

NON OFFICIAL VERSION

ONLY ORIGINAL SPANISH VERSION SHOULD BE CONSIDERED LEGALLY VALID FOR INTERPRETATION

ELECTRIC POWER

Act 26 190

Legal Regulations on National Promotion for the Use of Sources of Renewable Energy to Generate Electric Power. Aim. Scope. Scope of application. Enforcement Authority. Policies. Investments Regulations. Beneficiaries. Benefits. Penalties. Trust Fund for the Development of Renewable Energies.

Passed on December 6th 2006

Enacted on December 27th 2006

The Senate and the House of Deputies of the Argentine Nation, in Congress assembled, enact the following provisions as law:

LEGAL REGULATIONS ON NATIONAL PROMOTION FOR THE USE OF SOURCES OF RENEWABLE ENERGY TO GENERATE ELECTRIC POWER

SECTION 1° — Aim. To declare of public interest the generation of electric power from sources of renewable energy, in order to supply the electricity public service and to conduct researches and manufacture equipment for the development of technology.

SECTION 2° — Scope. To set forth that the aim of these legal regulations is to reach a contribution of sources of renewable energy equal to eight percent (8 %) of the total national consumption of electric power by December 31st 2017.

(Section replaced by Section 1° of Act 27 191 published in the Official Gazette on October 21st 2015)

SECTION 3° — Scope of application. This Act encourages the making of new investments in projects to generate electric power from the use of sources of renewable energy within the national territory. These projects shall comprise the building of civil works, electromechanical works and assembly works, the manufacture and/or import of component parts to include them in locally manufactured equipment and the commercial operation.

SECTION 4° — Definitions. In order to enforce this Act, the following definitions shall be applied:

a) Sources of Renewable Energy: sources of renewable energy are non-fossil sources of renewable energy suitable to be used in a sustainable way in the short-, medium- and long- term: wind energy, solar thermal energy, solar photovoltaic energy, geothermic energy, tidal energy, energy from ocean currents, hydraulic energy, biomass, landfill gas, treatment plant gas, biogas and biofuels, except for the uses set forth in Act 26 093. *(Subsection replaced by Section 2° of Act 27 191 published in the Official Gazette on October 21st 2015)*

b) The power limit set forth in this Act for hydroelectric plant projects shall be up to fifty megawatts (50MW) *(Subsection replaced by Section 2° of Act 27 191 published in the Official Gazette on October 21st 2015)*

c) Electric power generated from sources of renewable energy: it is the electricity generated by plants which only use sources of renewable energy, as well as the energy portion generated from such sources in hybrid energy plants which also use conventional energy sources.

d) Power generation equipment: it consists of the equipment used for the transformation of energy which is available in its primary form (wind energy, hydraulic energy, and solar energy, among others) into electric power.

SECTION 5° — Enforcement Authority – The Enforcement Authority of this Act shall be set forth by the National Executive Power, pursuant to its corresponding competences set forth by the Ministries Act 22 520 and its regulatory and complementing rules.

SECTION 6° — Policies - The National Executive Power, by means of the Enforcement Authority, shall implement, among others, the following public policies to promote investments in renewable energies:

a) To draft, together with provincial jurisdictions, a Federal Program for the Development of Renewable Energies which shall take into consideration all technologic, productive, economic and financial issues needed for the management and the fulfillment of goals of future share in such energy resources market.

b) To coordinate, together with universities and research institutes, the development of technologies suitable for the use of renewable energy sources, within the framework of the provisions set forth by Act 25 467 on Science, Technology and Innovation.

c) To identify and provide assistance for the development of applied research, national manufacturing of equipment, strengthening of the market and the massive use of renewable energies.

d) To enter into international cooperation agreements with entities and institutes specialized in the research and development of technologies applied to the use of renewable energies.

e) To set forth promotional actions so as to achieve a greater level of acceptance among society on the benefits of a greater use of renewable energies within the national energy mix.

f) To promote the training of human resources in every field related to the use of renewable energies.

SECTION 7° — Investments Regulations - To set forth Investments Regulations for the building of new plants to generate electric power from sources of renewable energy, which shall be in force within the scope and under the limitations set forth in this Act.

(Section replaced by Section 3° of Act 27 191 published in the Official Gazette on October 21st 2015)

SECTION 8° — Beneficiaries - Individuals and legal entities that have issued investment projects and/or licensees of new plants for the generation of electric power from sources of renewable energy, which have been approved by the Enforcement Authority, whose projects involve the use of sources of renewable energy within the scope set forth in Section 2°, which are domiciled in the national territory and whose production is aimed at the Wholesale Electric Market or at the supply of the public service, shall be beneficiaries of the regulations set forth in Section 7°.

SECTION 9° — Benefits - Beneficiaries mentioned in Section 8° that perform projects for the generation of electric power from sources of renewable energy as its commercial activity pursuant to the provisions set forth in this Act, and which fulfill the requirements established in such Act, shall enjoy the promotional benefits included in this Section, as of the approval of the corresponding project by the Enforcement Authority. The start date of such project shall be prior to December 31st 2017 inclusive. The starting of performance shall be deemed effective when funds no lesser than fifteen percent (15 %) of the budgeted total investment have been contributed to the project prior to the date aforementioned. The project effective performance shall be proved by means of a sworn statement issued before the Enforcement Authority, in compliance with the requirements set forth in the regulations.

The applicable promotional benefits are listed as follows:

1. Value Added Tax and Income Tax. Act 26 360 and its regulatory standards shall be enforceable when calculating those taxes. Such rules shall be in force until the expiration of the “Legal Regulations on National Promotion for the Use of Sources of Renewable Energy to Generate Electric Power”, including the following amendments:

1.1. This fiscal treatment shall be applied to the performance of infrastructure works, including capital goods, civil works, electromechanical works and assembly works and other related services which are part of the new generation plant or will be part of existing generation plants and which offers a comprehensive operational capacity for the electric power generation from sources of renewable energy, as defined in subsection a) of Section 4° of this Act.

1.2. The benefit of accelerated depreciation to be applied when calculating the Income Tax and the benefit of advance Value Added Tax return shall not be mutually exclusive, and beneficiaries may simultaneously receive both tax treatments.

1.3. The benefit of advance Value Added Tax return shall become effective after at least one (1) fiscal period, as of the period when the corresponding investments were made. The advance return shall be applied, when calculating the Value Added Tax, to the beneficiaries that make investments until the end of the projects and within the forecast terms for the beginning of the commercial activity.

1.4. Regarding the benefit of accelerated depreciation to be applied when calculating the Income Tax for the investments made within the framework of these regulations, the beneficiaries that make such investments may choose between applying the corresponding depreciations as of the fiscal period of the good's authorization, pursuant to provisions set forth in Sections 83 and 84, as appropriate, of the Act on Income Tax (original text passed in 1997) and its amendments, or pursuant to the following regulations:

1.4.1 Investments made before December 31st 2016 inclusive:

1.4.1.1 In amortizable personal property acquired, produced, manufactured or imported in such period: at least in two (2) annual, equal and consecutive installments.

1.4.1.2. In infrastructure works started in such period: at least in a certain number of annual, equal and consecutive installments; the calculation of such installments shall consider the reduction of the estimated life cycle to fifty per cent (50 %).

1.4.2. Investments made before December 31st 2017 inclusive:

1.4.2.1. In amortizable personal property acquired, produced, manufactured or imported in such period: at least in three (3) annual, equal and consecutive installments.

1.4.2.2. In infrastructure works started in such period: at least in a certain number of annual, equal and consecutive installments; the calculation of such installments shall consider the reduction of the estimated life cycle to sixty per cent (60 %).

Once the beneficiary has chosen one of the depreciation proceedings mentioned *ut supra*, such proceeding shall be notified to the Enforcement Authority and to the Federal Administration of Public Revenue, as instructed, within the term and under the conditions set forth by such entities. Such proceeding shall be applied (without exception) to all capital investments made in order to perform new projects or to widen the output capacity of existing projects, including the investments required during the operation.

2. Compensation of damages with profits. In order to beneficiaries of these legal regulations may enforce the provisions set forth in Section 19 of the Act on Income Tax (original text passed in 1997), the term for the compensation of damages set forth in the second paragraph of the mentioned act shall be extended to ten (10) years.

3. Tax on Minimum Presumed Income. Goods used for the performance of activities promoted by this Act shall not be part of the taxable base of the Tax on Minimum Presumed Income set forth by Act 25 063 or the taxable base of any complementing, amending or replacing tax that may be imposed in the future, as of the start date of the performance of the works, as previously defined in this section. Such benefit shall be extended until the eighth accounting period inclusive, as of the start date of the corresponding project.

4. Reduction of financial burden from financial liabilities. In order to apply Subsection 5) of Section 94 and Section 206 of Act 19 550 and its amendments, interests and exchange rate adjustments derived from the financing of the project promoted by this Act shall be subtracted from the losses of the partnership.

5. Exemption of Profit Distribution Tax. The Income Tax at a ten percent (10 %) rate set forth in the last paragraph, included by Act 26 893, of Section 90 of the Act on Income Tax (original text passed in 1997) and its amendments, shall not be imposed to profits distributed by partnerships in charge of investment projects and which receive benefits from these legal regulations, as long as such profits are reinvested in new infrastructure projects in this country.

6. Tax Credit Certificate. Beneficiaries of these legal regulations that duly prove to have included sixty per cent (60 %) of domestic goods in the electromechanical assemblies, except for civil works, or a lower percentage, which shall never be less than thirty per cent (30 %), in case they duly prove the lack of domestic production, shall have the right to receive, as an additional benefit, a tax credit certificate to be applied when paying national taxes, for a value equivalent to twenty (20 %) per cent of domestic goods of electromechanical assemblies, except for civil works. Such percentage shall be proven.

Since the beginning of commercial transactions, beneficiaries shall ask the issue of the tax credit certificate to the Enforcement Authority, within the term and according to the proper proceedings, as long as beneficiaries prove the percentage of domestic goods duly included in the project.

The credit tax certificate mentioned in this subsection shall include the beneficiary name and may be assigned to third parties only once. It shall be used by the beneficiaries or assignees to pay the total payable amount corresponding to Tax Income, Tax on Minimum Presumed Income, Value Added Tax and Internal Taxes, as sworn statement and advance payments balance, whose collection is in charge of the Federal Administration of Public Revenue.

(Section replaced by Section 4 of Act 27 191 published in the Official Gazette on October 21st 2015)

SECTION 10. — Penalties - The failure to perform the project shall imply the removal of the benefits granted within the framework of this Act. Unpaid taxes, interests and updates calculations may be claimed.

SECTION 11. — The following may not enjoy the benefits of these regulations:

a) Individuals which have been adjudged bankrupt and which were not allowed to continue the commercial activity, pursuant to the provisions set forth in Act 19 551 and its amendments, or in accordance with Act 24 522, as appropriate.

b) Defendants in a private prosecution or those individuals against whom a criminal complaint has been filed by the former Tax Administration Department under the former Secretariat of Economy of the former Ministry of Economy and Public Works and Services, or by the Federal Administration of Public Revenue, autonomous entity under the Ministry of Economy and Production, pursuant to Act 23 771 and its amendments or to Act 24 769 and its amendments, as appropriate. The corresponding prosecutor's referral of the case to oral trial shall be drafted prior to the effectiveness of this Act. Those defendants in a private prosecution or those individuals against whom a criminal complaint has been filed shall be indicted.

c) Individuals against whom a complaint on charges of ordinary crimes has been filed or defendants in a private prosecution for ordinary crimes related to the failure to observe their tax obligations or third parties tax obligations.

The corresponding prosecutor's referral of the case to oral trial shall be drafted prior to the effectiveness of this Act. Those defendants in a private prosecution for ordinary crimes or those individuals against whom a complaint on charges of ordinary crimes has been filed shall be indicted.

d) Legal entities, including cooperatives, whose partners, managing partners, directors, liquidators, members of the supervisory body, as appropriate, or those who have equivalent positions, against which a complaint on charges of ordinary crimes has been filed or defendants in a private prosecution for ordinary crimes related to the failure to observe its tax obligations or third parties tax obligations. Those defendants in a private prosecution for ordinary crimes or those legal entities against which a complaint on charges of ordinary crimes has been filed shall be indicted.

If, after these individuals and legal entities have received the benefits of these regulations, any of the events mentioned in the previous paragraphs occur, the treatment agreed under such regulations shall expire.

Individuals or legal entities which will enjoy the benefits of these regulations shall previously waive to the bringing of a judicial or an administrative action related to the provisions of Decree 1043 passed on April 30th 2003 or aimed at claiming, for tax purposes, the enforcement of the update proceedings whose use is forbidden pursuant to the provisions of Act 23 928 and its amendments and Section 39 of Act 24 073 and its amendments. Those who have brought such actions prior to the effective date of this Act shall drop the claim and waive the rights invoked in such claim. In this case, each party shall bear its own costs and the Federal Administration of Public Revenue shall waive the right to charge the corresponding penalties.

SECTION 12. — Projects which qualitatively and quantitatively promote the creation of jobs and projects which entirely include domestic capital goods shall be given special priority. The Enforcement Authority shall authorize the inclusion of foreign capital goods if the lack of domestic competitive technology is duly proven.

SECTION 13. — Complementarity – These regulations are complementary to the provisions set forth in Act 25 019 and its regulatory rules. Benefits included in Sections 4° and 5° of Act 25 019 shall also be applied to all other sources defined in this Act, with the restrictions set forth in Section 5° of Act 25 019.

SECTION 14. — Trust Fund for the Development of Renewable Energies. To replace Section 5° of Act 25 019, which shall be drafted as follows:

Section 5°: The National Secretariat of Energy, by virtue of the provisions set forth in Section 70 of Act 24 065, shall increase the levy up to 0.3 \$/MWh within the range set forth in such section. The collected amount shall be aimed at the creation of the TRUST FUND FOR THE DEVELOPMENT OF RENEWABLE ENERGIES, which shall be managed and whose funds shall be allocated by the Federal Electric Power Council. The funds shall be used:

I. To pay up to ONE POINT FIVE CENTS PER KILOWATT/HOUR (0.015 \$/kWh) for the energy produced by installed wind systems and wind systems to be installed, which place the energy on wholesale markets or markets aimed at supplying public services.

II. To pay up to ZERO POINT NINE ARGENTINE PESOS PER KILOWATT/HOUR (0.9 \$/kWh) for the energy produced by installed solar photovoltaic generators or solar photovoltaic generators to be installed, which shall be aimed at supplying public services and shall be available to customers.

III. To pay up to ONE POINT FIVE CENTS PER KILOWATT/HOUR (0.015 \$/kWh) for the energy produced by geothermal, tidal, biomass energy systems and energy from landfill gas, treatment plant gas, biogas energy plants to be installed and which place the energy on the wholesale market or markets aimed at supplying public services. Sources included in Act 26 093 shall not receive this payment.

IV. To pay up to ONE POINT FIVE CENTS PER KILOWATT/HOUR (0.015 \$/kWh) for the energy produced by hydroelectric systems to be installed whose power is up to THIRTY MEGAWATTS (30 MW) and which place the

energy on the wholesale markets or markets aimed at supplying public services.

The value of the Fund and the payment established shall be adjusted applying the Quarterly Adequacy Ratio for the seasonal cycles included in Act 25 957.

Energy produced by equipment to be installed shall be paid for a FIFTEEN (15) year term, as of the request of the beginning of the benefit period.

Energy produced by equipment installed in wind and solar photovoltaic generators shall be paid for a FIFTEEN (15) year term, as of the installation date.

SECTION 15. — Accession - To encourage the Provinces and the Autonomous City of Buenos Aires to accede to this Act and to enact their own rules to promote the generation of electric power from sources of renewable energy in their own jurisdictions.

SECTION 16. — Term for the issue of the regulations – The National Executive Power shall issue the regulations of this Act within NINETY (90) days after its enactment, and shall draft and implement the program for the development of renewable energies within the following SIXTY (60) days.

SECTION 17. — To inform the Executive Power.

THIS ACT WAS PASSED IN THE SESSION ROOM OF THE ARGENTINE CONGRESS, IN BUENOS AIRES, ON THIS SIXTH DAY OF THE MONTH OF DECEMBER OF THE YEAR TWO THOUSAND AND SIX.

—RECORDED UNDER N° 26 190—

ALBERTO BALESTRINI. — JOSE J. B. PAMPURO. — Enrique Hidalgo. — Juan H. Estrada.