



Regulation of the Large Investments Incentives Regime (RIGI)

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Introduction

On August 23, 2024, Decree 749/2024 (the “Decree”) was published in the Official Gazette. The Decree regulates Title VII of the “Law of Bases and Starting Points for the Liberty of Argentines” No. 27,742 (the “Ley Bases”), through which the Large Investments Incentives Regime (“RIGI”, for its acronym in Spanish) was created.

The Decree, which marks the beginning of the path for the RIGI’s practical implementation, contains detailed provisions related to its application, creates various registries, defines the authority responsible for applying the regime, and delegates to other agencies the responsibility to implement many complementary measures that are still necessary.

We explain below some of the provisions that we consider relevant in general terms, without prejudice to the in-depth analysis that can be carried out according to the area of interest of each potential investor.

Sectors to Which the RIGI Applies

Forestry Industry	Activities whose main input is wood and include the planting of forests.
Tourism	Activities aimed at providing lodging and accommodation services.
Infrastructure	Construction of structures, networks, and systems necessary for logistics and transportation by any means, ports, airports, entertainment projects, and the operation of public services and services declared of public interest, such as healthcare, education, telecommunications, and defense and security.
Mining	Prospecting, exploration, and exploitation of mineral substances included in Title I of Law 1,919, as well as the processes included in section 5, paragraph b) of Law 24,196.
Technology	Production of innovative technological goods and services in biotechnology, nanotechnology, mobility based on new energy transition technologies, aerospace and satellite industry, nuclear industry, software industry, robotics, artificial intelligence, and defense and arms industry.
Steel Industry	Industrialization and processing of iron ore, steel, and its alloys.
Energy	Generation, storage, transportation, and distribution of renewable and non-renewable energy, production of low-carbon energies, bioenergy, and carbon capture, transportation, and storage.
Oil and Gas	Including the following activities: - Treatment plants, natural gas liquids separation, oil pipelines, gas pipelines, multipurpose pipelines, and storage facilities. - Transportation and storage of liquid and gaseous hydrocarbons. - Petrochemicals, including fertilizers and refining. - Production, capture, treatment, processing, fractionation, liquefaction of natural gas and transportation of natural gas for the export of liquefied natural gas. - Offshore exploration and exploitation of liquid and gaseous hydrocarbons.

Subjects to Which the RIGI Applies

They may be companies, branches, temporary unions, and other associative contracts, as long as they meet the requirements established in the “Ley Bases”, for which existing vehicles at the time of the law’s enactment may be reorganized. The Decree establishes the applicable requirements for dedicated branches, clarifying that the allocation of assets to the dedicated branch does not necessarily imply a change of ownership.

Projects to Which the RIGI Applies

Projects must be carried out by a Special Purpose Vehicle (“SPV”), in accordance with the “Ley Bases” and the Decree, whose assets and activities constitute an inseparable economic unit, and which must demonstrate the following:

- The project's components are interconnected and/or linked in such a way that their exclusion from the project would prevent the development of the contemplated activities.
- The project's activities are reasonably related and necessary for the development of the sector or subsector in which the project is framed.
- The project's components are located within a maximum radius of 200 kilometers, except for: (a) related transportation infrastructure, which may exceed this radius; (b) cases where, exceptionally, due to the lack of adequate infrastructure, the Application Authority may extend such radius, or (c) Long-Term Strategic Export Projects.
- The SPV owns all the project's assets and uses them exclusively for its development, except when it is not possible to maintain such ownership or exclusive use due to current regulations.

Minimum Investment Amounts

Projects must include a minimum investment commitment in computable assets of US\$ 200,000,000, except for the following subsectors, to which a higher threshold was assigned:

Offshore Hydrocarbon Exploration and Exploitation	US\$ 600.000.000
Natural Gas Exploitation and Production for Liquefied Natural Gas Export	US\$ 600.000.000
Transportation and Storage of Liquid and Gaseous Hydrocarbons	US\$ 300.000.000

In all cases, 40% must be disbursed during the first 2 years.

Exceptionally, depending on the Project's type and characteristics, the Executive Power is authorized to reduce the minimum investment percentage for the first 2 years, which cannot be less than 20% of the total investment.

Long-Term Strategic Export

To qualify as such, Projects must meet the following requirements:

- Demonstrate that the Project can position Argentina as a new long-term supplier in a global market where the country does not yet have a significant presence, for which the Decree sets the qualification guidelines.
- Commit to a minimum investment in computable assets of: (i) US\$ 2,000,000,000 in total; (ii) US\$ 1,000,000,000 for the first two stages (to be defined by the interested parties when submitting the Project); and (iii) US\$ 400,000,000 for the first two years from the date of adherence to the RIGI.
- If multiple SPVs participate, they must commit to assume joint and several liability for all obligations arising from the RIGI applicable to each SPV.

Project Evaluation

The Decree details the formal and essential requirements for requesting the admission of a Project under the RIGI. It also highlights the principles that the Application Authority must consider when evaluating whether or not the Project has the potential to distort the market, which are as follows:

- It is presumed that a Project aimed at the production and/or export of commodities does not distort the local market.
- It is presumed that a Project that plans to export more than 90% of its production does not distort the local market (notwithstanding the fact that a lower export percentage will not lead to the presumption that the Project distorts the local market).
- It is presumed that a Project whose feasibility declaration foresees the use of the exchange incentives contemplated in the “Ley Bases” does not present elements likely to distort the local exchange market.
- It is presumed that the Project presents elements likely to distort the exchange market when its feasibility declaration does not foresee the use of the exchange incentives contemplated in the “Ley Bases” and, in addition, its financing source is predominantly local according to the Central Bank of the Argentine Republic.

Expansion of Pre-existing Projects

Provided that the RIGI requirements are met, and a plan is submitted that ensures that the foreseen incentives will be applied only to an investment that will increase a Project’s productive capacity, the resulting expansion will qualify under the RIGI.

In that case, the Decree provides that separate accounting must be kept, or a branch dedicated exclusively to the expansion must be created. The admission of an expansion project under the RIGI will not allow the application of the incentives to the pre-existing project. Additional investments will enjoy the same RIGI incentives, regardless of the investment amount.

Guarantees

The Decree establishes the cases in which the guarantees referred to in section 182 of the “Ley Bases” must be implemented.

Customs Guarantee	Enforceable in case the SPV, or a supplier admitted to the RIGI, incurs in any of the violations of the RIGI detailed in the “Ley Bases” that imply its termination or non-compliance with the conditions for the enjoyment of the customs incentive related to the exemption from import duties, statistical fee, and destination verification for imports of new capital goods, spare parts, components, and consumer goods.
Tax Guarantee	Enforceable when there is a final and definitive condemnatory resolution that imposes on the investor, for not complying with its obligations under the RIGI, the obligation to reimburse the tax benefits received under the regime.

Tax Incentives

The main benefits for adhered SPVs will be:

- A special income tax rate of 25% of the net income generated and a 7% rate for dividends and profits, which will be reduced to 3.5% when distributed after seven years from the end of the fiscal period in which the SPV adhered to the RIGI, regardless of the period in which the profit being distributed was generated.
- An optional special regime for accelerated depreciation of capital investments (two equal and consecutive annual installments in the case of amortizable movable assets acquired, manufactured or imported and the term derived from reducing the useful life of the asset by 60% in the case of mines, quarries, forests, and similar assets or infrastructure works), subject to certain conditions (e.g., the assets remain in the SPV's equity until the end of the activity cycle that led to their acquisition or the end of their useful life, whichever is shorter).
- Use of losses in subsequent years, without time limit, adjustable by the variation of the Internal Wholesale Price Index (IPIM, by its acronym in Spanish), operated between the month of the fiscal year-end in which they originated and the month of the fiscal year-end being settled. They may be transferred to third parties after five years for application in a fiscal period that has ended and whose tax return has not expired or in the fiscal period in which they were received.
- The possibility of canceling the value-added tax (VAT) invoiced on purchases or derived from imports, including perceptions, up to the limit of the total net amount of the qualifying transactions through the issuance -without requiring prior authorization from the Federal Administration of Public Revenue (AFIP, by its acronym in Spanish)- of tax credit certificates, which will be freely available to the supplier, subject to AFIP's regulations.
- Special rules in income tax for payments abroad consisting of: (i) exemption for maritime charters or leases, international transportation services used in the export of goods, and services included in engineering, procurement, and construction management contracts; (ii) a maximum rate of 10.5% in other cases; and (iii) inapplicability of grossing-up rules.
- The possibility of computing 100% of the amounts paid and/or received as tax on debits and credits in bank accounts as income tax credit.
- Deductions of interest and exchange differences arising from the financing of the project during the first five years without applying the limitations provided for in the income tax law.
- Definition of the concept of affiliate for SPV operations with related entities, special treatment of Temporary Union of Enterprises (UT, for its acronym in Spanish, a type of joint venture agreement contemplated in the Civil and Commercial Code) and other associative contracts, as well as dedicated or special branches and the requirements that must be met to adhere to the RIGI.
- More flexible rules in connection to business continuation, pre-approval of partial transfers and publicity and registration requirements applicable to tax-free reorganizations to facilitate SPV configuration and intragroup asset transfers for project development.

Customs Incentives

Customs benefits are also regulated, including:

- Imports of new capital goods, spare parts, parts and components related to the approved investment plan identified as Capital Goods (BK) and Computer and Telecommunications Goods (BIT) in Annex I of Decree No. 557/23, and inputs and intermediate goods intended to be transformed into other goods identified in such Annex I as BK or BIT, consumer goods, and temporary imports made by SPVs will be exempt from import duties, statistical fees, and destination verification, and from the perception, collection, advance, or withholding of any national and/or local tax. The payment of imports through the Free and Single Foreign Exchange Market (MULC, by its acronym in Spanish) will not be subject to the so-called “PAIS Tax”.
- The periods during which goods imported under exemption are subject to destination verification are established, as well as in which cases they shall be disregarded.
- Exports for consumption of goods obtained under the project, carried out by the SPV, will be exempt from export duties after three years have passed since the SPV adhered to the RIGI, in general, and two years for long-term strategic export projects. SPVs may freely import and export goods for the construction, operation, and development of the project, without any prohibition or restriction, quota, official price, or other measures affecting the value of the goods or the domestic market supply priorities.

Exchange Incentives

The exchange incentives provided by the RIGI include the following:

- Collections from exports of products and/or services provided by the project will be exempt from the obligation to be entered and/or negotiated and settled in the foreign exchange market, being freely available, in incremental percentages as from the project’s start date (20%, 40%, and 100% as from the second, third, and fourth anniversary, respectively).
- SPVs will not be required to enter and/or settle in the foreign exchange market the foreign currency and/or any consideration corresponding to items or concepts related to the project, other than exports, which will be freely available.
- Foreign currency from local or external financing will not be subject to restrictions regarding its free availability abroad or in the country.
- SPVs will not be subject to limitations on the holding of external assets, liquid or not, although the existence of such assets may be a condition for accessing the foreign exchange market.
- SPVs shall not be subject to foreign exchange regulations that establish, or may establish in the future, restrictions or prior authorizations for access to the foreign exchange market for the payment of:
 - i. capital of financial debts abroad and/or repatriation of direct investments, provided that such access does not exceed the amount of foreign currency entered and settled in the foreign exchange market under the respective concepts; and
 - ii. profits, dividends, or interest, provided that they were generated by capital contributions or other direct investments or by financial debts entered and settled in the foreign exchange market (or in proportion to the amounts entered), without amount restriction; in particular, and additionally, the “Ley Bases” provides that the national government guarantees *“the right to pay profits, dividends, and interest through access to the foreign exchange market*

without any restrictions and without the need for prior approval from the Central Bank of the Argentine Republic, provided that the investment has been entered through the single and free foreign exchange market.”

- SPVs’ investments made through contributions of foreign direct investment in capital goods in kind or the import of capital goods financed by the supplier or another foreign creditor with direct disbursement to the supplier abroad will be considered as entered and settled in the foreign exchange market.
- SPVs’ non-resident creditors, including related parties, who have received pesos in the country as a result of a collection against the SPV caused by the SPV’s default, as well as the guarantors of the SPV’s obligations, including related parties, whose guarantee is expressly established in the debt agreements for the payment of such guarantee, will have access to the foreign exchange market for the repayment of capital and interest under the same terms and conditions that would have been applicable to the SPV.
- Public agencies and private entities involved in the procedure necessary for SPVs to access the foreign exchange market will ensure that such process does not affect the project’s normal development and execution.

Tax Stability

The RIGI provides for both foreign exchange and tax stability for SPVs. In respect of the latter, the Decree clarified that the taxes covered by the 30-year stability are the taxes, fees, and contributions that have SPVs as taxpayers, as well as the duties, tariffs, and other levies on imports and exports.

Accumulation with Other Promotional Regimes

The Decree clarifies that non-cumulative promotional benefits are those that are of the same nature and apply to the same investment of a SPV, and defines the scope of the limitation for each kind of incentives:

- ***Tax or Customs Incentives:*** two benefits shall be deemed to be of the same nature when they exempt, totally or partially or reduce the rate applicable to the same taxable event, allow the computation of the same tax as payment on account of another, or refer to the same aspect of the determination of the taxable base of a tax.
- ***Exchange Incentives:*** the benefits provided for in the RIGI may not be accumulated with the incentives of other existing or future promotional regimes, including, without limitation, the following: (i) Decree No. 929/13; (ii) Decree No. 234/21; (iii) Decree No. 892/20; (iv) Decree No. 277/22; (v) Decree No. 679/22; and (vi) Decree No. 28/23, or those regulations that may replace them in the future.

Application Authority

The Decree assigns this role to the Ministry of Economy, which must form a Project Evaluation Committee.

Registries and Delegations

The Registries of Unique Project Vehicles (SPV), Long-Term Strategic Export Projects and Suppliers of the Incentive Framework for Large Investments are created, whose operating rules will be established by the Application Authority.

The Decree also entrusts the competent agencies according to the subject matter (AFIP, BCRA) to issue the necessary complementary regulations for the implementation of the RIGI.

Jurisdiction and Arbitration

According to the “Ley Bases” SPVs shall be able to submit any disputes with the Argentine government related to or derived from RIGI to arbitration under ICC, PCA or ICSID rules, and also allows for the establishment of specific dispute resolution mechanisms in the resolutions whereby RIGI projects are approved. In this respect the Decree contains the following provisions:

Arbitration Agreement

In the application for adhesion to the RIGI, the SPV must express in writing its agreement to resolve disputes first through consultations and friendly negotiations and, if necessary, through arbitration.

Once the SPV’s adherence to the RIGI has been accepted, the arbitration agreement between the National Government and the SPV will be formalized, which will be effective as from the date of the administrative act approving the adhesion application.

Exceptionally, the Application Authority may propose to the National Executive Power, with the SPV’s express consent, specific dispute resolution mechanisms for the RIGI project in question.

The Decree clarifies that an investment will not be considered protected under the mutual investment promotion and protection treaties until the application for adhesion to the RIGI and the investment plan have been approved, and to the extent and scope established in the applicable mutual investment promotion and protection treaty.

RIGI Panel

The “RIGI Panel” is created, with jurisdiction to solve disputes arising from or related to the RIGI, between the National Government and a SPV. The RIGI Panel will consist of three professionals in the fields of engineering, economics, and at least one legal professional, who must be included in the list of qualified professionals prepared by the Application Authority through a public examination.

The parties will appoint these professionals by mutual agreement within 15 business days from the notification of the request for dispute resolution by the RIGI Panel. The Panel may then summon the parties to hearings and order the production of necessary evidence, in order to rule on the dispute within 60 calendar days from the closure of the process, which may be extended once for an equal period.

To read our legal update entitled *Congress Finally Passed the Law Known as “Ley Bases”*, click [here](#).

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