

Morgan Lewis

# SPARK

## RUSSIAN ENERGY & MINING QUARTERLY LAW UPDATE

### SECOND QUARTER 2021

#### From our team to yours

*Morgan Lewis Spark* is a quarterly update highlighting new and amended Russian legislation of importance to companies operating in the Russian energy and mining sectors. We hope it provides you with a useful tool to navigate these developments.

There was a lot of new legislation introduced in the second quarter of 2021. Russia adopted its first-ever law on greenhouse gas emissions and introduced major amendments to the Subsoil Law (effective from 2022). This period was also marked by legislative developments in respect of gas, LNG, power and renewables.

We will continue to watch for Russian legislative developments with a focus on the core documents and initiatives that will shape the future of the industry as we move through 2021.

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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## **MORGAN LEWIS NEWS**

We kicked off a year-long seminar series focused on the global energy transition called “Reaching Net Zero Together”. Our first webinar, [On the Road to Net Zero: Hydrogen and other Paths](#), was held in February. Other webinars were conducted in June, [The Role of Gas in the Energy Transition](#), in July, [Energy Storage Solutions](#), and in September, [The Winds of Change](#), a discussion of the latest developments regarding offshore wind generation on the East and West Coasts of the United States.

In July we hosted AIPN’s webinar: “Energy Transition: Companies’ Perspective”, which is available in [recording](#).

We also launched [Morgan Lewis Empowered](#), a quarterly newsletter, produced by our energy lawyers, covers important trends and developments.

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## **LEGISLATIVE OVERVIEW SECOND QUARTER 2021**

We have set out below brief summaries of some of the key legal developments and amendments occurring in the second quarter of 2021 that 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 would like to find out more.

### **CLIMATE CHANGE—FIRST LAW ON GREENHOUSE GAS EMISSIONS**

Russia adopted its first-ever law on greenhouse gas emissions (the **Law On Greenhouse Gas Emissions**).

The Law on Greenhouse Gas Emissions obliges companies that release greenhouse gases into the atmosphere in excess of the established amounts to report their emissions annually starting from 2023. There will be a state information system that registers and maintains information about emissions.

In addition to the mandatory reporting requirements, the Law on Greenhouse Gas Emissions also establishes a voluntary right to participate in so-called “climate projects”, which are the projects aimed at reducing greenhouse gas emissions.

The central information/reporting center and the ability to account for carbon volumes may be needed by Russian companies, in particular when exporters will become subject

to taxes being introduced in Europe on products with manufacturing processes that result in greenhouse gas emissions.

In addition, it introduces the term of “carbon units”, which is a new category of property rights that can be traded.

While the Law on Greenhouse Gas Emissions has introduced an important new framework, its actual implementation will largely depend on future regulations since the operation of the new framework will require a significant number of amendments to existing law and elaboration of new regulations.

We understand that drafts of amendments to the following Russian legislation are being developed within the framework of the Law on Greenhouse Gas Emissions:

- [amendments to Tax Code](#) regarding trade in carbon units, in particular, tax exemptions for operations with carbon units;
- [amendments to Code of Administrative Offences](#) introducing liability for violation of the Law on Greenhouse Gas Emissions, in particular, the reporting obligations established by it;
- Rules for the Creation and Maintenance of a Register of Greenhouse Gas Emissions, Submission and Verification of Reports on Greenhouse Gas Emissions, as well as Forms for Reports on Greenhouse Gas Emissions;
- [amendments to certain acts of the Government](#) with respect to defining the powers of federal executive bodies in the field of limiting greenhouse gas emissions;
- [procedures](#) for assessing the achievement of greenhouse gas emissions reduction targets;
- [regulations](#) on the approval of the criteria for classifying legal entities and individual entrepreneurs as regulated organizations;
- [procedures](#) for verifying the results of climate project implementation;
- [procedures](#) for creating and maintaining a carbon units register;
- [procedures](#) for determining the prices for services provided by an operator conducting transactions in the carbon units register; and
- [procedures](#) for process and criteria for classifying projects as climate projects and for the form and submission of reports on climate projects.

We will continue to monitor the development of these new regulations.

[Federal Law No. 296-FZ dated 2 July 2021: “On Limitation of Greenhouse Gas Emissions”.](#)

## **OIL & GAS**

### **Major Amendments to the Subsoil Law—Effective from 2022**

The Subsoil Law—the principal statute regulating oil and gas, mining and other underground activities— was amended in several significant ways by Federal Law No. 123-FZ dated 30 April 2021 (the **Amendments**).

The Amendments are numerous, but they will only come into effect on 1 January 2022, which should allow enough time for the relevant governmental authorities to bring the subordinate regulations in line with the Amendments and for the companies operating in Russia to fully digest the text of the Amendments.

Below we provide a short summary of the key changes that we believe are more substantive revisions introduced into the Subsoil Law by the Amendments. The Amendments include many other provisions, which—in our opinion—are more of a technical nature and/or clarify the existing provision. Readers are encouraged to read the entire text of the Amendments to determine how their specific projects may be affected by it.

### **Auctions will be the only means of competitive bidding for subsoil licenses**

Under the revised Subsoil Law art. 13.1, tenders (i.e., the procedure where the winning bidder is determined based on an evaluation of the commercial, social, environmental, etc., strengths of the proposal) will be excluded from subsoil license award methods, so that the auction (i.e., the procedure where the highest-paying bidder wins) will remain as the only method available in cases where the license is granted through a competitive bidding process.

All auctions will be conducted in an electronic form per the procedure to be adopted by the Russian government (the “Government”). This reflects a long-time perception of tenders being a “less transparent” means of awarding subsoil licenses. And we note that this rule will also now apply to the licensing of subsoil plots for the development of technologies of hard-to-recover mineral exploration/production (such licenses were previously granted only through tenders).

The Government may impose various restrictions for strategic (“federal significance”) license area auctions, including restrictions to admit bidders with foreign shareholding. And generally, the Government will now be able to impose special requirements on bidders for any subsoil areas (whether of federal significance or not) based on strategic planning, social, economic, environmental, or other concerns. (In fact, the practice of such special requirements has been slowly developing for some time now, e.g., with the introduction of requirements with respect to minimum domestic refining of a certain volume of production by the prospective licensee, and other requirements.)

Nevertheless, we understand that the technical pre-qualification of the bidders to be admitted to the auction will remain, as Subsoil Law art. 14 was not amended in any substantive manner. Readers may recall an earlier Subsoil Law amendment proposal to do away with such pre-qualification, which was reported some time ago, but did not take the form of a formal draft law amendment.

The subsoil license will be granted to the only auction participant (if only one company or individual participates), or to the second highest bidder if the winning bidder fails to pay the bid amount as required.

### **Bidder blacklisting**

A winning bidder that fails to pay all or part of the bid amount will be included for a period of two years in a special “bad-faith bidder register”. Such register will be publicly available, and companies included in the register will not be admitted to auctions, nor will they be able to apply for a subsoil license that is issued without an auction. Again, the idea of such blacklisting has been floating with regulators for a while, as we have discussed previously.

### **Subsoil license contents**

Subsoil Law art. 12 (providing what should be included in a subsoil license) has been amended in several ways. Notably, production targets will no longer be required to be stated in the license itself, but rather they will be set out in the technical documentation, and the license will contain milestones for the developments of various technical documents and the achievement of various stages of field developments. Again, this approach has already been adopted in practice, at least in the newer licenses, and will now be codified by Law.

### **Strategic license transfer**

Subsoil Law art. 17.1, as amended, will permit a strategic field license to be transferred to the licensee’s subsidiary if such transfer has been approved by the Government Commission per the rules of the Foreign Strategic Investment Law. The Amendments removed reference to such Government decision being possible only “in exceptional cases.” But now, per literal reading, this process may involve some duplication of decisions by the Government Commission and the Government itself. Perhaps, some further clarifying amendments will be introduced to streamline this process further.

The Amendments also revise and elaborate on the license transfer rules generally, but these are mostly of a technical and/or clarifying nature, and we do not pause to recite them here.

### **Elaborated rules on license suspension, restriction, and termination**

The Amendments introduced various revisions to streamline the procedures of subsoil license suspension, restriction and termination (Subsoil Law arts. 20 and 21, as well as newly added arts. 20.1 and 20.2). The revised rules add more specific details as to which breaches may lead to license termination, and in what cases the authorities may choose to suspend or restrict a subsoil license rather than terminate it. Other substantive and procedural amendments will add more certainty here (and some have already been developed in practice and will now be codified in the Law).

Under the Amendments, concerns with respect to the rational use of the subsoil may now be a separate ground for subsoil license restriction or termination, in addition to

the already existing national security, safety or environmental grounds under previous regulations.

The Amendments now specifically allow the licensee to initiate license suspension, such suspension may be needed in certain cases, for example when the licensee needs more time to raise the required financing for the development. In fact, practitioners have seen such licensee-initiated suspensions under prior regulations, and the Amendments will provide a more solid legal basis for them.

There are also a number of technical amendments with respect to the suspension and abandonment of exploration and production facilities. However, we note that under the Subsoil Law (as amended)—with the exception of the rarely used production sharing agreement context—licensees are still not required to establish and maintain an abandonment fund during the project active phase (a [draft regulation](#) was put together a while ago, but no action on this has been reported of late).

### **Operations by third parties**

The Amendments added a paragraph to Subsoil Law art. 22 specifically allowing a subsoil licensee to engage third-party companies or individuals for the performance of license-related operations, provided that such third parties have the required equipment and qualified personnel for these operations, as well as, where needed, operational licenses. -Here again, there has already been a wide-spread practice of such third-party engagement ranging from standard contractors that a licensee would normally use (such as seismic, drilling, logging and other service companies) to long-term operatorship arrangement. The latter would typically (but not necessarily) be found in offshore or hard-to-recover onshore projects.

### **Repealing of the Licensing Regulation**

The Amendments repealed the so-called Licensing Regulation, an act adopted by the Russian Federation Supreme Soviet on 15 July 1992, which had the effect of a federal law, but retained quite antiquated provisions that have been gradually diverging from the Subsoil Law. A few other legislative amendments were also made to confirm the Subsoil Law supremacy status in the area of subsoil regulation.

[Federal Law No. 123-FZ dated 30 April 2021](#): *“On Amendment of the Russian Federation Law “On Subsoil”, Article 1 of the Federal Law “On Licensing of Certain Types of Activities” And Repealing of the Russian Federation Supreme Soviet Resolution “On the Process of the Coming into Effect of the Regulation for the Subsoil Use Licensing Procedure” And Certain Provisions of the Legal Acts of the Russian Federation”.*

### **Subsoil Law Amendments Related to New State Supervisory Framework**

The Subsoil Law was further amended by Federal Law No. 170-FZ dated 11 June 2021, together with more than one hundred other federal laws, in connection with the Federal Law No. 248-FZ dated 31 July 2020 “On State Control (Supervision) and Municipal

Control in the Russian Federation”, which set forth a general framework for the function of regulatory supervision and enforcement. These statutory amendments came into effect on 1 July 2021 (the **Effective Amendments**).

The Effective Amendments implement a general supervisory framework with respect to state geological control (supervision) and state mining supervision by amending Subsoil Law arts. 37 and 38 (and a few other revisions that are technical, aimed at conforming the use of terminology throughout the statute).

On 30 June 2021, the Government also adopted two regulations further developing the framework on the state geological and state mining supervision, respectively.

In sum, these regulations and Subsoil Law arts. 37 and 38 (as amended by the Effective Amendments) establish that:

- the purpose of state geological control (supervision) is to ensure that subsoil licensees and other relevant persons comply with:
  - the rational subsoil use requirements;
  - the subsoil license terms;
  - the rules for drafting, approving, and implementing various technical design documents;
  - the rules for submission of geological data to the relevant state authorities; and
  - various other rules and regulations under the Subsoil Law and its subordinate acts;
- the state geological control (supervision) has a federal division that relates to all subsoil use plots, except for those of local significance, and is administered by Rosprirodnadzor and regional divisions – which relate to subsoil plots of local significance and is administered by relevant regional authorities;
- the Federal Security Service administers the state geological control (supervision) with respect to the facilities under its jurisdiction;
- the federal mining supervision focuses on compliance with safety regulations by the licensees, operators, a equipment manufacturers and sellers;
- the federal mining supervision is administered by Rostekhnadzor (note that there is no counterpart “regional” mining supervision, meaning that all mining safety regulation compliance will fall within federal jurisdiction); and
- there are also further details with respect to the mining supervision function and a provision to ensure that its jurisdiction does not overlap with the state geological control (supervision).

[\*Federal Law No. 170-FZ dated 11 June 2021: “On Amendment of Certain Legislative Acts of the Russian Federation in connection with the Adoption of Federal Law “On State Control \(Supervision\) and Municipal Control in the Russian Federation”\*](#)”.

[\*Decree of the Russian Government No. 1095 dated 30 June 2021: “On Approval of the Regulation for Federal State Geological Control \(Supervision\)”\*](#)”.

[\*Decree of the Russian Government No. 1074 dated 30 June 2021: “On Approval of the Regulation for Federal State Mining Supervision”\*](#)”.

## **Gas Supply Law Amendments**

The Gas Supply Law was amended by Federal Law No. 184-FZ dated 11 June 2021 (the **Gas Supply Amendments**). In particular, as has been widely publicized, the Gas Supply Amendments set forth the framework for organization and financing of gas pipeline hook-up to residential buildings (at no or minimal charge for residents) through the establishment of a “unified gasification operator”, a special mark-up for gas transportation tariffs and other organizational matters.

Among other things, the revisions introduced by the Gas Supply Amendments now specifically envisage “take-or-pay” contracts, which may be entered into with certain categories of gas consumers. Such categories of consumers will be determined by a resolution of the Government, to be adopted under the Gas Supply Amendments.

[\*Federal Law No. 184-FZ dated 11 June 2021: “On Amendment of Federal Law on Gas Supply in the Russian Federation”.\*](#)

## **LNG**

A set of amendments to the Tax Code, as well as to the Merchant Shipping Code, will allow registering floating storage facilities of liquefied natural gas (**LNG**) in the register of ships from 2022. These amendments extend the tax benefits that have already been granted to ships registered in the Russian International Register of Ships to vessels used for storage and transshipment of LNG in the Russian seaports and, accordingly, to extend the benefits of a Russian flag to the LNG floating storage facilities. (These amendments are in line with similar rules that have been previously introduced for vessels registered with the Russian Maritime Register of Shipping and used for storage and transshipment of oil and oil products.)

[\*Federal Law No. 142-FZ dated 26 May 2021: “On Amendments to the Merchant Shipping Code of the Russian Federation”.\*](#)

[\*Federal Law No. 198-FZ dated 11 June 2021: “On Amendments to Article 427 of Part Two of the Tax Code of the Russian Federation”.\*](#)

## **POWER AND RENEWABLES**

### **National Energy Strategy Action Plan**

In June 2021, the Russian government adopted a general action plan to implement the National Energy Strategy that was adopted in June 2020 (on which we reported in our [\*Q2 2020 Edition of the Spark\*](#)).

The action plan sets forth more specific assignments for various government ministries, other agencies, and state-owned and private companies with respect to achieving better energy efficiency, stability of fuel and energy supply, development of hydrogen energy, and replacement of petrol with natural gas as motor vehicle fuel among other

measures to reduce environmental impact. The action plan also includes deadlines for implementation of these measures.

[Government Directive No. 1447-r dated 1 June 2021.](#)

### **Government Regulation Incentivizing Renewable Energy Source Manufacturing**

In April 2021, the Government amended several of its prior decrees with a view of further incentivizing the use of renewable power sources. These amendments, in particular, affect the rules for determining a degree of localization in various renewable power generation facilities (such as wind, solar, etc.) as well as their constituent elements, the procedures for calculating the export potential and certain other rules of renewable power source classification. These measures are aimed at encouraging Russian manufacturers to play a more active role in the energy transition process and general renewable power source incentivizing.

[Government Decree No. 535 dated 2 April 2021: "On Amendment of Certain Acts of the Russian Government Aimed at Incentivizing the Use of Renewable Energy Sources"](#).

### **Formation of a Common Electricity Market of the Eurasian Economic Union**

Russia ratified the protocol on amending the Treaty on the Eurasian Economic Union dated 29 May 2014 aimed at forming a common electricity market of the Eurasian Economic Union (EAEU). The protocol, signed by Russia, Armenia, Belarus, Kazakhstan and Kyrgyzstan, is intended to improve the energy security of these countries, by establishing the rules for the functioning of the common electric power market of the EAEU.

The creation of a common electricity market will allow companies to freely choose suppliers of electric power, which can have a positive effect on the cost of production, as well as increase the energy security of all EAEU states.

The implementation of the protocol will require the development of a number of regulatory documents that will set out in more detail the functioning of the common electric power market of the EAEU (e.g. transit of electricity, distribution of the throughput of interstate power transmission lines and information exchange at the common market).

[Federal Law No. 235-FZ dated 1 July 2021: "On Ratification of the Protocol on Amendments to the Treaty on the Eurasian Economic Union of 29 May 2014 \(regarding the formation of a common electric power market of the Eurasian Economic Union\)"](#).

## **NAVIGATING THE NEXT GLOBAL RESOURCE**

You may find useful resources on our [Navigating the NEXT](#) webpage, helping you to navigate the steady stream of workplace policy shifts guide corporations and investors to the latest aid available for rebuilding; decipher the intersection of global laws for multinational companies; and interpret the meaning of the latest developments for climate, health, and social issues.

# 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](http://www.morganlewis.com).

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