

Morgan Lewis

SPARK

Q3 | 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 were a number of interesting legislative developments in the third quarter of 2021. Russia has continued along the green wave of energy and environmental legislative development, with further hydrogen framework development and the elaboration of a legislative framework for regulation of greenhouse gas emissions and sustainable (green) projects financing. This period was also marked by legislative developments with respect to mining, power, and renewables, and environmental protection.

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 through the remainder of 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 continue our energy industry webinar series, "[Reaching Net Zero Together: Energy Transition Challenges and Opportunities](#)". During our series, we will address the host of issues facing companies around the globe as they adapt to changes compelled by climate concerns, fluctuations in demand, and the fast pace of technology innovation while they work to pivot their business models to achieve their net zero goals. Our next webinar, "[Advanced Nuclear Solutions](#)," will be on 16 November, where we will discuss nuclear energy's contribution to climate change goals.

LEGISLATIVE OVERVIEW

THIRD QUARTER 2021

We have set out below brief summaries of some of the key legal developments and amendments occurring in the third 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.

ENERGY TRANSITION AND SUSTAINABILITY

Hydrogen Development Framework

Russia adopted the Hydrogen Development Framework (the "**Framework**") in furtherance of the earlier adopted hydrogen road map (October 2020), which we covered in [Morgan Lewis Spark for Q4 2020](#).

According to the Framework, Russia will seek to tap the national potential for production, export, and use of hydrogen and industrial products for hydrogen power generation and to secure Russia's place among global leaders of hydrogen production.

The Framework defines mid-term (until 2024) and long-term (until 2035) goals, objectives, strategic initiatives, and key measures to develop hydrogen power generation in Russia, as well as key guideline principles until 2050.

- Stage 1 (2021-2024) – hydrogen clusters are to be created and pilot projects are to be implemented to achieve hydrogen export sales of 0.2 million tons by 2024 and to spur the use of hydrogen power in the domestic market.
- Stage 2 (2025-2035) – envisages the launch of Russia's first commercial hydrogen production projects with export sales reaching up to 2 million tons in 2035 (or 12 million under an ambitious scenario). At this stage, major export-oriented hydrogen generation facilities are to be created, and pilot projects that entail using hydrogen in the domestic market are to be implemented.

- Stage 3 (2036-2050) – aims at full-scale market growth of hydrogen power generation. It is expected that by 2050, Russia should be able to supply up to 15 million tons of hydrogen to global markets (or 50 million tons under a best-case scenario). The cost of hydrogen generation from renewable energy sources is expected to be more in line with that from fossil fuels, which will then open the way to major projects for generation and export of renewables-based low-carbon hydrogen.

The Framework also envisages creation and development of industrial and technology clusters and implementation of pilot projects for low-carbon generation and export. The hydrogen clusters are expected to be established at the regional level, including in the Russian Northwest, targeted at the EU; in the East, targeted at Asia; and in the Arctic region, aimed at creating low-carbon power supply systems throughout the Russian Arctic zone and/or at exporting hydrogen and hydrogen-based fuel blends.

[Directive No. 2162-p of the Russian Federation Government “On Approval of Hydrogen Power Generation Concept in the Russian Federation” dated 5 August 2021](#)

Greenhouse Emission Reduction Initiative

In July 2021, Russia adopted its first-ever law on greenhouse gas emissions that establishes a framework for regulation in this area. We provided an overview of this new law in [Morgan Lewis Spark for Q2 2021](#) (and an earlier overview of the law in draft form in [Morgan Lewis Spark for Q3 2020](#)).

Implementation of greenhouse gas emissions regulations (including the reporting obligations and carbon unit trading) requires further legislation to be developed, and we will continue to closely monitor the developments in this area.

Over Q3 2021, a number of draft laws were developed seeking to create a legal framework for the carbon units market, including the following draft regulations (links to the text of each draft):

- [Procedures for creating and maintaining a carbon units register;](#)
- [Draft decree on appointment of the National Settlement Depository to operate a carbon units register;](#)
- [Pricing procedures for services provided by the operator conducting transactions in the carbon units register;](#)
- [Procedures for submission of reports on climate projects and the form of such reports, procedures and criteria for classifying projects as climate projects.;](#)
- [Procedures for verifying results of climate project implementation;](#)
- [Amendments to the Tax Code on tax exemption of trade in carbon units and companies’ costs of climate projects;](#)
- [Procedures for preparation and submission of international climate reporting.](#)

The draft regulations are still in early stages, and we will continue to monitor the developments in this area. At the time of writing, the draft regulations propose that the National Settlement Depository be appointed as the operator of the carbon units register.

They also envisage adoption of special rules for the verification of climate projects and reporting procedures, as well as amendments to the Tax Code introducing tax exemptions for trade in carbon units and costs incurred by companies in the implementation of climate projects.

Sustainable Development (including Green Projects)

The Russian Government has approved objectives and focal points of sustainable (including green) development in Russia that define key government policy guidelines to promote investment in “green” and, to the extent a project does not qualify as green but has certain sustainable features aimed at adapting such project to more sustainable technologies and processes, so-called “adaptational” projects.

The “green” and “adaptational” criteria have also been approved by the Russian Government as part of a legal framework aimed to launch a system of preferential financing for green projects and sustainable development initiatives. (Further information on regulatory framework for “green” financing in Russia (and other jurisdictions) may be found in our article [“Green Finance: Regulatory Regime and Key Trends in the EMEA Region.”](#))

Priority objectives of such projects include:

- preserving, protecting, or improving the environment;
- reducing emissions and discharges of pollutants and/or preventing their impact on the environment;
- reducing greenhouse gas emissions; and
- energy saving and increasing efficiency of resource use.

Key areas for the implementation of state sustainable development policy in Russia include:

- waste management;
- energy;
- construction;
- industry;
- transportation and industrial machinery;
- water supply and sewage;
- natural landscapes, rivers, bodies of water, and biodiversity;
- agriculture; and
- sustainable infrastructure.

The Russian Government has set out specific parameters for eligibility to raise financing for the implementation of green or adaptational projects via special bonds or loans, as well as the requirements applicable to the verification system for sustainable development projects.

[Directive No. 1912-r of the Government of the Russian Federation “On Approval of the Objectives and Main Directions of Sustainable \(including Green\) Development of the Russian Federation” dated 14 July 2021](#)

[Decree No. 1587 of the Government of the Russian Federation “On Approval of Criteria for Sustainable \(including Green\) Development Projects in the Russian Federation and Requirements Applicable to the System of Verification of Sustainable \(including Green\) Development Projects in the Russian Federation” dated 21 September 2021.](#)

SUBSOIL USE

New Mining Supervision Regulations

A new procedure for the federal state mining supervision was enacted to replace the previous procedure for state supervision of safe performance of subsoil use related works.

According to the new procedure, when exercising control (supervision) over the subsoil use facilities that are hazardous production facilities, the federal state safety supervision system of risks assessment and management will be used. Scheduled control (supervisory) activities will not need to be carried out at subsoil use facilities that are not classified as hazardous production facilities.

[Decree No. 1074 of the Government of the Russian Federation “On Federal State Mining Supervision” dated 30 June 2021 \(together with the “Regulations on Federal State Mining Supervision”\)](#)

New Procedure for Determining the Rates for Payment for Regular Subsoil Use

The Ministry of Natural Resources developed a new procedure for determining the rates for regular subsoil use payments. The new procedure will take effect from 1 March 2022 (while the previous procedure approved by Order No. 134 of the Russian Ministry of Natural Resources dated 07 March 2014 will terminate).

Pursuant to the Subsoil Law, the factors affecting the rates for regular subsoil use payments are economic and geographic conditions, size of the subsoil plot, type of mineral, duration of works, exploration maturity of the area, and risk level. The regular subsoil use payment rates will be calculated using a formula stipulated in the procedure.

[Order No. 214 of the Ministry of Natural Resources of the Russian Federation “On Approving the Procedure for Determining Specific Rates of Regular Subsoil Use Payments” dated 30 March 2021 \(registered with the Ministry of Justice of the Russian Federation on 14 September 2021 under No. 64983\)](#)

POWER

New Developments in the Renewables Regulation

Certain amendments have been made to the regulations for capacity supply agreements of qualified generating facilities operating on the basis of renewable energy sources ("**Capacity Supply Agreement**"). The Capacity Supply Agreement amendments include elaborations of:

- the procedure for determining the penalty amount under Capacity Supply Agreements (i.e., penalty calculation for a delay in launching a power-generating facility);
- the procedure for establishing the price (tariff) ceilings for electric power/capacity produced by qualified generating facilities and purchased for the purposes of compensating power line losses (which is established by the tariff regulation executive authorities of Russia's constituent entities); and
- detailed regulations for the competitive selection of construction projects for generating facilities operating on the basis of renewable energy sources.

[Decree No. 1169 of the Government of the Russian Federation "On Amending Certain Acts of the Government of the Russian Federation on Stimulating Use of Renewable Energy Sources on Wholesale and Retail Electric Power/Capacity Markets" dated 12 July 2021](#)

Amendments to Pilot Project on Retail Electric Power Markets

The Russian Government adopted legislative amendments that seek to improve the regulation for implementing pilot projects for the creation, operation, and development of so-called "active power complexes on the retail electric power markets" (which are basically microgrids).

Generally, the pilot project envisages the construction and operation of active power complexes (microgrids) in a pilot mode. Following implementation of the pilot project, the Russian Ministry of Energy will analyze the pilot project's results and submit proposals to the Russian Government as to the feasibility of further development of microgrids in Russia. The pilot project implementation period is expected to run from 2023 to 2031.

[Draft Decree of the Government of the Russian Federation "On Amending Certain Acts of the Government of the Russian Federation on the Operation of Active Power Complexes"](#)

ENVIRONMENTAL PROTECTION

Cumulative Environmental Damage Cleanup Projects

Rosprirodnadzor adopted regulations for the approval of cumulative environmental damage cleanup projects that stipulate the time frames and the sequence of Rosprirodnadzor's administrative procedures/actions.

Under the Environmental Protection Law, cumulative environmental damage sites that are included in the state register of cumulative environmental damage sites kept by the Ministry of Natural Resources must be cleaned up by regional and federal authorities within the framework of a special state program for environmental protection.

Order No. 142 of Rosprirodnadzor "On Approval of the Administrative Regulations of the Federal Service for the Supervision of Natural Resources for the Provision of a State Service for the Approval of Accumulative Environmental Damage Cleanup Work Projects" dated 29 March 2021 (registered with the Ministry of Justice of the Russian Federation on 17 September 2021 under No. 65044)

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ABOUT US

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