, government suppliers, constructors, public agencies, etc.).

María Inés Brandt
Partner
mib@marval.com

María Inés Brandt is a partner of Marval, O’Farrell & Mairal Tax Department with more than 20 years’ experience in tax matters.

She focuses on tax advice and planning and has outstanding expertise in the tax aspects of large, challenging corporate and finance transactions, including the design, planning and organization of tax-efficient transactions.

She is also an expert in complex tax litigation. Before joining Marval, O’Farrell & Mairal, she was a founding partner at Tanoira Cassagne Abogados and a partner at Estudio Beccar Varela.

Miguel Santamaria
Senior Associate
gs@marval.com

Gonzalo specializes in Administrative Law and regulatory matters. He works in matters of great complexity and importance, providing comprehensive advice in his fields of expertise.

He has participated in drafting sophisticated legal documents in connection with local and international procurement contracts.
Gabriel A. Fortuna
Senior Associate
gaf@marval.com

Gabriel joined the firm in April 2003. He is a senior associate who specializes in environment and natural resources law and has a growing profile in the area. He has been particularly active in environmental matters relating to the mining and oil and gas sectors over the past year.

He has published several articles related to environmental matters and has participated as a panelist in different conferences related to his area of expertise.

Jimena Montoya joined the firm in 2012. She is a semi senior associate who devotes most of her time to environmental matters, especially environmental audits and due diligences.

She graduated as a lawyer from the Universidad de Buenos Aires (UBA) in 2009. In 2011 Jimena obtained a post graduate degree in Environmental Direction & Management from the University of Barcelona, Spain and in 2014 she earned a postgraduate degree in Oil and Gas Law from the University of Buenos Aires.

Before joining Marval she worked at the law firm Richards, Cardinal, Tützer, Zabala y Zaefferer law firm as a paralegal.
Business Opportunities in Argentina’s Renewable Energy Promotion Law

Contact us

MARVAL, O’FARRELL & MAIRAL

For more information, please contact us using this form