

Morgan Lewis

SPARK

From our team to yours

First and foremost, we hope that you and your family are safe and healthy as you receive this update. We are certainly living in unprecedented times—which create greater uncertainty, instability, and anxiety for all of us.

This is not the first time for the energy and mining sectors or for Russia to be facing a crisis, but it may be the first time that it effects each of us so personally. But given Russia’s resilience and our industries’ grit and innovative spirit, we’re confident that together we’ll be seeing a turnaround in the months to come. Please know that through all of this, our team remains focused, connected, and ready to support you and your colleagues in any way that we can.

This is our first edition of *Morgan Lewis Spark*, a quarterly update highlighting new and amended Russian legislation of importance to companies operating in the Russian energy and mining sectors.

During the first quarter of 2020, there have been a number of important legislative changes, including the new Investment Code and multiple legislative acts addressing the coronavirus (COVID-19). There is also a lot of legislation in the pipeline, including changes the Gas Export Law and changes to Associated Mineral Licensing.

The next edition of *Morgan Lewis Spark* will be published following the end of the second quarter. We will continue to watch for legislative developments, with particular interest as to the COVID-19 business support and the implementation of the OPEC+ agreements.

If you have questions regarding any of the updates in *Morgan Lewis Spark*, please reach out to us. We’ll be delighted to discuss any of this with you.

Be well.

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IN THE NEWS

[Find helpful legal analysis on Covid-19 measures around the globe](#)

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**If you are interested in becoming a member of AIPN, let us know and we can help you.*

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LEGISLATIVE OVERVIEW

FIRST QUARTER 2020

We have set out below brief summaries of some of the key legal developments and amendments that occurred in the first quarter of 2020 which may be of interest to energy and mining companies doing business in Russia.

Feel free to contact our team in Moscow if you have any questions or if you would like to find out more.

OIL & GAS

Geological Study in Internal Waters and Territorial Sea

Amendments to the Subsoil Law came into effect in February 2020 allowing companies to apply for geological study licenses for blocks situated within Russia's internal waters and territorial sea.

Companies (state-owned or private) are now entitled to apply for a geological study license, which is to be granted without a tender or auction, upon a decision by the Russian government, subject to approval by the Ministry of Defense and the Federal Security Service confirming the absence of threat to state security. The government is entitled to introduce additional requirements for applicants having any foreign participation. A list of eligible internal waters/territorial sea blocks is to be maintained by the government.

A geological study license will entitle its holder to conduct geological study, and then to apply for an advanced exploration and production license in the event of a discovery. If a discovery is made, the government has the right (but not the obligation) to issue a production license (again, without additional auction or tender). As is the case with discoveries on all deposits of federal significance, per Subsoil Law Art. 2.1, the government has wide discretion and can deny issuing an advanced exploration and production license if the subsoil user that made the discovery has "foreign participation". The subsoil user in such case is entitled to compensation of its costs incurred for obtaining the relevant geological study license and operations thereunder—plus some premium amount, which varies depending on the location of the subsoil block.

[Federal Law No. 355-FZ dated 4 November 2019:](#)
"On Amendments to the Subsoil Law of the Russian Federation Regarding Granting the Right to Use Subsoil Plots of Federal Significance Located in Internal Seas and the Territorial Sea of the Russian Federation for Geological Exploration aimed at Oil, Gas and Gas Condensate Fields Search and Assessment"

Exemption for Oil Traders from Export Customs Duty

Amendments to the Customs Duty Law became effective 18 February 2020, and will apply retroactively from 1 May 2019.

Under the current Russian tax mechanisms aimed at the gradual reduction of the export customs duties and increasing the Mineral Extraction Tax (MET) in the oil sector, crude is subject to tax at the time of extraction, and not at the time of export. Therefore, only subsoil users subject to Excess Profit Tax (EPT) were exempted from paying export customs duty. In practice, however, in many vertically integrated companies it is not the subsoil user, but another group company (e.g. a parent company or affiliate) that carries out the export of crude oil.

According to the amendments, export customs duty exemptions will now apply not only to subsoil users, but also to the oil traders purchasing the crude oil (including oil and gas condensate mixture) from subsoil users and reselling/exporting it to foreign buyers. The exemption will apply provided that:

- (1) the exported crude oil was extracted from an oilfield subject to EPT; and
- (2) the oil trader submitted a goods declaration and an electronic confirmation stating that the relevant oilfield was subject to EPT. (The form of the electronic confirmation is still to be approved by the Federal Customs Service.)

[Federal Law No. 24-FZ dated 18 February 2020:](#)
"On Amendments to Article 35 of the Law of the Russian Federation "On the Customs Tariff"

Extension of the List of LNG Exporters

Amendments to the Gas Export Law were approved at first reading by the State Duma on 31 March 2020.

Initially, the Gas Export Law reserved the exclusive right to export LNG only to Gazprom and its 100% subsidiaries. In late 2013 this right was extended also to:

- (1) companies having state ownership (either direct or indirect) exceeding 50% and that own licenses for the development of offshore subsoil fields (including under PSA regime), and their 50%+ controlled subsidiaries (in other words, as a practical matter, companies/projects majority owned by Gazprom or Rosneft), producing LNG, and
- (2) subsoil users of strategic fields (so-called fields of federal significance, which includes all offshore fields as well as onshore fields having confirmed gas reserves over 50 bcm and/or confirmed oil reserves over 70 million tons), if the underlying subsoil

licenses for such fields were issued before 1 January 2013 and contemplate the construction of an LNG plant or delivery of produced gas for liquefaction to an LNG plant.

The pending new 2020 amendments aim to increase the overall production of LNG in Russia (especially in the Arctic region) for export, by expanding the right to export LNG in the following way:

- for subsoil users mentioned in category (2) above (as a practical matter to date, Novatek and its controlled project companies) the export right will be extended to LNG liquefied from gas produced at strategic fields licensed after 1 January 2013; and
- subsoil users with licenses for strategic fields issued after 1 January 2013 and providing for liquefaction of produced gas will receive the right to export LNG provided that such subsoil users are controlled (directly or indirectly) by persons/entities that control (again, directly or indirectly) subsoil users authorized in category (2) above. (In other words, companies controlled by those already eligible to export LNG under the 2013 amendments will be entitled to export their LNG produced under strategic field licenses issued after 1 January 2013.)

Thus, assuming the new draft amendments are enacted as is, the newer Novatek-controlled joint ventures under licenses issued after 2013 will be eligible to export LNG. But apparently Gazprom or Rosneft joint ventures, or subsidiaries (except for Gazprom's wholly owned subs), except those under offshore field licenses, will still have to rely on other arrangements (e.g., sale contracts to/through Gazprom Export etc., or the exception for pre-2006 PSAs, etc.) to bring their LNG to export markets.

[*Draft Law No. 895044-7: "On Amendments to Article 3 of the Federal Law "On Gas Export"*](#)

DEVELOPMENT OF THE ARCTIC

Arctic State Policy

On 5 March 2020 President Vladimir Putin signed the "Decree on the Basics of the State Policy of the Russian Federation in the Arctic for the Period Until 2035". This policy outlines Russia's key priorities in the Arctic region, as well as pinpointing goals and measures to expedite economic development to help "settle the Arctic". These economic measures, among others, include boosting private investment (while preserving state control over

project implementation) in key energy projects in the energy-rich Arctic region and using the Northern Sea Route to export oil and gas to overseas markets as it becomes increasingly free of ice.

This global plan goes hand-in-hand with other measures within the package of laws and regulations elaborated to boost development of natural resources in the region, discussed below.

Tax Benefits for Arctic Oil and Gas Projects

Amendments to the Tax Code have been developed to provide tax incentives to companies engaged in geological study, exploration, and production of hydrocarbons in certain territories of the Russia's Arctic zone. Reportedly, new tax benefits will accelerate the implementation of nine major drilling projects with a total worth of 15 trillion roubles.

Relevant amendments to Part 2 of the Tax Code were adopted and published on 18 March 2020, and become effective within one month after their official publication.

Regional tax benefits

The amendments introduce reduced MET rates for companies operating completely or partially north of the 70th parallel and located completely within Krasnoyarsk Krai, the Republic of Sakha (Yakutia), and the Chukotka Autonomous Area. Such companies will be eligible to use reduced tax rates for regional component of MET provided they maintain separate accounting of Arctic and non-Arctic operations.

New LNG and chemical production projects will be able to receive regional benefits for corporate income tax if to the extent their production capacities were or are launched after 1 January 2017. The amendments provide for the right of the constituent entities of Russia to establish for such projects reduced tax rates for the portion of corporate income tax payable to the regional budget.

Reduced MET rate

For petrochemical and LNG projects, a zero MET rate is provided for LNG producers over the course of 12 years from the moment the first gas delivery. MET preferences will apply only to new projects whose production capacities are launched after 1 January 2022, and the relevant deposits are located north of the Northern Arctic Circle within the Arkhangelsk Region, the Komi Republic, the Yamalo-Nenets Autonomous Region, Sakha (Yakutia) or Chukotka. The zero rate will apply until 250 billion bcm of gas is produced or until 12 years have passed since the first commercial sale of gas.

MET deduction

The amendments introduce the possibility to reduce, by the sum of relevant tax deduction, the total amount of MET, charged in connection with the extraction of dehydrated, desalted, and stabilized oil from oilfields located completely or partially north of the 67th parallel and south of the 69th parallel completely within the borders of Krasnoyarsk Krai. MET deduction will be available for companies that obtained their development licenses before 1 January 2019 or that received the license from such companies, in accordance with the Subsoil Law, after 1 January 2019. This deduction will be available to companies having with state participation (including indirect) exceeding 50%. The deduction will apply to the tax periods within the interval from 1 January 2020 to 31 December 2029.

Federal Law No. 65-FZ dated 18 March 2020: "On Amendments to Part Two of the Tax Code of the Russian Federation"

Guidelines on Selection of Investment Projects in the Arctic Zone

On 18 March 2020 the government adopted the Guidelines on Selection of Investment Projects Planned for Implementation in the Arctic. The guidelines establish selection mechanisms for large-scale investment projects in the Arctic region that can benefit from state support.

The guidelines outline criteria for selection of investment projects, requirements for investors, rules regulating the selection process, and grounds for exclusion of an investment project from the Arctic investment projects list.

The following criteria are to be taken into account for the selection of such projects for implementation:

- (a) the project focuses on socio-economic development of the Arctic zone and capability to create new jobs;
- (b) the overall amount of investment in a project should not be less than 300 million roubles;
- (c) implementation of the project requires the creation or modernization of surrounding infrastructure facilities;
- (d) the total amount of the state subsidy offered for a proposed investment project should not exceed 20% of the declared private investment, and the share of the investor's own funds should be at least 15% of the total cost of the investment project;
- (e) manufacturing facilities of the investment project should be located in the Arctic zone.

Investors will also be required to have previous experience in implementing investment projects, register their companies in the Russian Arctic zone and have no outstanding debts to the Russian Federation or state budgets at any level.

Resolution of the Government of the Russian Federation No. 297 dated 18 March 2020: "On Approval of the Guidelines on Selection of Investment Projects Planned to Be Implemented on the Territory of the Arctic zone of the Russian Federation"

Establishment of the State Corporation on Arctic Shelf Development

The Ministry of the Far East Development has prepared a draft law on the establishment of a state corporation on Arctic shelf development. Currently, only two state-owned companies, Gazprom and Rosneft, are permitted to independently develop Arctic shelf oil and gas deposits. The draft law aims to expand access of private investors to the Arctic shelf, while the state control over such investors and coordination of the projects would be carried out by a newly established state company, Rosshelf.

Rosshelf would represent the interests of the Russian Federation in new hydrocarbon projects on the Arctic shelf and in the Far East. In addition to the corporate and regulatory framework for Rosshelf, the draft law introduces a new system for granting subsoil use rights on the continental shelf in the Arctic and in the Far East, and a new system of one-time payments for subsoil use licenses in these areas. Private investors would be able to participate in offshore projects in the Arctic and the Far East provided that they enter into a consortium with the participation of Rosshelf.

Reportedly, the Ministry of Energy and the Ministry of Natural Resources spoke out against the draft law, arguing that the draft in current form creates conflict of interest. On the one hand, the draft vests Rosshelf with administrative and regulatory authorities, whereas, on the other hand, Rosshelf will act as a party to a consortium agreement, performance of which will be supervised by Rosshelf itself.

Draft Federal Law: "On the State Corporation for the Development of the Continental Shelf of the Russian Federation in the Arctic and Far East Regions 'Rosshelf' and on Amendments to Certain Legislative Acts"

MINING

First Reading on New Associated Minerals Amendments

On 22 January 2020, the State Duma approved at first reading a draft law on stimulating geological study and extraction of associated minerals—mineral complexes (rocks, ores, subsoil waters, brines), as well as minerals, metals, and other elements and their compounds contained in minerals, not having independent industrial purpose, but extraction of which may still be economically profitable.

Currently, under the Subsoil Law, a subsoil user (save for state companies) can use the extracted mineral resources only in accordance with the terms and designated purpose of the underlying license. If during geological exploration a subsoil user discovers a new type of associated mineral that is not specified in the license, the subsoil user is not authorized to further use and sell it. Thus, subsoil users are not motivated to conduct comprehensive geological study in order to extract such associated minerals. As a result, the State fails to replenish a significant portion of certain minerals (precious, non-ferrous, rare metals, and other) and companies lose additional profit from the possible sale of same. The amendments will allow all subsoil users, not only state companies, to extract associated minerals under a subsoil license together with the main mineral.

The draft also amends the mechanism of extraction of non-hydrocarbon minerals (lithium, iodine boron) from subsoil waters during geological study, exploration, and development of crude to allow oil and gas companies to accelerate extraction of these components from subsoil waters subject to re-injection of the water in the formation.

Finally, the draft amendment aims to exclude from the list of fields of federal significance those fields containing deposits of lithium dissolved in subsoil waters, since these deposits are not currently accounted for in the State Register of Mineral Reserves and the economic and technological feasibility of extraction from such deposits is yet not confirmed.

[Draft Law No. 781847-7: "On Amendments to the Subsoil Law of the Russian Federation in Connection with Development of Extraction of Associated Minerals Not Related to Crude Hydrocarbons from Subsoil Waters, Associated Waters, and Water Used for Own Production and Technological Needs During Exploration and Extraction of Crude Hydrocarbons"](#)

POWER AND RENEWABLES

Abolishment of Special Measures to Support the Use of Peat as Fuel

On 22 January 2020, the State Duma adopted at first reading a draft law proposing to exclude the possibility of generating facilities operating on the basis of peat to apply for support measures similar to those provided for facilities producing electricity from renewable energy sources.

Peat is an organic fossil fuel, not a renewable energy source. Currently, producers of electric energy from peat are able to effectively compete with producers from other energy sources, including by introducing energy-saving technologies, using integrated solutions for the multipurpose processing of peat fuel, improving technical and economic performance of generating capacities, and thus decreasing, as a result, the selling price of the electric energy that they produce.

According to the proponents of these amendments, in these circumstances the current measures of support are being used at the expense of other entities in the market and should be abolished.

[Draft Law No. 811008-7: "On Amendments to the Federal Law 'On Electric Power Industry' in Connection with Exclusion of Measures to Support the Production of Electric Energy Using Peat Fuel"](#)

Russian Ministry of Energy Considers Introduction of Green Certificates

The Ministry of Energy has developed a draft law that introduces low-carbon certificates (LCCs), an analogue to green certificates, Renewable Energy Certificates (RECs), or Renewable Obligation Certificates (ROCs). A green certificate is a tradable commodity confirming that electricity has been generated by a renewable (green) energy source.

For consumers of electric energy, LCCs are valuable as evidence of a decrease of the carbon footprint in the final products and represent environmental benefits that renewable energy has generated. For owners of generating facilities using low-carbon energy sources, such certificates serve as an additional source of attracting investments.

This draft law was developed in response to the Order of former Prime Minister Dmitry Medvedev, No. DM-P13-9288, dated 26 October 2019 on development of a system of digital certification of electric power produced from renewable energy sources and the creation of a system of circulation of green certificates.

LCCs will be issued in electronic form by the Market Council, a nonprofit organization of electric power entities and large consumers of electric and heat energy, upon a voluntary application of an owner of a nuclear power plant or a qualified generating facility, using renewable energy sources. LCCs will not be issued in relation to electric energy produced at qualified generating facilities using production and consumption waste.

The draft law outlines the legal framework for circulation and discharging LCCs. The transfer of LCCs to a new holder will require the full transfer of all rights certified by the LCCs. LCCs can be transferred both with the sale of electric energy produced under the relevant LCCs, or independent from such sale.

The holders will be able to freely transfer and dispose of LCCs; each transaction (issuance, disposal, including transfer, pledge, other encumbrance, and discharge) of an LCC must be entered into the register maintained by the Market Council.

[Draft Federal Law on Amendments to the Federal Law: "On Electric Power Industry" and Certain Legislative Acts of the Russian Federation in Connection with Introduction of Low-Carbon Certificates](#)

INVESTMENT CODE

Reform of Investment Legislation

On 1 April 2020, President Putin signed a package of laws (informally referred to as the Investment Code) with a view to boosting investment in Russia. The key tool that the new legislation offers is an individual investment regime (including in respect of taxes, customs and regulatory requirements) available to eligible projects for a term from six to 20 years.

The new legislation consists of the Federal Law "On the Protection and Promotion of Capital Investments and the Development of Investment Activity in the Russian Federation" and related amendments the Tax Code and the Budget Code. It becomes effective from 1 April 2020 with the exception to certain provisions that will gradually come into force within one year.

REGULATORY CHANGES

Optimization of Regulatory Burden

More than 25,000 acts of Soviet legislation have ceased to be effective starting from the beginning of 2020 following the Russian government's launch of the so-

called "regulatory guillotine", an extensive reform aimed at the verification of effective regulations, including those introduced in recent decades, and the cancellation of the outdated and overly burdensome legal acts.

COVID-19 UPDATE

The outbreak of COVID-19 urged lawmakers to undertake unprecedented measures to support larger businesses coping with the pandemic. Below we briefly outline key legislative developments addressing the COVID-19 crisis. More information on COVID-19 legislative effects in Russia and around the globe can be found on [our website](#).

Monitoring and Targeted Support to Key Companies

Russia plans to introduce financial and economic monitoring with respect to Russian companies that play a key role in the Russian economy—so called "systemically important companies"—and provide targeted support to such companies.

The Minister of Economic Development (jointly with other regulators) has been instructed to develop a procedure for monitoring such companies. The targeted state support to the key companies may include state subsidies, debt restructuring, and other measures to be determined on a case-by-case basis depending on the results of the monitoring. For more, [read our client alert](#).

Temporary Freeze on Bankruptcies

Russia amended its legislation on bankruptcy to allow the government to introduce a temporary freeze on the initiation of bankruptcy proceedings. The new provisions are part of a set of amendments related to emergency prevention and response that were introduced into multiple laws by Federal Law No. 98-FZ on 1 April 2020.

The amendments allow the government to introduce a freeze in respect of bankruptcies in extraordinary situations including natural disasters, technical emergencies, substantial fluctuations of the rouble exchange rate, and other similar circumstances. For more, [read our client alert](#).

'Anti-virus' Changes to Corporate Legislation

Russia amended its corporate legislation to address corporate governance requirements. The recent amendments allow joint stock companies to conduct annual meetings of shareholders by absentee vote (rather than in person) and extend the mandatory deadlines for certain corporate actions. For more, [read our client alert](#).

Postponed Introduction of Certain Requirements

Introduction of a number of new regulations and laws has been postponed in an effort to not increase the burden on businesses. For more, [read our client alert](#).

Credit History Protection and Loan Terms

The Russian Central Bank is considering initiatives, including methods of providing credit history protection in respect of delays or failures to pay caused by the consequences of COVID-19 and the provision of loans on special terms for this period. For more, [read our client alert](#).

Another batch of important new regulations concern antitrust and other regulatory filings and litigation in Russian court.

Antitrust and Other Regulatory Filings and Timelines During COVID-19

The COVID-19 pandemic affects certain regulatory deadlines and routine filings, including filings under the Russian competition law. For more, [read our client alert](#).

Russian Courts Face Limitations Due to COVID-19

Russian courts introduced certain measures to prevent the spread of COVID-19. Parties should take these measures into consideration when developing their litigation strategies. For more, [read our client alert](#).

Morgan Lewis

ABOUT US

Morgan Lewis is recognized for exceptional client service, legal innovation, and commitment to its communities. Our global depth reaches across North America, Asia, Europe, and the Middle East with the collaboration of more than 2,200 lawyers and specialists who provide elite legal services across industry sectors for multinational corporations to startups around the world. For more information about us, please visit www.morganlewis.com.

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