

MBPartners

Newsletter

*Base and Starting Points Law for the
Freedom of Argentines No. 27,742*



Introduction

On July 8th, 2024, the "**Bases and Starting Points for the Freedom of Argentines Law No. 27,742**" (the "**Law**") was published in the Official Journal of the Argentine Republic, which amends a wide variety of rules affecting both public and private laws.

The Law, which will enter into force on the day after its publication –except for the chapters or titles where the contrary is indicated–, throughout its 238 articles, introduces new regulations, modifies the regulatory framework of certain activities, and repeals laws and regulations, all with the purpose of promoting private activity as an engine for the country's growth.

The National Executive Authority ("**NEA**") will regulate the Law and will dictate the complementary, interpretative or clarifying norms that are necessary for its application.

This document is a brief description of legal developments in Argentina; it is not intended to be an exhaustive analysis or to provide legal advice.



Context

The path to sanction

On June 28, 2024, the Law was approved, marking the end of a legislative process that took a little more than 6 months. During this process, the NEA has had to demonstrate its negotiation capacity, as well as its ability to promote initiatives in aspects considered fundamental to achieve the stabilization and development, both economic and social, of the country.

The approval of the Law is considered the first achievement of President Javier Milei's Government, and is of great relevance in the search for providing conditions of comfort and confidence for foreign investors and officials of multilateral organizations, such as the International Monetary Fund.

The initial project of law -presented in December 2023- was more extensive. In order to achieve its approval, during the discussion and negotiation process, changes were introduced and chapters were eliminated to moderate its scope.

The main differences between the text of the Law and the initial project consist of the following:

- Limitations to the declaration of emergency and to the delegated powers of the NEA.
- Reduction from 41 to 8 of the companies included in the privatization process.
- The amendments to the antitrust, intellectual property, divorce and inheritance regimes were eliminated, as well as the reforms that had been proposed for the General Corporations Law. Furthermore, the reforms to the electoral system, the public health system and the transportation system were abandoned.

A summary of the most important aspects of the Law, especially those with a significant impact on business and corporate aspects, is provided below.

Laws being reformed

A first glance

The negotiation of the Law had numerous key points, probably the most relevant being the Incentive Regime for Large Investments known as “IRLI”, which –as will be seen– establishes a scheme of incentives and tax, customs and exchange benefits for investors, aiming to provide legal certainty to promote the development of economic activity.

The Law also includes important reforms in labor matters, which represents one of the largest legislative changes in this area.

Furthermore, the Law includes a chapter on privatizations, which is the result of intense negotiations, finally including –as will be seen– a list of 8 public companies that will be submitted to privatization.

It is also important to highlight that the Law declares a public emergency in administrative, economic, financial and energy matters for a period of one year, delegating certain legislative powers to the NEA.

The Law is structured in IX Titles:

- Title I: Declaration of Emergency
- Title II: State Reform
- Title III: Contracts and Transactional Agreements
- Title IV: Promotion of registered employment
- Title V: Labor Modernization
- Title VI: Energy
- Title VII: Incentive Regime for Large Investments (IRLI)
- Title VIII: Fiscal Measures for an Equitable and Quality Adjustment
- Title IX: Final Measures

Main aspects

With corporate impact

- State-Owned Companies
- Energy
- Labor Matters
- Public Infrastructure Concessions
- Incentive Regime for Large Investments (IRLI)



State-Owned Companies

One of the main points of the original proposal of the Law, sent to the National Congress at the beginning of this year, was an ambitious State Reform which provided the privatization of 41 state-owned companies. After some agreements in the National Congress aimed at facilitating its approval, the Law finally declared the following companies and corporations entirely or majority owned by the National Government to be subject to be privatized:

- **Energía Argentina S.A.**
- **Intercargo S.A.U.**
- **Sociedad Operadora Ferroviaria S.E. (SOFSE)**
- **Agua y Saneamientos Argentinos S.A.**
- **Belgrano Cargas y Logística S.A.**
- **Corredores Viales S.A.**

In addition, the Law declared two other state-owned companies to be privatized (*i.e.* Nucleoeléctrica Argentina S.A. and Yacimientos Carboníferos Río Turbio) but, for this purpose, it provides that, among others, it must: (i) organize a shared ownership program; and (ii) incorporate the participation of private capital, and that the National Government must maintain control or a majority shareholding in the capital stock.

The privatization process shall be carried out in accordance with the principles of transparency, competition, maximum concurrence, open government, efficiency and effectiveness in the use of resources, publicity and disclosure. The Bicameral Commission for the Follow-up of Privatizations will be involved in the privatizations that are carried out.

On the other hand, the Law establishes that the companies, corporations or agencies involved are exempted from complying with the regime set out in Law No. 11,867 and will not be required to comply with the minimum capital amount indicated in Article 186 of the Argentine Corporate General Law.



Energy (i)

The reforms that the national government is implementing in the energy sector have a clear objective: to attract investments in order to multiply the extraction of gas and oil for export. In the energy field, the Law established several amendments to the following regulatory frameworks:

- Law No. 17,319 of Hydrocarbons.
- Law No. 24,076 of Natural Gas.
- Law No. 26,741 of Hydrocarbons Sovereignty of the Argentine Republic. .

In addition, the Law creates the National Gas and Electricity Regulatory Entity, which replaces the Electricity Regulatory Entity (**ENRE**) and the Gas Regulatory Entity (**ENARGAS**) and empowered the NEA to elaborate, with the agreement of the provinces, a harmonized environmental legislation, with the purpose of applying the best international practices of environmental management to the exploration, exploitation and transportation of hydrocarbons.

The reforms in this area are aimed at promoting an integrated and international vision of the energy sector and favoring the participation of the private sector.

The following is a brief summary of the main regulatory changes introduced by the Law in the following areas:

1. [the hydrocarbons regulatory framework \(Laws 17.319, 27.007 and 26.741\)](#)
2. [the Natural Gas and Electric Power Industry regulatory framework](#)



Energy (ii)

1. Modifications to hydrocarbons regulatory framework (Laws 17.319, 27.007 and 26.741)

- The main objectives of the national hydrocarbons policy are to maximize the income obtained from the exploitation of resources and to satisfy the hydrocarbons needs of the country, as opposed to the previous regulation which established as main objective the satisfaction of the hydrocarbons needs of the country, having to maintain reserves that ensure this purpose.
- The processing and storage of hydrocarbons is regulated with greater precision.
- The right to freely commercialize hydrocarbons is established, stipulating that the NEA cannot intervene or fix prices in the domestic market. Furthermore, it ratifies the ownership of permit holders and concessionaires with respect to the hydrocarbons they extract.
- The free import and export of oil, gas and their derivatives is authorized, according to the regulations of the NEA.
- It modifies the model schedule regarding the bidding and awarding system for exploration permits and exploitation concessions and modifies the adjudication system of the law.



Energy (iii)

1. Modifications to hydrocarbons regulatory framework (Laws 17.319, 27.007 and 26.741) (cont.)

(a) Upstream

The need for authorization or permit for surface recognition is eliminated.

Exploitation concessions:

- The acquisition regime and terms of non-conventional concessions are modified in accordance with the reconversion of conventional concessions.
- The "maximization of the production compatible with the appropriate and economic exploitation of the reservoirs" is eliminated as a standard to determine the investments to be made by the exploitation concessionaires.
- Regarding the terms of the concessions (conventional, non-conventional and off-shore), it empowers the competent authority to grant concessions for different terms from those established in the law.
- The regime of ten-year extensions is eliminated, and a bidding process is required as a condition for the adjudication of new concessions at the end of the term of the existing concessions.



Energy (iv)

1. Modifications to hydrocarbons regulatory framework (Laws 17.319, 27.007 and 26.741) (cont.)

b) Midstream

- The regime of transportation concessions is modified to give rise to a regime of authorizations and licenses granted by the NEA or the local authority, as appropriate and as long as the carrier: (a) has technical capacity and financial solvency and (b) is domiciled in Argentina.
- The category of processing authorization is created.

It is expected that the authorizations will be granted through public bidding with private initiative. It establishes that these authorizations do not confer a right of exclusivity, and that the capacity not used by its holder must be made available to others.



Energy (v)

2. Modifications the Natural Gas and Electric Power Industry regulatory framework

- It is expected that natural gas imports will be authorized without the requirement of prior approval. However, natural gas exports must be regulated by the NEA.
- Exports of Liquid Natural Gas (“LNG”) must be authorized by the National Energy Secretary, within 120 days after receiving the request according to the regulations issued by the NEA which will establish the conditions to be satisfied by the applicants and the investments and hydrocarbon exploitation development projects that will allow producing the amounts of natural gas required to supply the respective natural gas liquefaction project or projects mainly aimed at exporting LNG.
- It includes the extension of the renewal term of licenses at their expiration, which was raised from 10 to 20 years.
- It includes the possibility for transporters and distributors, by themselves or by others, to acquire, build, operate, maintain and manage natural gas storage plants in order to ensure the supply of non-interruptible services.
- The NEA was empowered for a period of 1 year to adjust the regulatory framework for electric energy in order to guarantee, among other things, free trade of electric energy and free competition in the electric energy markets.



Labor Matters (i)

Promotion of registered employment and labor modernization

The labor transformation proposed by the Law is significant. Even though its content and reformist zeal is not that of the original project, the Law faces the greatest change in labor legislation of the last decades, establishing a labor reform aimed at the promotion of registered employment and labor modernization.

In this respect, the Law provided for the amendment of Employment Law No. 24,013, Labor Contract Law No. 20,744 ("LCL") and Agricultural Labor Law No. 26,727 ("ALL"). Likewise, Laws No. 14,546 of Commercial Travelers and No. 25,323 of Workers' Compensation were repealed.

Among the main labor measures included is that of allowing employers, for a term of 90 days as from the date of the enactment of this chapter of the Law, to regularize the labor relations in force in the private sector initiated prior to the date of its enactment. The NAE will regulate the effects of the regularization and may reimburse fines and penalties and extinguish the criminal action related thereto.

In this sense, it is foreseen the inclusion in this regime of those debts that are disputed in administrative or judicial proceedings, when the employer unconditionally accepts and assumes the payment of costs.

It is also provided that the Federal Administration of Public Revenues ("FAPR") and the social security institutions, with their own or delegated powers in the matter, will refrain from making, ex officio, determinations of debt and issuing infringement proceedings for the same causes and periods included in the regularization corresponding to the social security subsystems.



Labor Matters (ii)

Promotion of registered employment and labor modernization

The following are the most relevant points of the various reforms provided for in this title, which have undergone some modifications in their text by the Senate in the aspects of Registry Simplification and Self-Employed workers:

- **Trial period.** It will be of 6 months (before 3 months), and the collective bargaining agreements may extend such trial period: a) up to 8 months, in companies of 6 and up to 100 workers; and b) up to 1 year in companies of up to 5 workers.
- **Simplification of registration.** A simplified labor registration system is foreseen. There will also be a simple mechanism for the preparation of salary receipts and a unified contribution will be provided for companies with up to 12 workers.
- **Severance Fund.** By means of a collective bargaining agreement, the parties may substitute the severance payment provided for in the current system for a severance fund or system in accordance with the parameters established by the NEA. The amount of the monthly contribution will be freely agreed between the parties and/or the amount freely agreed by the parties in the event of mutual termination in accordance with article 241 of the LCT. In all cases, the companies may self-insure in the system to be defined.
- **Scope of application of the LCL.** Work, service and agency contracts (among others) regulated by the National Civil and Commercial Code are excluded from the scope of application of the LCL.



Labor Matters (iii)

Promotion of registered employment and labor modernization

- **Discriminatory dismissal.** An increase in compensation of between 50% and 100%, depending on the seriousness of the facts, is stipulated for dismissals that, after a court ruling, are proven to have been motivated by a discriminatory act.
- **Independent worker.** It establishes that up to three independent workers may be hired to carry out a productive undertaking and may benefit from a special unified regime, which will be based on an autonomous relationship, without the existence of a dependency relationship among them or with the persons contracting the services or works.
- **Pregnancy protection.** The prohibition for pregnant women to work during the 45 days before and after childbirth is maintained, although by virtue of the reform the pregnant woman is granted the option to reduce the pre-birth leave to 10 days, accumulating the remaining period to the postpartum period.
- **Dismissal for just cause.** The following are expressly included as causes for dismissal or labor injury: (i) active participation in blockades or seizures of the establishment; (ii) within the context of participation in strikes, (a) the freedom of work of those who do not participate in the measures of force is affected; (b) the entry of persons or things to the establishment is impeded or obstructed; (c) damage is caused to persons or things of the company or of third parties. Before proceeding with the dismissal motivated by these causes, the employer must intimidate the employee to explain his attitude (except in the case of damage to persons or things).



Labor Matters (iv)

Promotion of registered employment and labor modernization

The Law promotes, together with the reforms to the labor regime mentioned above, an amendment to the ALL, in the following terms:

- **Permanent agrarian labor contract of continuous rendering.** The agrarian labor contract will be understood to be entered into on a permanent basis and as of continuous rendering, except for the cases expressly provided for in the ALL.
- **Labor exchange.** The labor exchanges in charge of the trade union associations of workers with trade union status may propose to the employers a list of the personnel necessary for the performance of temporary tasks in the activities contemplated by the ALL, in accordance with the resolutions issued for such purpose by the Agricultural Labor Commission. The employer may hire the person suggested and/or any other person he/she may choose. Any regulation that opposes this article and/or the employer's freedom to hire and choose personnel is hereby repealed.



Public Infrastructure Concessions (i)

Contracts and Transactional Agreements

In Title III, the Law established measures regarding the renegotiation and rescission of administrative contracts and the subscription of transactional agreements in connection with administrative, judicial and/or arbitration disputes, among which the following are highlighted:

- The NEA is authorized, with the prior intervention of the National Treasury Procurator's Office and the National General Auditor's Office, to carry out the renegotiation or termination of contracts: (i) for public infrastructure works, public works concessions, construction or provision of goods and services and their annexed and associated contracts; (ii) whose amounts exceed the ten million modules established in Article 28 of Decree No. 1,030/2016 or the one that in the future replaces it; and (iii) have been signed before December 10, 2023. This under the pretext that the Argentine Republic is in an emergency situation that may be considered as a force majeure cause.
- Furthermore, it is contemplated the possibility that in any administrative, judicial and/or arbitration controversy or claim that arises between a contractor and any organ or entity of the National Public Administration based on presumed non-compliance with state contractual obligations in which there is a certain possibility of its origin being recognized, the NEA will be authorized to make pre-judicial, judicial or arbitration agreements. The procedure for entering into such agreements should be regulated.



Public Infrastructure Concessions (ii)

Reforms to the National Public Infrastructure Concession Law (“NPICL”)

The significant changes regarding public infrastructure concessions are found in Chapter II of Title III of the Law, which introduces substantial modifications to the NPICL, with the purpose of moderating state prerogatives in contractual matters, and encouraging the intervention of private national and international individuals not only in the execution of the works but also in their proposal and financing.

The reform focuses on 5 key aspects related to the public infrastructure concession:

- the right to the maintenance of the contractor's economic-financial equation,
- the validity of the private initiative regime,
- the attenuation of state prerogatives and the strengthening of the contractor's rights,
- the specific inclusion of alternative mechanisms to the judicial jurisdiction for the resolution of disputes, and
- flexibility in public contracting.



Public Infrastructure Concessions (iii)

Reforms to the National Public Infrastructure Concession Law (“NPICL”)

- **The right to maintain the contractor's economic-financial equation:** provisions relating to the financing of the works and the way to guarantee such financing are included, as well as provisions regarding the balance of the contractor's economic-financial equation. In the case of a distortion of the balance of the economic-financial equation due to causes not attributable to the grantor or the concessionaire, the parties will be authorized to renegotiate the contract in order to achieve its recomposition or to agree on its extinction by mutual consent.
- **The validity of the private initiative regime:** article 4 of the NPICL gives greater relevance and reinforces the need to select the contractor through a competitive selection method, referring to national and international public bidding. The procedure shall be established by the NEA in its regulations.
- **The attenuation of state prerogatives and the strengthening of the contractor's rights:** the power of ius variandi is limited to 20% of the contract amount, full compensation (consequential damages and loss of profits) is provided for in the event of early termination for reasons of public interest, and unamortized investments are set as a compensation parameter, among other modifications.
- **The express inclusion of alternative mechanisms to the judicial jurisdiction for the resolution of disputes:** such as dispute prevention and resolution mechanisms, conciliation and/or arbitration.
- **Flexibility in public contracting:** the concept of the most convenient offer is mentioned, it is prohibited in the article the application of rules that do not allow indexation and it is contemplated that the payment of the contract and/or remunerations in foreign currency must be cancelled in that currency.



Incentive Regime for Large Investments (IRLI) (i)

It provides the creation of the IRLI, which establishes a scheme of tax, customs and exchange incentives as well as benefits for significant investments in certain industries. The main purpose of the IRLI is to provide legal certainty to enhance investments.

As will be seen below, among other relevant issues, the IRLI provides for legal and regulatory stability for a term of 30 years; as well as a dispute resolution regime submitted to the international arbitration jurisdiction before the ICSID (International Centre for Settlement of Investment Disputes - World Bank) or the Permanent Court of Arbitration, at the investor's choice.

Investment projects in the forestry, infrastructure, mining, tourism, technology, iron and steel, energy, oil and gas sectors, involving investment amounts of at least US\$200 million, may access the IRLI. At least 40% of the minimum investment amount must be made in the first 2 years.

On the other hand, the category of Long Term Strategic Export Projects ("**LTSEP**") is created for investment projects exceeding US\$1,000 million, which will be provided with greater benefits.

It is important to note that the projects covered by the IRLI are declared to be of "national interest" under the terms of Article 75, paragraph 18 of the National Constitution. The purpose of this stipulation is to avoid obstacles from local jurisdictions.



Incentive Regime for Large Investments (IRLI) (ii)

Single Project Vehicles ("**SPV**"), defined as entities dedicated exclusively to one or more investment projects, may request adhesion to the IRLI. SPVs may be corporations, single-member corporations, limited responsibility companies, branches of foreign companies, joint ventures or other associative contracts and dedicated branches.

The term to adhere to the IRLI will be 2 years from its entry into force, with the possibility of extension for an additional year at the discretion of the NEA.

The following are the most important benefits provided by the IRLI:

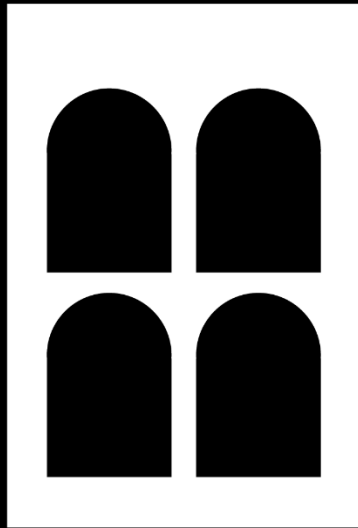
- Regarding **Income Tax**: (i) the rate is reduced from 35% to 25%; (ii) the rate on dividends is reduced to 3.5% if the profits are distributed after 3 years from the date they were obtained; (iii) accelerated depreciation is provided for certain types of assets or infrastructure works; (iv) the limitations foreseen in the Income Tax Law for IPC adjustments do not apply; (v) tax loss carryforwards without time limit and with the possibility of transfer to third parties; and (vi) the tax on bank debits and credits will be computed at 100% as a credit in the Income Tax.
- In connection with **Value Added Tax (VAT)**: accelerated refund of favorable balances and payment of VAT through tax credit certificates.



Incentive Regime for Large Investments (IRLI) (iii)

- In **foreign exchange** matters: the SPVs will be able to freely dispose of the foreign currency they generate, according to the following scheme:
 - ✓ 20% after 2 years.
 - ✓ 40% after 3 years.
 - ✓ 100% after 4 years.
- In the **local purchase** regime: regarding local suppliers, it is required that a minimum of 20% of the total amount foreseen for the investment in suppliers be destined to local companies, provided that this offer is under market conditions.
- **Compatibility** with other regimes: adherence to IRLI does not entail incompatibility with other promotional regimes, but there can be no accumulation of benefits.





MBPartners

For further information and/or inquiries, please contact:

Victoria Bengochea: vbengochea@mbppartners.com

Ignacio Meggiolaro: imeggiolaro@mbppartners.com

Karina Damiano: kdamiano@mbppartners.com

mbppartners.com

 @mbp_ok

 mbp-partners