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International Energy and Natural Resources Law

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International Energy and Natural Resources Law

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International Energy and Natural Resources Law

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I. Angola

In January 2015, the President of the Republic of Angola issued a decree approving the new Organizational Charter for the National Petroleum Institute (*Instituto Nacional do Petróleo*), an entity responsible for promoting education and training in the petroleum sector.¹ Soon after, in February 2015, the Minister of Petroleum, through executive decree, divided the Namibe Basin's offshore area into twelve oil blocks for the purpose of granting future oil concessions.² The Minister of Petroleum also approved the following downstream technical statutes:

- Executive Decree No. 79/15, of March 2, 2015 (Technical Regulations on Design, Construction, Technical Exploitation and Safety of Fuel Gas – notably Liquefied Petroleum Gas and Natural Gas – Distribution Networks and Branch Lines)³;

* Kristin Drecktrah Paz, an associate with Gomm & Smith in Miami, served as committee editor of this article. The following authors submitted contributions: Mariana Ardizzone, a partner with Ardizzone Abogados in Buenos Aires, Argentina, contributed the section on Argentina. Ricardo Silva and Sara Frazão contributed the sections on Angola, Cape Verde, Democratic Republic of the Congo, Gabon, and Mozambique. Ricardo Silva is a Partner at Miranda Alliance's Lisbon Headquarters, where Sara Frazão is an associate. Miranda Alliance is a global network of Law Firms with local offices in Angola, Brazil, Cameroon, Cape Verde, Democratic Republic of the Congo, Equatorial Guinea, France, Gabon, Guinea-Bissau, Macao (China), Mozambique, Portugal, Republic of the Congo, São Tomé and Príncipe and Timor-Leste, and liaison offices in the U.S. and the U.K. Mauricio Becerra de la Roca Donoso, managing partner at Becerra de la Roca Donoso & Asociados, contributed the section on Bolivia. João Otávio Olivério is a founding partner of Olivério Advogados in São Paulo, Brazil. He provided the section on Brazil. Jehmal T. Hudson, Esq., Congressional Liaison with the Federal Energy Regulatory Commission, contributed the sections on Canada and Germany. Leonardo Sempertegui is a partner with Sempertegui Ontaneda Abogados in Quito, Ecuador. He provided the submission on Ecuador. Ariel Cohen, principal at International Market Analysis Ltd., contributed the sections on Kazakhstan, Russia and Ukraine.

1. See *New Organizational Charter for the National Petroleum Institute*, ANGOLA LEGAL NEWS (Jan. 2015), http://www.mirandalawfirm.com/uploadedfiles/20150412_9dd1a3.pdf.

2. See *Division of the Namibe Basin into New Oil Blocks*, ANGOLA LEGAL NEWS (Feb. 2015), http://www.mirandalawfirm.com/uploadedfiles/20150412_fd1f6c.pdf.

3. See *Fuel Gas Distribution Networks Technical Regulations*, ANGOLA LEGAL NEWS (Mar. 2015), http://www.mirandalawfirm.com/uploadedfiles/20150706_1c2184.pdf.

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- Executive Decree No. 80/15, of March 2, 2015 (Technical and Safety Regulations on Design, Construction, Exploitation and Maintenance of Containerized Liquefied Petroleum Gas Filling Plants)⁴;
- Executive Decree No. 81/15, of March 2, 2015 (Technical Regulations on Safety of Liquefied Natural Gas Storage Facilities in Pressurized Cryogenic Tanks – Autonomous Liquefied Natural Gas Units)⁵;
- Executive Decree No. 82/15, of March 2, 2015 (Technical Regulations on Design, Construction, Installation, Operation, Maintenance, Repair and Modification of Liquefied Petroleum Gas Tanks)⁶; and
- Executive Decree No. 83/15, of March 3, 2015 (Technical Regulations on Design, Construction, Exploitation and Maintenance of Fuel Gas Facilities and Installation of Gas Appliances).⁷

II. Argentina

A. LOW OIL PRICES DRIVE NEW INCENTIVE PROGRAMS

On July 6, 2015, the Oil Plus and Refining Plus Incentives Programs (Programs) created in 2008⁸ were formally terminated,⁹ as low international oil prices frustrated the incentives formula designed by the programs.¹⁰ The Programs provided tax credits to oil producers and refiners to increase output and served to offset the onerous duties levied by the government on exports of hydrocarbon and fuels at peak oil prices.¹¹ As international prices decreased, the export duties were also reduced, and government tax incentives proved useless. All benefits due to beneficiaries under these programs as of the formal termination date must be paid with government bonds in U.S. dollars due in 2018 (twenty percent) and in 2024 (eighty percent).¹²

To incentivize the incremental production of light crude and the incremental export of heavy crude, the government launched the new “Crude Oil Production Stimulus Program,”¹³ effective from January 1, 2015 to December 31, 2015,¹⁴ and subject to possible renewals.¹⁵ Under the new program, the government will pay three different incentives to beneficiary companies:

4. See *Containerized LPG Filling Plants*, ANGOLA LEGAL NEWS (Mar. 2015), http://www.mirandalawfirm.com/uploadedfiles/20150706_1c2184.pdf.

5. See *LNG Storage Facilities Safety Regulations*, ANGOLA LEGAL NEWS (Mar. 2015), http://www.mirandalawfirm.com/uploadedfiles/20150706_1c2184.pdf.

6. See *LPG Tanks Technical Regulations*, ANGOLA LEGAL NEWS (Mar. 2015), http://www.mirandalawfirm.com/uploadedfiles/20150706_1c2184.pdf.

7. See *Fuel Gas Facilities and Installation of Gas Appliances in Buildings*, ANGOLA LEGAL NEWS (Mar. 2015), http://www.mirandalawfirm.com/uploadedfiles/20150706_1c2184.pdf.

8. See Decree No. 2014/2008, Nov. 25, 2008, [31540] B.O. 4 (Arg.).

9. See Decree No. 1330/2015, July 6, 2015, [33169] B.O. 1 (Arg.).

10. See *id.*

11. See *id.*

12. See *id.*

13. See Resolution 14/2015, Feb. 4, 2015, [33064] B.O. 14 (Arg.).

14. See *id.* at art. 2.

15. See *id.*

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- 1) A Production Incentive of up to three USD per barrel per quarter on a beneficiary company's total production as long as the quarterly production is equal to or greater than its average daily production during the last quarter of 2014.¹⁶ Such production incentive will be capped when the price received by the producer together with the production incentive exceeds seventy USD per barrel of Escalante (heavy) oil or eighty-four USD per barrel of Medanito (light) oil.¹⁷
- 2) A Base Export Incentive providing up to two USD per barrel per quarter on all exported volumes of oil.¹⁸
- 3) An Incremental Exports Incentive¹⁹ with up to three USD per barrel payable per quarter on quarterly exports equal to or greater than their export base, and which is not cumulative with the Base Export Incentive.²⁰

All incentive amounts are payable in Argentine Pesos at the official exchange rate, which is controlled by the Central Bank of Argentina.²¹ Export incentives assume all local refineries are fully supplied. Registration may be canceled if the recipient fails to comply with the conditions of the program or its obligations under Decree 1277/2012 and supplementary regulations (e.g. annual investment plans reported to the Investment Committee).²²

**B. NEW UNIFIED NATIONAL CIVIL AND COMMERCIAL CODE INTRODUCES
 PROTECTION OF COLLECTIVE RIGHTS**

A new Unified Civil and Commercial Code (Code)²³ came into force on August 1, 2015,²⁴ replacing and abrogating both the National Civil Code²⁵ first enacted in 1869 and the National Commercial Code first enacted in 1889.²⁶ The new Unified Civil and Commercial Code, drafted by a committee of jurists chaired by Justice Ricardo Luis Lorenzetti, President of the Argentine Supreme Court, was the result of a unification planned for the first time in 1926.²⁷ Despite much anticipation and the excellent credentials of the drafting committee, the new Code has created considerable controversy.²⁸ Over 100 representatives from opposing political parties walked out in

16. *See id.* at add. I, tit. I, no. 9.

17. *See id.*

18. *See id.* at add. I, tit. I, no. 12.1.

19. *See id.* at add. I, tit. I, no. 12.2.

20. *See id.* at no. 12.2.

21. *See id.* at add. I, tit. V, § 1, subsec. ii.

22. *See id.* at add. I, tit. VI, § 2, subsec. i-iii.

23. *See* CÓDIGO CIVIL Y COMERCIAL DE LA NACIÓN [CÓD. CIV. Y COM.] [CIVIL AND COMMERCIAL CODE] (2015) (Arg.).

24. *See* Law No. 27077, Dec. 16, 2014, [33034] B.O. 7 (Arg.).

25. *See generally* Law No. 340, Sept. 25, 1869 (Arg.), <http://www.infoleg.gob.ar/infolegInternet/verNorma.do?id=109481>. It was drafted along with other projects during the last century, although none of them reached enactment.

26. *See generally* Law No. 2367, Oct. 5, 1889 (Arg.), <http://www.infoleg.gob.ar/infolegInternet/verNorma.do?id=109500>.

27. *See* Dr. Jorge Oscar Perrino, *Derecho Civil*, REVISTA DEL COLEGIO DE ABOGADOS DE LA PLATA, at 13 (Nov. 2012), http://www.calp.org.ar/uploads/docs/reforma_codigo_civil.pdf.

28. *See* Laura Serra, *En medio de denuncias y escándalos, sancionaron el nuevo Código Civil* [New Civil Code enacted in the Midst of Claims and Scandals], LA NACIÓN (Oct. 2, 2014), <http://www.lanacion.com.ar/1732078-en-medio-de-denuncias-y-escandalos-sancionaron-el-nuevo-codigo-civil>.

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protest over flaws in the parliamentary procedure employed for debate and enactment of the Code; nevertheless, the bill was approved in solitude by 134 incumbent representatives and allies.²⁹

The Code makes changes in the law regarding family relations, obligations, contracts and property law matters.³⁰ It also addresses collective interests related to natural resources that were first introduced in the domestic legal system with the 1994 Reform to the National Constitution.³¹ The 1994 Reform provided standing for aggrieved parties, ombudsmen, and certain NGOs, who could file *amparo* actions based on any form of discrimination against rights protecting the environment, competition, users and consumers, or rights affecting the general public interest.³²

One of the hallmarks of the new Code is that it incorporated certain key aspects of constitutional law giving light to a process coined “constitutionalization of private law.”³³ This process is enshrined in the new Code, which recognizes both individual and collective rights, and which proscribes any abuse of individual rights that could affect the environment or collective rights in general.³⁴ The Code provides that the exercise of individual rights over goods and property belonging to individuals or to the eminent domain of the state must be compatible with collective incidence rights. Therefore, any exercise of individual rights must comply with national and local administrative law for the public interest, and must not affect the operation or sustainability of flora, fauna, biodiversity, water, cultural values, and landscape ecosystems, in accordance with the criteria provided by law.³⁵

C. UPDATED RENEWABLE PORTFOLIO STANDARDS AND ADDITIONAL INCENTIVES
 ENACTED FOR POWER GENERATION

On September 23, 2015, the Argentine National Congress enacted a law to update Argentina’s previous renewable portfolio standards and to reinforce incentives to develop power generation from renewable energy sources.³⁶ The bill was introduced by Senator Marcelo Guinle from the Patagonian Province of Chubut, which is famous for its record-setting winds.³⁷ The law’s existing target of eight percent of power generation from

29. *See id.*

30. Soledad Vallejos, *Los siete puntos más polémicos del nuevo Código Civil y Comercial* [The Seven Most Controversial Issues in the New Civil and Commercial Code], LA NACIÓN (Aug. 4, 2015) <http://www.lanacion.com.ar/1816161-los-siete-puntos-mas-polemicos-del-nuevo-codigo-civil-y-comercial>.

31. *See* Art. 41, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

32. *See id.* at art. 43.

33. Valentin Thury Cornejo, *Lorenzetti sobre el nuevo código civil y comercial* [Lorenzetti on the New Civil and Commercial Code], TODO SOBRE LA CORTE (Mar. 17, 2015), <http://todosobrelacorte.com/2015/03/17/lorenzetti-sobre-el-nuevo-codigo-civil-y-comercial>. The article includes a link to a video featuring a dissertation given by Justice Lorenzetti on March 2, 2015 on the matter.

34. *See* COD. CIV Y COM, art. 14.

35. *See id.* art. 240.

36. *Amendments to the law that establishes the Promotion Regime of Power Generation from Renewable Sources*, CANOSA ABOGADOS (Oct. 20, 2015), <http://www.canosa.com/amendments-to-the-law-that-establishes-the-promotion-regime-of-power-generation-from-renewable-sources/>.

37. *See* Gerardo Rabinovich, *Energías Renovables: Diagnóstico, Barreras y Propuestas para la República Argentina*, Secretaría de Energía, Fundación Bariloche y REEEP [Renewable Energy: Diagnostics, Barriers and Proposals for the Argentine Republic, Ministry of Energy, Bariloche Foundation and REEEP], FINANZAS CARBONO

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renewable energy sources³⁸ was postponed until December 31, 2017,³⁹ and a further second stage target of twenty percent was set for December 31, 2025.⁴⁰

The new law seeks to apply the lessons learned from the failure of the many bids placed for renewable power generation auctions in order to close its financial packages.⁴¹ It thus introduces a Renewable Energy Fiduciary Fund (Fondo para el Desarrollo de Energías Renovables, or FODER).⁴² The FODER will be chartered as a financial and administrative trust, granting loans and capital contributions, and providing other forms of financing to power generation projects from renewable energy resources.⁴³ Notably, power consumers demanding more than 300kW shall either self-generate or purchase power to meet the new renewable portfolio targets.⁴⁴ The price of power under any such purchase agreements shall be capped at 113 USD/MWh.⁴⁵

III. Bolivia

A. OIL AND GAS

In 2015, the Bolivian government issued regulations facilitating hydrocarbon exploration by oil companies in environmentally-protected areas.⁴⁶ These regulations have received mixed reviews. Conservationist sectors and the Ombudsman deem the regulations as an unconstitutional infringement on indigenous peoples' human rights,⁴⁷ while others argue that oil activities are beneficial to the entire community and do not

(June 2009), <http://finanzascarbono.org/comunidad/pg/file/gerardor/read/41200/energias-renovables-diagnostico-barreras-y-propuestas-para-la-republica-argentina-secretaria-de-energia-fundacion-bariloche-y-recep-junio-2009>.

38. See Law No. 26190, Dec. 27, 2006, [31064] B.O. 1 (Arg.).

39. See Gerardo Rabinovich, *Energías Renovables: Diagnóstico, Barreras y Propuestas para la República Argentina, Secretaría de Energía, Fundación Bariloche y REEEP [Renewable Energy: Diagnostics, Barriers and Proposals for the Argentine Republic, Ministry of Energy, Bariloche Foundation and REEEP]*, FINANZAS CARBONO (June 2009), <http://finanzascarbono.org/comunidad/pg/file/gerardor/read/41200/energias-renovables-diagnostico-barreras-y-propuestas-para-la-republica-argentina-secretaria-de-energia-fundacion-bariloche-y-recep-junio-2009>.

40. See Law No. 27191, Oct. 15, 2015, [33239] B.O. 1 (Arg.).

41. Antonio Rossi, *Energía verde: fracasó el plan de Enarsa y habrá nuevas licitaciones [Green energy: Enarsa's plan failed and there will be new bids tendered]*, CLARÍN (Dec. 8, 2013), http://www.clarin.com/politica/Energia-fracaso-Enarsa-nuevas-licitaciones_0_1043895670.html.

42. Law No. 27191, Oct. 15, 2015, [33239] B.O. 1 (Arg.).

43. *Id.* at art. 7.

44. *Id.* at art. 9.

45. *Id.*

46. See Decreto Supremo No. 2298 [Supreme Decree No. 2298], Mar. 18, 2015, (Bol.), <http://www.lexivox.org/norms/BO-DS-N2298.xhtml> (amending and supplementing Supreme Decree No. 29033, Consultation and Participation Regulations for Hydrocarbon Activities); see also Decreto Supremo No. 2366 [Supreme Decree No. 2366], May 20, 2015, (Bol.), <http://faolex.fao.org/docs/pdf/bol145342.pdf> (establishing measures for the exploitation of hydrocarbon resources within environmentally-protected areas); see also Decreto Supremo No. 2400 [Supreme Decree No. 2400], June 6, 2015, (Bol.), <http://faolex.fao.org/docs/pdf/bol146680.pdf> (supplementing and modifying the environmental regulations for hydrocarbons set forth in Supreme Decree No. 24335).

47. *Defensor del Pueblo anuncia recurso contra decreto 2366 [Ombudsman announces legal action against decree 2366]*, EL ARBOL (June 15, 2015), http://www.erbol.com.bo/noticia/indigenas/15062015/defensor_del_pueblo_anuncia_recurso_contra_decreto_2366.

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harm environmental conservation efforts if the right technology is used to reduce negative impacts.⁴⁸

B. ALTERNATIVE ENERGY

In 2015, the Ministry of Hydrocarbons and Energy issued a series of regulations to increase power generation with alternative energy sources (e.g., wind, solar, biomass, geothermal, and small hydro, among others) in the energy matrix with the goal of reaching a total of 255 MW alternative-energy participation by 2025.⁴⁹ These alternative energy projects will benefit from additional funding from the market itself, which will be determined by the Electricity Authority for each project.⁵⁰ In order to benefit, projects must be included in the Alternative Energy Development Plan for 2025.⁵¹

C. CONTROL OF FUEL SALES

The government-issued regulations that implement the Fuel Commercialization Information System (Bolivian Systems Self-Identification or B-SISA) aim to control the commercialization of gasoline and diesel in all motor vehicles by requiring that all such vehicles have an ID tag provided by the National Administration of Hydrocarbons.⁵² The B-SISA will record the number of liters of diesel and gasoline each motor vehicle fuels at gas stations, as it aims to prevent the smuggling and misuse of fuel for drug trafficking.⁵³ The B-SISA also involves installing antennas in gas stations, which report information on the commercialization of fuels by using self-identification radio frequency technology (RFID).⁵⁴ Because the Bolivian government subsidizes diesel and gasoline prices for domestic consumption, motor vehicle operators will not be able to buy fuel in gas stations without the RFID control.⁵⁵ It has been reported that the B-SISA has also become a

48. Vesna Marinkovic U., *Carlos Miranda: "Las actividades petroleras no son excluyentes de la conservación del medio ambiente"* [Carlos Miranda: "Oil activities are not exclusive of environmental conservation"], ENERGÍA BOLIVIA, http://www.energiabolivia.com/index.php?option=com_content&view=article&id=3300:las-actividades-petroleras-no-son-excluyentes-de-la-conservacion-del-medio-ambiente&catid=36:dialogos&Itemid=114 (last visited Mar. 12, 2016).

49. Resolución Ministerial No. 4/15 [Ministerial Resolution No. 4/15], art. 3, Jan. 13, 2015, (Bol.), <http://faolex.fao.org/docs/pdf/bol141591.pdf> (approving the criteria for the application of alternative energy factors and procedures for submitting project evaluation, terms, and approval).

50. Resolución Ministerial No. 4/15 [Ministerial Resolution No. 4/15], art. 5, Jan. 13, 2015, (Bol.), <http://faolex.fao.org/docs/pdf/bol141591.pdf>.

51. *Id.* at art. 2.

52. *B-SISA: Boliviana de Sistemas de Autoidentificación [B-SISA: Bolivian Vehicle Identification System]*, AGENCIA NACIONAL DE HIDROCARBUROS (2014), <http://www.anh.gob.bo/index.php?Nisa>.

53. Pablo Cambará, *Dos largas filas para obtener la viñeta B-Sisa [Two long lines to obtain the B-Sisa device]*, EL DEBER (Oct. 23, 2015), http://www.eldeber.com.bo/app_public.php/economia/filas-inmensas-obtner-vineta-b.html.

54. Gabriel Diez Lacunza, *B-SISA y el control vehicular en una milésima de segundo [B-SISA and vehicle control in one millisecond]*, PAGINA SIETE (Apr. 20, 2014), <http://www.paginasiete.bo/economia/2014/4/20/b-sisa-control-vehicular-milesima-segundo-19351.html>.

55. Cambará, *supra* note 53.

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valuable informational tool for investigating cases such as car theft, kidnappings, and robberies.⁵⁶

IV. Brazil

A. RENEWABLE ENERGY

In 2015, Brazil experienced a tremendous year for renewable energy development for three areas: (i) renewable energy auctions; (ii) tax and financing incentives implemented at the federal, state, and municipal levels; and (iii) pricing increases and energy generated for consumers through the traditional means of hydroelectricity.⁵⁷ At an extraordinary meeting on April 22, 2015, Brazil's National Council for Financial Policy (CONFAZ) agreed to authorize the Brazilian states to grant VAT, or value-added tax, exemptions on all distributed generation from net-metering systems.⁵⁸ As a result, VAT tax will be levied only on the amount of energy used beyond the amount of energy distributed by concessionaires and energy generated by the consumer, as authorized by the Brazilian Electricity Regulatory Agency (ANEEL).⁵⁹ The CONFAZ agreement also removed doubts regarding the legality of the VAT exemptions that the state of Minas Gerais had already been granting.⁶⁰ In light of the CONFAZ agreement, the states of Goiás, Pernambuco, and São Paulo developed changes to their respective laws to grant VAT exemptions, effective September 1, 2015.⁶¹ The changes especially benefit the solar energy market, which likely amounts to almost all of the net-metering systems in Brazil, as photovoltaic panels are the easiest and cheapest form of available energy production that also allow final consumers to reduce their electric bills.

The state of São Paulo amended its VAT laws pursuant to two decrees,⁶² which grant VAT exemptions. The first change deals with energy output from distribution companies. Provided that the output of electric energy to a consumer unit is produced by micro-

56. Jimena Paredes, *B-Sisa rastreará los vehículos de la gente que es investigada* [B-Sisa will track the vehicles of people being investigated], LA RAZÓN (Mar. 25, 2015), http://www.la-razon.com/economia/Seguimiento-B-Sisa-rastrear-vehiculos-gente-investigada_0_2240775909.html.

57. With respect to this item, the surge of conventional energy prices occurred when the current government allegedly manipulated energy prices for consumers to control inflation before the 2014 elections. In addition, some areas such as São Paulo, the most active and populous state in Brazil, have felt a decrease on the energy produced due to a drought in the beginning of 2015, which caused consumer bills in some areas to increase by as much as fifty percent.

58. Convênio ICMS 16 [ICMS Agreement 16], de 22 de Abril de 2015, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 27.4.2015 (Braz.).

59. *See id.*

60. Lei No. 20.824 [Law No. 20824], de 31 de Julho de 2013, DIÁRIO OFICIAL DA MINAS GÉRIAS [D.O.E.M.G.] de 1.8.2013 (Braz.), http://www.fazenda.mg.gov.br/empresas/legislacao_tributaria/leis/2013/120824_2013.htm.

61. Tom Kenning, *Three Brazil states granted VAT exemptions for solar net-metering*, PV-TECH (Apr. 30, 2015, 3:26PM), http://www.pv-tech.org/news/three_brazil_states_granted_vat_exemptions_for_solar_net_metering.

62. *See* Decreto No. 61.439 [Decree No. 61439], de 19 de Agosto de 2015, DIÁRIO OFICIAL DA SÃO PAULO [D.O.E.S.P.] de 1.09.2015 (Braz.), <http://www.al.sp.gov.br/repositorio/legislacao/decreto/2015/decreto-61439-19.08.2015.html>; *see* Decreto No. 61.440 [Decree No. 61440], de 19 de Agosto de 2015, DIÁRIO OFICIAL DA SÃO PAULO [D.O.E.S.P.] de 1.09.2015 (Braz.), <http://www.al.sp.gov.br/repositorio/legislacao/decreto/2015/decreto-61440-19.08.2015.html>.

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generation or mini-generation, a VAT exemption will be granted when the amount that goes to a consumer unit corresponds to the energy input on the power grid by its consumer unit plus active energy credits originated in the consumer unit itself or in another unit of the same owner.⁶³ The second change involves commercial transactions involving equipment and components for the exploration of solar and wind energy. In addition to São Paulo, the states of Pernambuco, Goiás, Rio Grande do Norte, Tocantins, Ceará, Bahia, Maranhão, and Mato Grosso have granted VAT incentives for net-metering activities following the CONFAZ authorization.

Working similarly to the VAT's benefits, PIS/PASEP—the tax levied on the total tax of corporations—taxes electric energy supplied by distributors to consumers only on the difference after the net-metering compensation. PIS/PASEP's new structure was put in place by Law No. 13,169, of October 6, 2015,⁶⁴ which also reduced to zero the tax rate of the mandatory Social Security Financing Contribution (COFINS).

On August 11, 2015, the federal government revealed its new Investment Program in Power Energy (PIEE) in hopes of increasing investments in new power generation and transmission projects through public auctions to be held between August 2015 and December 2018.⁶⁵ The projected amount of these projects will total BRL 186 billion, of which BRL 116 billion will be invested in the construction of hydroelectric power plants, small hydroelectric power plants (PCHs), thermoelectric plants, solar photovoltaic power plants, wind farms, fossil, and biomass, of which more than eighty percent is expected to come from renewable energy.⁶⁶ The government also announced that the Brazilian Bank for Economic and Social Development (BNDES) will finance power generation projects subject to the applicable requirements of local content and other conditions based on the type of project.⁶⁷ To achieve PIEE's goals, there will also be at least three energy auctions

63. See Resolução Normativa No. 482 [Regulation Resolution No. 482], de 17 de Abril de 2012, Agência Nacional de Energia Elétrica [ANEEL] [National Agency of Electric Energy] (Braz.), <http://www.aneel.gov.br/cedoc/ren2012482.pdf>.

64. Lei No. 13.169 [Law No. 13169], de 6 de Outubro de 2015, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] (Braz.), http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13169.htm#art17.

65. See MINISTÉRIO DE MINAS E ENERGIA [Ministry of Mines and Energy], PROGRAMA DE INVESTIMENTO EM ENERGIA ELÉTRICA (PIEE) 2015-2018 [Ministry of Mines and Energy, Investing in Electric Energy Presentation] (2015), <http://www.epe.gov.br/Estudos/Documents/Apresenta%C3%A7%C3%A3o%20PIEE%20pdf.pdf>.

66. *Id.* at 17.

67. See *id.*; see also *Energia Elétrica [Electric Energy]*, BNDES, http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Areas_de_Atacao/Infraestrutura/Energia/index.html# (last visited Mar. 14, 2016).

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per year in the modalities A-3, A-5, Alternative Sources and Reserve Energy.⁶⁸ PIEE's main features may be found below:⁶⁹

Projects	Capacity (MW)	BNDES Maximum %	Maximum Amortization
Hydro	11,000	50%	25 years
PCH	From 1,000 to 1,500	70%	19 years
Fossil Thermo	From 3,000 to 5,000	50%	20 years
Solar Photovoltaic	From 2,000 to 3,000	70%	23 years
Wind Farms	From 4,000 to 6,000	70%	19 years
Biomass Thermo	From 4,000 to 5,000	70%	19 years
Total	From 25,000 to 31,500		

V. Canada

The Canadian International Trade Tribunal (Tribunal) is an “independent quasi-judicial body that reports to Parliament through the Minister of Finance.”⁷⁰ The Tribunal “hears cases on dumped and subsidized imports, safeguard complaints,” federal government procurement complaints, “and appeals of customs and excise tax rulings.”⁷¹ “When requested by the federal government, the Tribunal also provides advice on other economic, trade, and tariff matters.”⁷²

The Tribunal initiated an inquiry to determine whether the “dumping and subsidizing of photovoltaic modules and laminates . . . originating in or exported from the People’s Republic of China” caused injury, retardation, or threatened to cause injury.⁷³ This inquiry was initiated further to a notice received from the Canada Border Services Agency

68. *Glossary*, COMPANHIA ENERGETICA DE SAO PAULO [Sao Paolo Energy Company], <http://ri.cesp.com.br/investor-services/glossary/?lang=en> (last visited Mar. 14, 2016) (defining “A-1, A-3, A-5 (Auction)” as follows: “It is pronounced as A minus one, A minus three, A minus five. It refers to Electric Energy Sale Auctions and indicates the number of years prior to the beginning of delivery of that energy purchased in those Auctions. It corresponds to the one year before, the third year before and the fifth year before the Base Year ‘A’ (refer to Base Year ‘A’), (defining “Base Year ‘A’” as “the year foreseen for the beginning of the supply of that electric energy purchased by distribution agents on auctions dealt by Decree n° 5,163 of July 30, 2004.”); Vitor Correria Lima Franca, *Challenges for the Optimal Uses of Wind Power in Brazil*, GWU SCHOOL OF BUSINESS AND PUBLIC MANAGEMENT, Fall 2011, at A16-17, http://www.aneel.gov.br/biblioteca/trabalhos/trabalhos/Artigo_Vitor_Franca.pdf (explaining that the Auction Reserve – 2009 “is provided in art. 1 of Decree No. No.6,353, 2008, which regulated the art. 3 of Law No.10,848 of March 15, 2004, and aims to purchase energy to increase the security of the supply of electricity to the National Interconnected System - SIN, from units specially contracted for this purpose, either through newly generation projects or existing projects”).

69. See MINISTÉRIO DE MINAS E ENERGIA, *supra* note 65.

70. Canadian Int’l Trade Tribunal, *Tribunal Finds Threat of Injury — Photovoltaic Modules and Laminates from China*, GOV’T OF CANADA (July 3, 2015), <http://news.gc.ca/web/article-en.do?nid=995779>.

71. *Id.*

72. *Id.*

73. Canadian Int’l Trade Tribunal, *Preliminary Injury Inquiry No. PI-2014-003, Photovoltaic Modules and Laminates*, GOV’T OF CANADA (Feb. 3, 2015), <http://www.cit.gc.ca/en/node/7188>.

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stating that preliminary determinations had been made respecting “the dumping and subsidizing of the above-mentioned goods.”⁷⁴ The Tribunal “found that the dumping and subsidizing of photovoltaic modules” did not cause injury, but that they threatened “to cause injury to the domestic industry.”⁷⁵ The Tribunal determined that the Canada Border Services Agency would collect anti-dumping and countervailing duties,⁷⁶ which will be in effect for five years.⁷⁷ The products affected by this ruling are “Chinese crystalline and thin film solar PV products with a power output not exceeding 100W.”⁷⁸

VI. Cape Verde

“Given its privileged geographic location,” Cape Verde is “ideally placed to become the Mid-Atlantic vessel-refueling hub” and “is intent on making the most of the incredible opportunity for economic growth that bunkering presents.”⁷⁹ “With that in mind, the Maritime and Port Agency published Cape Verde’s Bunkering Regulations on April 16, 2015.”⁸⁰ “The Regulations establish the principles, rules, and procedures for refueling vessels at Cape Verde’s ports” and its Exclusive Economic Zone.⁸¹

VII. Democratic Republic of the Congo

A recently enacted Hydrocarbons Law (Law No. 15-012, of August 1, 2015) sets forth the general legal framework governing hydrocarbons.⁸² The new law covers both upstream and downstream activities and applies to future contracts and renewal of existing rights. However, certain provisions on environmental protection, safety, and hygiene are immediately applicable to existing contracts.⁸³

VIII. Ecuador

A. CREATION AND OPERATION OF THE TECHNICAL REGISTRY OF HYDROCARBONS

A new resolution establishes the procedure for the Technical Registry of Hydrocarbons in Ecuador, a public database that tracks permits, authorizations, renovations and expiry of operating permits, contracts, and import authorizations, as well as transfers of rights and

74. *Id.*

75. Canadian Int’l Trade Tribunal, *supra* note 70.

76. *Id.*

77. Becky Beetz, *Canada Issues Ruling on Anti-Dumping Case, Final Duties Set*, PV MAGAZINE (July 6, 2015), http://www.pv-magazine.com/news/details/beitrag/canada-issues-ruling-on-anti-dumping-case—final-duties-set_100020085/#ixzz3iSgzlVtp.

78. *Id.*

79. *Cape Verde Legal News – Bunkering in the Mid-Atlantic*, MIRANDA & ASSOC. (Feb.–Apr. 2015), http://www.mirandalawfirm.com/uploadedfiles/20150706_b63455.pdf.

80. *See id.*

81. *See id.*

82. *See* Catarina Tavora & Filipa Monteiro, *Democratic Republic of Congo – The Long Awaited New Petroleum Law*, MIRANDA & ASSOC. (Nov. 2015), http://www.mirandalawfirm.com/uploadedfiles/20151127_e0eb5f.pdf.

83. *See id.*

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obligations and other authorizations executed by the Agency's Executive Director.⁸⁴ The Hydrocarbons Act of Ecuador requires this registry.⁸⁵ The registry is different from the public registry, which is managed by the Secretary of Hydrocarbons and is specifically limited to contracts and related legal acts.⁸⁶

B. ESTABLISHMENT OF HYDROCARBONS AGENCY FINES

The Hydrocarbon Regulation and Control Agency issued a resolution that establishes its power to collect fines imposed on private corporations controlled by the Agency, as well as to collect unpaid fees for services performed.⁸⁷ The collection process begins with an order of payment and notice to the debtor, allowing a short term to pay all fees due.⁸⁸ The Agency may also order precautionary measures to guarantee payment of the pending obligation.⁸⁹

C. ORGANIC LAW FOR THE PUBLIC SERVICE OF ELECTRIC ENERGY

The "Organic Law for the Public Service of Electric Energy," published on January 16, 2015, aims to incorporate fundamental principles to develop an electric energy system in Ecuador.⁹⁰ The Constitution of Ecuador of 2008 ordered a new structure for all strategic sectors, including electric energy.⁹¹ The law creates a new structure to regulate, control, and exploit this energy sector.⁹²

The Ministry of Electricity and Renewables, the governing body of the electric energy sector, established the public policy that guides these activities, both private and public.⁹³ The Agency for Regulation and Control of Electricity and the National Electricity Operator are entities that control—from the technical and market standpoint, respectively—the correct operation and performance of electric energy services.⁹⁴ State-

84. La Agencia de Regulación y Control Hidrocarburífero (ARCH) [The Agency of Hydrocarbon Regulation and Control], Expídense el Instructivo para el funcionamiento del Registro de Control Técnico de Hidrocarburos (RCTH) [Issuing the Instructions for the Operation of the Technical Control Registry of Hydrocarbons], 002-001-DIRECTORIO-ARCH-2015, art. 1, R.O. No. 503, May 19, 2015 (Ecuador).

85. Ley de Hidrocarburos [Law of Hydrocarbons], Decreto Supremo No. 2967, R.O. No. 711, Art. 12, Nov. 15, 1978 (Ecuador).

86. See Secretaría de Hidrocarburos Ecuador [Ecuador Secretary of Hydrocarbons], Banco de Información Petrolera del Ecuador (BIPE) [Bank of Petroleum Information of Ecuador], *Ecuadorian Oil Data Bank*, <http://www.she.gob.ec/banco-de-informacion-petrolera/> (last visited Mar. 9, 2016).

87. La Agencia de Regulación y Control Hidrocarburífero (ARCH) [The Agency of Hydrocarbon Regulation and Control], Expídense las Normas para el Ejercicio de la Acción Coactiva [Issuing the Standards for the Exercise of Coercive Action], 002-002-DIRECTORIO-ARCH-2015, arts. 3-4, R.O. No. 503, May 19, 2015 [Ecuador].

88. See *id.* art. 5.

89. See *id.* art. 13.

90. Ley Orgánica Del Servicio Público De Energía Eléctrica [Organic Law for the Public Service of Electrical Energy], art. 1, R.O. No. 418, Jan. 16, 2015 [Ecuador].

91. See Constitución de la Republica del Ecuador 2008 [2008 Constitution of the Republic of Ecuador], art. 314, R.O. No. 449, Oct. 20, 2008 [Ecuador].

92. See Ley Orgánica Del Servicio Público De Energía Eléctrica [Organic Law for the Public Service of Electrical Energy], art. 1, R.O. No. 418, Jan. 16, 2015 [Ecuador].

93. See *id.* at art. 8.

94. See *id.* at art. 14.

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owned and private corporations are allowed to participate in this market, with preference given to companies that promote government initiatives.⁹⁵

D. CREATION OF THE MINISTRY OF MINING

By decree, the President of the Republic of Ecuador created the Ministry of Mining on February 28, 2015.⁹⁶ Previously, the Ministry of Non-Renewable Resources controlled mining regulations and public policy—this Ministry has since changed its name and now only oversees oil and gas activities.⁹⁷ The establishment of the Ministry of Mining was intended to provide a specialized entity to oversee mining activities in an effort to promote both private and government activity in the sector.⁹⁸ The Ministry of Mining’s main objectives and strategic priorities are to increase productivity within the mining sector and to enhance mining activities in the country.⁹⁹

IX. Gabon

The country’s new Mining Code, which repealed the former law, was enacted through Law No. 017/2014, of January 30, 2015.¹⁰⁰ The new code sets forth that the Gabonese government “is now entitled to an automatic ten percent participating interest in the share capital of any mining company’s licensed substances in the production phase,” and it has the option to increase its share capital participation “up to twenty-five percent through negotiations and against payment.”¹⁰¹

New rules on mining companies and their subcontractors have also been introduced. “Subcontractors operating in Gabonese territory for longer than a certain period of time” must now “incorporate local companies.”¹⁰² In addition, the rules also “defined new fiscal benefits and exemptions for holders of mineral permits and their subcontractors.”¹⁰³ Finally, Gabon launched the country’s “11th Licensing Round” for exploration and production of petroleum in the Gabonese offshore.¹⁰⁴ Five deep-water blocks in the South Gabon Salt Basin will be available for competitive bidding, and the Licensing Round will only be open for five months to companies meeting the prequalification criteria.¹⁰⁵ The deadline for submitting bids is March 31, 2016.¹⁰⁶

95. *See id.* at art. 25.

96. Decreto Ejecutivo [Presidential Decree] No. 578, R.O. No. 448, Feb. 28, 2015 [Ecuador].

97. *See id.* at art. 2.

98. *See id.* at art. 3.

99. *See* Ministro de Minería [Ministry of Mining], PROFITAS (July 17, 2015), <http://www.profitas.com/blog/?p=3649>.

100. *Gabon Legal News – New Mining Code in Force*, MIRANDA & ASSOC. (Sept. 2015), http://www.mirandalawfirm.com/uploadedfiles/20151028_868d2d.pdf

101. *Id.*

102. *See id.*

103. *See id.*

104. *See* Direction Generale des Hydrocarbures (DGH), *Gabon 11th Licensing Round*, GABON 11TH ROUND, <https://www.gabon11thround.com> (last visited Mar. 9, 2016).

105. *See* Direction Generale des Hydrocarbures (DGH), *11th Gabon Deep Water Licensing Round*, GABON 11TH ROUND, https://www.gabon11thround.com/data/15FY-ML-461-V1_Gabon_Flyer_300NC.pdf (last visited Mar. 9, 2016).

106. *See id.*

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X. Germany

In June 2015, the European Commission (Commission) requested that Germany implement the EU Energy Efficiency Directive (Directive).¹⁰⁷ The Directive was a key instrument to achieve a twenty percent cut in Europe's annual primary energy consumption by 2020 by establishing binding measures to help the EU reach that target, as well as proposed measures to increase efforts to use energy more efficiently at all stages of the energy chain.¹⁰⁸ "Full implementation and enforcement of existing energy legislation was a priority under the newly adopted Energy Union Package."¹⁰⁹ All Member States are currently monitoring their progress on transposing the Directive.¹¹⁰ "The Commission continues to monitor the progress . . . and will address any shortcomings in future infringement cycles."¹¹¹

Under the Directive, "EU Member States must meet certain energy savings targets" between January 1, 2014 and December 31, 2020.¹¹² Should Germany refuse to comply with this obligation, the Commission could decide to refer the matter to the EU Court of Justice with a request for financial penalties.¹¹³ The Commission formally warned twenty-seven Member States (out of a total twenty-eight) "for failing to fully transpose the Directive by the June 2014 deadline."¹¹⁴ Yet Germany was one of only eight Member States that did not fully transpose the Directive by the deadline to receive a reasoned opinion from the Commission.¹¹⁵

XI. Kazakhstan

On December 29, 2014, the Republic of Kazakhstan adopted the law entitled "On Introduction of Amendments and Additions to Certain Legislative Acts on Subsoil Use Matters."¹¹⁶ The new legislation came into effect on January 11, 2015, with the exception of certain specified provisions.¹¹⁷ This law includes amendments to the Subsoil Use Law,

107. See European Commission Press Release IP/15/5196, Commission refers Greece to Court and gives Germany a final warning regarding the transposition of the Energy Efficiency Directive (June 18, 2015).

108. See European Commission, *Energy Efficiency Directive*, <http://ec.europa.eu/energy/en/topics/energy-efficiency/energy-efficiency-directive> (last visited Mar. 12, 2016).

109. European Comm'n Press Release, *supra* note 107.

110. See European Commission Inception Impact Assessment, AP 2016/ENER/002, *Review of Directive 2012/27/EU on energy efficiency*, at 2 (Nov. 2015).

111. European Comm'n Press Release, *supra* note 107.

112. *Id.*

113. *Id.*

114. Sustainability Energy Policy & Practice, *EC Refers Greece to Court of Justice over Energy Efficiency Directive*, INT'L INST. FOR SUSTAINABLE DEV. (IISD) REP. SERVS. (June 18, 2015), <http://energy-liisd.org/news/ec-refers-greece-to-court-of-justice-over-energy-efficiency-directive/>.

115. European Comm'n Press Release, *supra* note 107.

116. Law of the Republic of Kazakhstan On Introduction of Amendments and Additions to Certain Legislative Acts on Subsoil Use Matters, Dec. 29, 2014, Law No. 271-V 3PK (Kaz.); see *Law of Kazakhstan No. 271-V 3PK On introduction of amendments and additions to certain legislative acts on subsoil use matters*, UNCTAD DIVISION ON INV. & ENTER. (Dec. 29, 2014), <http://investmentpolicyhub.unctad.org/IPM/MeasureDetails?id=2659&rgn&grp&t&s&pg&c&dt&df&isSearch=false>.

117. See Timur Odilov & Maxim Telemtayev, *Amendment to the Kazakhstan Legal Regime for the Oil & Gas Industry*, WHITE & CASE LLP (Jan. 16, 2015), <http://www.whitecase.com/sites/whitecase/files/files/download/publications/alert-amendments-to-the-kazakhstan-legal-regime-for-the-oil-gas-industry.pdf>.

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the Land Code, the Tax Code, the Administrative Offenses Code, and the Environmental Code; the amendments simplify and ease rules relating to subsoil use with the goal of attracting investment.¹¹⁸

Some of the more important amendments are as follows. Feasibility studies are now no longer necessary to enter into a production contract.¹¹⁹ Fewer expert reviews of certain project documents are now required (for example, environmental expert review is no longer required).¹²⁰ These changes make it easier for new investors to penetrate the industry, although they raise important questions about environmental standards and protection.

There have also been several changes to exploration-related procedures. The rights for exploration and production will be granted through an English-style auction,¹²¹ and the legal procedure for exploration in so-called “understudied subsoil areas” has been simplified.¹²² The law has removed the need for a separate contract to create supporting underground facilities for exploration and production. These changes should encourage the exploration of new fields and Europeanize the procedure. In addition, the procedure for transferring rights has been simplified, which will likely increase transfers and make the industry more flexible.¹²³

Other amendments simplify the relationship between subsoil users and authorities by more clearly defining contracting procedures. For example, the law sets forth deadlines to eliminate violations by subsoil users, whereas previously the government considered them on a case-by-case basis.¹²⁴ The law also includes general rules for surrendering contracted areas and clear rules governing oil spills.¹²⁵ Moreover, subsoil users can now increase their contract areas as long as the extension is less than fifty percent of their current contract area, whereas no expansions were allowed in the past.¹²⁶ Solid mineral users can adjust their production levels up to twenty percent without modifying their contracts.¹²⁷

Overall, these amendments make the subsoil industry more transparent, and they reduce and simplify the legal paperwork required for exploration and production. As a result, they encourage development and attract investors in the mining and hydrocarbon industries.

118. *See id.*

119. See Daniyar Mukhtarov, *Kazakhstan Simplifies Legislation on Subsoil Use to Attract Investment*, TREND NEWS AGENCY (Dec. 24, 2014, 16:02), <http://en.trend.az/casia/kazakhstan/2347217.html>.

120. *See id.*

121. *See Auction Theory: English and Second-Price Sealed-Bid Auctions*, CORNELL DEP'T OF MATHEMATICS, <http://www.math.cornell.edu/~mec/Winter2009/Spulido/Auctions/english.html> (last visited Mar. 3, 2016).

122. *Obzor izmeneniy ot 29 dekadriia 2014 goda v Zakon Respubliki Kazakhstan O nedrab and nedroisppol'zovanii [Review of Legal Developments to the Law of the Republic of Kazakhstan 'On Subsoil and Subsoil Use' Made on 29 December 2014]*, GRATA LAW FIRM (Mar. 27, 2015), http://www.gratanet.com/ru/news/recent_publications/Legal_developments_Subsoil.

123. *Id.*

124. *See* Odilov, *supra* note 117.

125. *Id.*

126. Mukhtarov, *supra* note 119.

127. *Id.*

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XII. Mozambique

On December 2, 2014, the Council of Ministers approved, by way of Decree-Law No. 2/2014, “the special legal and contractual regime applicable to the Liquefied Natural Gas Project for the natural gas deposits in Areas 1 and 4 of the Rovuma Basin.”¹²⁸ “This regime is paramount not only for the petroleum exploration and production concessionaires for the relevant areas, but also to all entities that take part in such project, including foreign and national lenders, suppliers of goods and services and employees.”¹²⁹

XIII. Russia

In 2015, several amendments to the Russian “Subsoil Law,” as well as a subsoil-related amendment to the Strategic Companies Law, came into effect.¹³⁰ The first of these changes is designed to provide recognition and monetary compensation to any “natural person” who can demonstrate that he or she participated in the federally financed discovery of the oil or gas deposits during the time the USSR or RSFSR existed.¹³¹

The second set of amendments addresses subsoil exploration, allowing more flexibility and faster processing in the event that mistakes are made in the issuance of licenses for subsoil use.¹³² Under Article 7, for example, in order to correct a technical error made during registration or renewal of a license for subsoil use, the license holder or the government must point out the mistake preceding the claim.¹³³

The third amendment simplifies and speeds up the process of subsoil exploration of “federally significant subsoil plots.”¹³⁴ Now government consent for exploration is no longer necessary, which appears to be a major development.¹³⁵ Also, license holders may now conduct detailed exploration at any stage of the area’s development, whereas before they had to wait for the whole plot to undergo exploration.¹³⁶ The only caveat is that both simplifications apply only to Russian users and investors, and the previous procedure remains in effect for the foreign users or Russian users working with foreign investors.¹³⁷

Finally, a change concerning subsoil development has made it easier for foreign investor to increase their shareholding in a strategic Russian subsoil company if they already own

128. *Mozambique Legal News – Special Regime for the Rovuma Basin Natural Gas Liquefaction Project*, MIRANDA & ASSOC. (Nov. 2014–Jan. 2015), http://www.mirandalawfirm.com/uploadedfiles/20150412_b4a53f.pdf.

129. *Id.*

130. *See id.* Veronica Zubrilina, *New Year Brings Lots of New in the Russian Legislation*, MGIMO UNIV. (Jan. 2, 2015), <http://mgimonorthernamerica.com/new-year-brings-lots-new-russian-legislation/>.

131. *See id.*; Federal’nyi RF o Vnesenii Izmeneniya v Stat’ju 34 Zakon Rossijskoj Federacii o Nedrah [Federal Law of the Russian Federation On Amendments to Article 34 of the RF Law On Subsoil], ROSSIISKAYA GAZETA [ROS. GAZ.], July 21, 2014, No. 6438, Item 166 (Russ.).

132. Federal’nyi Zakon RF o Vnesenii Izmeneniya v Federal’nyi Zakon RF o Nedrah [Federal Law of the Russian Federation On Amendments to the Federal Law On Subsoil], ROSSIISKAYA GAZETA [ROS. GAZ.], Dec. 29, 2014, No. 6571, Item 299 (Russ.).

133. *Id.* at art. 7.

134. Levon Kocharyan & Dinara Dorizo, *Recent Changes to Russian Subsoil Legislation*, LEXOLOGY (Mar. 6, 2015), <http://www.lexology.com/library/detail.aspx?g=b4614ab2-22e6-4639-a52d-39cf85432f9c>.

135. *See id.*

136. *See id.*

137. *See id.*

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seventy-five percent of the company.¹³⁸ The amendment also clarified ownership status details for companies that are more than fifty percent Russian-owned.¹³⁹

XIV. Ukraine

The Rada—the Ukrainian parliament—introduced a bill¹⁴⁰ expected to pass by the end of 2015 to reduce the exorbitant subsoil use taxes that were established in 2014.¹⁴¹ New rates under the proposed bill were first announced by Ukraine’s Finance Minister, Natalie Jaresko, at the U.S.–Ukraine Business Forum Conference in Washington, D.C. in July 2015, and were later proposed by the Finance Ministry.¹⁴² On September 3, 2015, the National Reform Council of Ukraine announced this comprehensive reform was under review.¹⁴³

Effective starting October 1, 2015, the proposed law would reduce royalties from fifty-five percent to twenty-eight percent for wells less than 5,000 meters deep, and would also reduce royalties from twenty-eight percent to fourteen percent for wells in deeper fields.¹⁴⁴ In addition to the reduction in royalties, the new tax regime includes a further reduction of royalties for wells drilled after January 1, 2016.¹⁴⁵ After this date, royalties will be twenty percent for shallower wells and ten percent for deeper wells.¹⁴⁶ Energy investors will also face a new thirty percent surcharge tax on profits.¹⁴⁷

The new bill replaces Tax Reform Law No. 1578,¹⁴⁸ which was passed on August 1, 2014, and which substantially increased the royalties on oil and gas.¹⁴⁹ That law was

138. Federal’nyi RF o Vnesenii Izmenenij v Federal’nyj Zakon o Porjadke Osusestvlenija Inostrannyh Investicij v Hozjajstvennye Obsesstva, Imejusie Strategiceskoe Znacenie Dlja Obespecenija Oborony Strany i Bezopasnosti Gosudarstva [Federal Law of the Russian Federation On Amendments to the Federal Law On the Procedure for Foreign Investment in Business Entities of Strategic Importance for National Defense and State Security], ROSSISKAYA GAZETA [ROS. GAZ.], Nov. 4, 2014, No. 6526, Item 254 (Russ.).

139. See *Overview of Amendments to Russian Legislation*, NORTON ROSE FULBRIGHT LLP (Mar. 2015), <http://www.nortonrosefulbright.com/knowledge/publications/126432/overview-of-amendments-to-russian-legislation>.

140. See *Cabinet submits bill on cutting gas production royalty for private companies to parliament*, Ukrainian News (July 15, 2015, 11:27), <http://ukrnews.today/cabinet-submits-bill-on-cutting-gas-production-royalty-for-private-companies-to-parliament/>.

141. See *id.*

142. MINISTRY OF FINANCE OF UKRAINE, *Reduced Gas Royalty Tax to Increase Investment, Stimulate Domestic Production and Improve Ukraine’s Energy Security* (July 13, 2015), <http://www.minfin.gov.ua/en/news/view/ministr-finansiv-natalija-jaresko-ogolosila-novi-stavki-podatkov-dlja-vidobuvannja-gazu-v-ukraini?category=N%vini-ta-media>.

143. *Ukraine Tax Reform Proposals Presented*, CONCORDE CAPITAL (Sept. 4, 2015), <http://concorde.ua/en/research/daily/ukraine-tax-reform-proposals-presented-14470/>.

144. *Id.*; MINISTRY OF FINANCE OF UKRAINE, *supra* note 142.

145. MINISTRY OF FINANCE OF UKRAINE, *supra* note 142.

146. *Id.*

147. *Id.*

148. See Robert Bensch, *Ukraine’s 2015 Tax Reform Will Damage Its Energy Independence*, OILPRICE (Jan. 15, 2015, 22:19), <http://oilprice.com/Energy/Energy-General/Ukraines-2015-Tax-Reform-Will-Damage-Its-Energy-Independence.html>.

149. Press Release, Serinus Energy, Ukraine: Impact of New Ukrainian Royalty Law (Aug. 4, 2014), <http://media.serinusenergy.com/en/pr/286443/ukraine-impact-of-new-ukrainian-royalty-law?rss=true>.

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considered a product of political infighting rather than logic.¹⁵⁰ The apparent goal of the law was to raise funding for the war in eastern Ukraine.¹⁵¹ Private hydrocarbon producers vehemently criticized the law, arguing that the new regulation would cause current investors to rethink their strategy and discourage new investors.¹⁵²

Indeed, the existing independent producers have lowered their production. While some major companies such as ExxonMobil and Shell have been freezing or abandoning their production plans in Ukraine, new investment levels have slumped.¹⁵³ Some of the decline in investment happened due to hostilities and political risks in Eastern Ukraine and the recession. However, higher royalty rates are believed to have contributed greatly to the decline of the sector.¹⁵⁴

The new royalty regime will be closer to international levels that are typically lower than twenty percent, and it is expected to encourage foreign investment and increase industry competition. Ukraine is thus hoping to increase its energy security and move on the road to self-sufficiency.

150. See James Stafford, *Who Needs Russia? Ukraine Will Destroy Itself With New Gas Tax*, HUFFINGTON POST (Aug. 11, 2014, 12:56 PM), http://www.huffingtonpost.com/james-stafford/who-needs-russia-ukraine_b_5668855.html (updated Oct. 11, 2014).

151. See *id.*

152. See *id.*

153. See, e.g., Roman Olearchyk, *Shell to Withdraw from Shale Gas Exploration in Eastern Ukraine*, FINANCIAL TIMES (June 11, 2015, 6:08 PM), <http://www.ft.com/cms/s/0/0c66011e-104a-11e5-bd70-00144feabdc0.html>.

154. See, e.g., Neil Buckley, *Ukraine Gas Hopes Pinned on Lower Royalty Rates*, FINANCIAL TIMES (Sept. 2, 2015, 5:36 PM), <http://www.ft.com/intl/cms/s/0/31ce36aa-515a-11e5-8642-453585f2cfd.html#axzz3t1bG3OwR>.

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