CLIFFORD CHANCE

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RenovAr, Argentina's Renewable Energy Program

Upcoming auction of 1 GW under completely revamped renewable energy framework.

Under Law No. 27,191 and Decrees No. 531/2016 and 882/2016, Argentina overhauled its renewable energy framework with the launch of the RenovAr program, with a view to increasing progressively the renewables share of its energy matrix from the current 1.8% to 8% by December 2017 and ultimately 20% by 2025. Recently, the Argentine government published the final bid documents for the initial tender to award long-term power purchase agreements for at least an aggregate 1GW of wind, solar, biomass, biogas and mini-hydro projects. Bids are due on September 5, 2016 and awards are expected to be announced on October 12, 2016.

Below are the key aspects of the legal and regulatory frameworks applicable to the renewable energy projects to be auctioned pursuant to the initial tender.

Clifford Chance was officially involved in the drafting of the contractual framework and our team would be happy to discuss any questions you may have on it.

Contractual Framework

- Bid terms;
- Template power purchase agreement (the "*PPA"*);
- FODER Trust agreement (*see FODER Trust below*);
- Template FODER Trust joinder agreement (the "*Trust Joinder*"); and
- World Bank guarantee, if selected (*see World Bank Guarantee below*).

PPA Term

- Up to 20 years.

PPA Offtaker

- Wholesale electric market administrator CAMMESA on behalf of distribution companies and large users. It is expected that as the Argentine energy market further regularizes, CAMMESA will assign its position as PPA offtaker to distribution companies and large users. *See Assignment below*.

FODER Trust

- Creation of special master trust (the "*FODER Trust*") funded by the Argentine government annually, through direct contributions, fees charged to final users and, potentially, third-party financing. In 2016, funding to FODER by the Argentine government will amount to approximately US$ 800 million.
- Each project company will join the FODER Trust as a beneficiary by entering into a project-specific Trust Joinder with the FODER Trust trustee and the Ministry of Economy.
- The FODER Trust will have a single segregated 12-month reserve account that will backstop all monthly invoice payments by the PPA offtaker to all project companies. *See Monthly Invoice Payments below*.
- The FODER Trust will also guarantee the payment of the project sale or purchase price due to any project company in connection with the exercise of a put or call option. *See Put and Call Options below*.
  - The guarantee of the sale price upon exercising a put option will be supported by a commitment of the Ministry of Energy, which will be backstopped by treasury bills issued by the Ministry of Economy.
  - The guarantee of the purchase price upon exercising a call option will be supported by a commitment of the Ministry of Energy but will not be backstopped by treasury bills issued by the Ministry of Economy.
- The FODER Trust may also provide financing to the projects.

World Bank Guarantee

- Project companies may opt to purchase a World Bank guarantee in an amount up to US$500,000 per MW, which will further backstop the payment by the FODER Trust of the project sale price upon the exercise of the put option.
  - The aggregate size of the World Bank guarantee for all projects will not exceed US$250 million in 2016/2017 and US$500 million thereafter (or US$500,000 *times* 1GW to be auctioned).
  - The World Bank will charge an aggregate up-front fee of 90bps on the guaranteed amount and a bi-annual maintenance fee ranging from 50bps to 100bps annually based on the overall term of the guarantee.

Tax Benefits

- Projects may be eligible for exemptions on import tariffs, accelerated tax depreciation, anticipated VAT refunds, exemptions on minimum deemed income tax, exemptions on dividend taxes, extension of income tax loss credit carryovers, financial expenses, deductions and tax credits on locally supplied capex. The availability of these benefits decreases overtime. In 2016, aggregate tax benefits may not exceed US$1.7 billion.

Strategic Financial Sponsor

- One or more shareholders of the project company must have a net worth of at least US$250,000 per MW offered. The Strategic Financial Sponsor must hold at least 25% of the equity until COD. The PPA offtaker can waive this requirement.

Dispatch Rules

- The legal framework establishes that power from intermittent renewable resources will have top dispatch priority (equivalent to run-of-the-river hydropower).

Price per MW/h

- Dollar amount to be based on individual bids and adjusted annually by an inflation factor and an early completion incentive factor.

Performance Bond

- Bank bond, bonding insurance policy or SBLC in an amount equal to US$250,000 per MW of contracted capacity. Failure to achieve financial close, commence construction or receive the main equipment on site will, in each case, trigger an obligation to increase the amount of the performance bond.
- The performance bond may be called to collect unpaid amounts on the earlier of COD, 180 days after the scheduled COD, and the termination date. The PPA offtaker can also set-off unpaid amounts from monthly energy payments after COD.

Construction Milestones

- Project company must achieve financial close, commence construction, receive the main equipment on site and achieve commercial operation, in each case, on or before the respective deadlines set forth in the bid.

Financial Close

- In order to achieve financial close on a recourse financing basis, 100% of the debt/equity financing must be committed.
- In order to achieve financial close on a non-recourse financing basis, 50% of the debt/equity financing must be committed.

Supply obligation

- Annual power supply must be at least equal to the P90 level set forth in the bid. Expansion of generation capacity is allowed to make up for power deficiency subject to certain requirements. Energy generated by the additional capacity that is necessary to achieve P90 or to compensate for a deficiency in the immediately prior year will be compensated at the applicable annual price. Any excess energy generated by the additional capacity will be compensated at the spot price or such other price agreed with third parties.

Monthly Invoice Payments

- Power supply will be payable by the PPA offtaker on a monthly basis.
- The FODER Trust will have a segregated 12-month reserve account that will backstop the PPA offtaker's monthly invoice payments. The reserve account will be a single account for all projects and will not be subject to attachment. It will be initially funded by the Argentine government and its balance will be monitored from time to time. The reserve account will be replenished through direct contributions by the Argentine government and/or increases in the fees charged to final users, in each case, if its balance drops below 65% of the required level. In 2016, the reserve account will hold approximately US$ 400 million.

Force Majeure

- Releases the affected party from its performance obligations.
- Availability of the renewable resource, weather conditions (except earthquakes, hurricanes, tornadoes, forest fires and floods), stability of the grid and labor issues affecting the project company do not constitute force majeure events.

PPA Renegotiation

- Any party may request the renegotiation of the PPA due to an extraordinary, unforeseeable and fundamental change in economic, legal or other conditions that is not attributable to the parties and makes compliance with the PPA excessively onerous for such party. Future decreases in energy prices will not constitute a reason to initiate such renegotiation.

Liquidated Damages

- May be imposed for failure to achieve COD when required or due to a supply deficiency for causes within the project company's control.

PPA Termination Events

- By the PPA offtaker, due to the project company's:
  - delay in achieving COD beyond 180 days after the required deadline;
  - failure to renew or increase the amount of the performance bond as required;
  - breach of strategic financial partner's share retention obligation;
  - material and repeated breaches; or
  - other events.
- By the project company, due to the PPA offtaker's:
  - failure to pay 4 consecutive monthly invoices or 6 non-consecutive monthly invoices over any 12-month period (to the extent not paid by the FODER); or
  - failure to comply with an arbitral award.
- By any party, due to a force majeure event exceeding 180 consecutive days

Put and Call Options

- To incentivize the parties not to terminate a PPA, the contractual framework sets forth put or call options to sell or purchase the relevant project that may be exercised upon the occurrence of a PPA termination event or any of the other events described below, in each case, so long as the PPA is not actually terminated. Compensation in the form of a project sale or purchase price will be payable by the FODER Trust upon the exercise by the project company of a put option or the exercise by FODER of a call option as described below.

Put Option

- The project company may exercise its put option due to:
  - any event entitling it to terminate the PPA;
  - inconvertibility or non-transferability of currency; or
  - amendment or termination of the FODER Trust affecting its guarantees.
- The put option may be exercised at a sale price in U.S. dollars equal to (a) the lower of (i) the value of the investment made by the project company as of COD and (ii) a pre-set value per MW for each technology multiplied by the contracted capacity (excluding any additional capacity installed due to supply deficiency), in each case, amortized at a rate of 5% per annum after COD, plus (b) any amounts due to the project company under unpaid invoices.
- The obligation of the FODER Trust to pay the project sale price will be supported by a commitment of the Ministry of Energy to contribute the necessary amounts to the FODER Trust. Such obligation will be backstopped by treasury bills issued by the Ministry of Economy in an amount up to the sale price of all projects and in any event not to exceed US$3 billion.
- The payment of the sale price may be further supported by a World Bank guarantee. *See "World Bank Guarantee" above*.

Call Option

- The PPA offtaker may exercise its call option due to any event entitling it to terminate the PPA, which is not timely cured by the project company or its lenders.
- The call option may be exercised at a purchase price in U.S. dollars equal to (a) the lower of (i) 75% of the value of the investment made by the project company as of COD amortized at a rate of 5% per annum and (ii) a pre-set value per MW for each technology multiplied by the contracted capacity (excluding any additional capacity installed due to supply deficiency), in each case, amortized at a rate of 5% per annum after COD, plus (b) any amounts due to the project company under unpaid invoices.
- The obligation of the FODER Trust to pay the project purchase price will be supported by a commitment of the Ministry of Energy to contribute the necessary amounts to the FODER Trust. However, such obligation will not be backstopped by treasury bills issued by the Ministry of Economy.

Assignment

- CAMMESA may assign its position as PPA offtaker to the extent required by applicable law in the future and so long as such transfer does not affect the rights of the project company under the FODER Trust guarantees, the Ministry of Economy backstop and, if applicable, the World Bank guarantee.
- Assignment by the project company will require the PPA offtaker's consent, except in connection with the exercise of the lenders' step-in rights. *See Lender Consent and Step-in Rights* below.

Lender Consent and Step-in Rights

- Assignment, termination, amendment and renegotiation of the PPA by the project company, among others, are subject to lenders' prior consent.
- Lenders are afforded a 180-day cure period in connection with any termination event attributable to the project company.

Governing Law

- Argentina

Disputes Resolution

Disputes under the PPA and the FODER Trust Joinder will be subject to UNCITRAL arbitration in a seat to be determined by the arbitral tribunal based on the nationality of the sponsors.

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