

# Morgan Lewis

# SPARK

## From our team to yours

Happy New Year from our team to you and yours. We would like to take this moment to wish you a happy, healthy and prosperous 2021.

**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.

The fourth quarter of 2020 saw a number of long-planned legislative initiatives coming to fruition, such as draft law on license splitting and consolidation and a draft law on new types of unincorporated venture agreements for oil & gas development. The quarter also featured significant reform in the regulatory area with 200-plus HSSE regulations having been replaced within the “regulatory guillotine” program. In addition, as governments and businesses around the world turn their increasingly acute attention to energy transition and sustainable energy, including the use of hydrogen technologies, Russia produced its own hydrogen roadmap.

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.

## Q4 | 2020

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## MORGAN LEWIS NEWS

An updated version of our international sanctions briefing can be viewed here: [US and EU Russia Sanctions Update—Overview And Energy Sector Focus \(And Emerging Russian Countersanctions\) – December 2020 Update.](#)

AIPN members can watch a recording of AIPN's Webinars on "Russia: Digitalization in Oil and Gas" and "[Russia's Oil and Gas Industry at a Crossroads - Energy Transition, Decarbonization and Hydrogen.](#)" If you are interested in becoming a member of AIPN, let us know and we can help you.

Our team has contributed an overview of blockchain laws and regulations applicable in Russia in the [Legal 500 Blockchain Country Comparative Guide and the Russian chapter for ICLG's Lending & Secured Finance Laws and Regulations 2020.](#)

For those of you watching the change in US presidential administrations, you will find [a new resource page](#) on [morganlewis.com](#) that will help clients navigate the policy changes by analyzing US presidential executive orders as they are issued or reversed, key agency appointments, and new regulations.

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## LEGISLATIVE OVERVIEW

### FOURTH QUARTER 2020

We have set out below brief summaries of some of the key legal developments and amendments occurring in the fourth quarter of 2020 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.

### SUBSOIL LICENSING (OIL & GAS AND MINING)

#### Hard-to-Recover Resources - Implementing Regulations

As Russia continues to develop its legislation aimed at stimulating hard-to-recover resources development, at the end of 2020 a number of regulations with respect to relevant technologies were adopted.

The regulations implement the new hard-to-recover technology development license regime, introduced by Subsoil Law amendments of December 2019, which envisage development of these technologies as a separate type of subsoil use activity under a subsoil use license. Such a license can be awarded at a tender or, if combined with the exploration and production of such resources, through a spin-off from a production or combined exploration and production license. We discussed those amendments in detail in our earlier [client alert](#).

In October 2020, the Russian government adopted the overall procedures for the drafting and approval of the design documentation for technology development for the exploration and production of hard-to-recover resources (and also two other related acts of a more technical nature). Then, in November 2020 the Ministry

of Natural Resources adopted a procedure for spinning off hard-to-recover resources into a separate license. Now there are only a few additional regulations still in process at the Ministry of Natural Resources to enable the full implementation of the new hard-to-recover technology development license regime.

[Decree of the Russian Government No. 1715 dated 20 October 2020](#) "On Preparation, Alignment and Approval of Design Documentation for the Development of Technologies for the Geological Study, Exploration and Production of Hard-to-Recover Resources."

[Decree of the Ministry of Natural Resources No. 894 dated 6 November 2020](#) "On the Approval of the Procedure for Spinning off of a Subsoil Plot Containing Hard-to-Recover Resources for the Purposes of the Development of Technologies for Geological Studies, Exploration and Production of Hard-to-Recover Resources, Exploration and Production of Such Resources under a Combined License, and the Review of Applications for Subsoil Use Rights for the Purposes of the Development of Technologies for Geological Study, Exploration and Production of Hard-to-Recover Resources, Exploration and Production of Such Resources under a Combined License, Where Such Rights Are Obtained through Spinning off of a License Area Portion from the License Area Granted for Exploration and Production of Natural Resources, or Geological Study, Exploration and Production under a Combined License."

#### License Splitting/Consolidation - Draft Legislation

As noted above, Russia's subsoil use legislation was amended in 2019 to allow for the splitting of a license for hard-to-recover resources in order to stimulate use and investment in technologies for extraction of hard-to-recover resources (primarily hydrocarbons). Again, for details please refer to our earlier [client alert](#).

There is also a further ongoing initiative aimed at introducing amendments that would allow for license

splitting for different subsoil horizons within a single license area. This broader initiative is not limited to hard-to-recover resources—and might conceivably be of interest for certain mining as well as hydrocarbon-development projects.

Namely, in December 2019 the Subsoil Law was amended to allow for the spinning-off of a portion of the license area, but only if necessary to divide the area for hard-to-recover resource development. The current Draft License Transformation Laws go much further, as they will apply to all minerals. As we understand from the Duma's official explanatory note, the earlier-adopted mechanism for spinning off hard-to-recover resources is expected to remain in place and operate alongside this newly proposed wider regime of license transformation.

As briefly previewed in the [2020 Q3 Edition of Morgan Lewis Spark](#), this draft legislation (a Subsoil Law amendment and implementing Government Decree, collectively, the **Draft License Transformation Laws**) was published in October 2020, and, if adopted, will considerably increase the flexibility for subsoil licensees to manage their licensed areas. Such enhanced flexibility should help streamline the structuring of oil & gas-related joint ventures and M&A deals.

The proposed Draft License Transformation Laws will allow a licensee to apply to:

- split the license into two or more licenses (each new license should cover reserves recorded in the state balance sheet);
- spin off a portion of the license area into a separate exploration and production license (covering reserves recorded in the state balance sheet); and
- consolidate two or more licenses of the same type if the licensed areas are contiguous and the licenses are held by the same licensee or licensees from the same group of persons.

Such splitting, spinning off, or consolidation will be allowed only with respect to exploration and production, or combined geological study, exploration, and production licenses. If a strategic ("federal significance") license area is split (or a portion is spun off from such license area), all the resulting license areas retain the federal significance status despite the volume of reserves covered by any of the resulting new licenses. The splitting, spinning off, or consolidation applies to any minerals, but does not apply to local-significance licenses (essentially, these are for commonly occurring minerals).

As appears from the related draft implementing Government Decree, an application for the splitting, spinning off, or consolidation of a license should be supported by, among other things, the applicant's proposal for the new license area boundaries, the new

license terms, an expert evaluation of the underlying reserves, and a field development plan or similar documentation with respect to such reserves.

The Draft License Transformation Laws specifically prohibit the splitting, spinning off, or consolidation of licenses in a way that would result in unacceptable selectivity of extraction of minerals or other violations of the rules for rational use of natural resources, operational safety, or environmental protection. While this prohibition is aimed at ensuring the efficient and effective use of the natural resources, it may arguably add a certain degree of subjectivity in the review of license splitting, spinning off, or consolidation applications, owing to various factors such as the absence of a universal definition of "selective extraction" (e.g., for oil and gas extraction, it may be inferred from [GOST R53713-2009](#)).

The public discussion of this draft legislation was completed in November 2020, and a report on the regulatory effects is being prepared. At this point, it is not clear when the draft will be introduced into the Duma, or how the current texts may be revised in the course of further drafting.

[Draft Law](#) "On the Amendment of the Russian Federation Law on Subsoil with respect to Perfecting the Mechanism of Splitting, Spinning Off and Consolidation of Subsoil Plots." [Draft Government Decree](#) "On Approval of the Procedure for Splitting, Spinning Off and Consolidation of a License Area (Except for Local Significance Areas)."

## OIL & GAS

### Risk-Service Contracts – Draft Law

On 2 November 2020, the Russian government introduced into the Duma a draft law envisaging new types of private commercial contracts to be used in the development of hydrocarbon resources (the **Draft Hydrocarbon Contract Law**). Its stated purpose is to introduce new contractual structures for governing oil & gas joint ventures in order to help subsoil licensees to attract new partners with investments and technologies. (In this way, its ultimate goal is similar to that of the Draft License Transformation Laws described above, though to be achieved through a different mechanism.) These structures are somewhat similar to international JOA-type unincorporated arrangements, but feature various specific differences from the standard international models.

In brief, the Draft Hydrocarbon Contract Law provides for two contract types: (1) a risk-based service contract and (2) a financing management contract.

A risk-based service contract would be between a subsoil licensee and an operator (or a group of operators

composed of several companies) with respect to a particular license area. Each party owns a participatory interest in the contract in proportions determined by the contract. Further notable provisions are as follows:

- The operator is obliged to undertake all of the operations required for the development of the designated license area (or a specific activities, such as exploration, production, etc., as set out in the contract), hire contractors, purchase supplies, etc., subject to certain transactions requiring the approval from the licensee or the management committee (see below).
- If the operator is composed of several companies, a responsible operator is designated to carry out the operator's activities.
- The management committee, composed of the contract party representatives, may be entitled to make all or certain decisions with respect to the license area development. The competence of such committee and its procedures are to be determined in the contract.
- The licensee must provide the operator with access to the license area and the required information. The licensee must abstain from operating in the license area or hiring additional third parties for such operation only if expressly provided for in the contract.
- The proceeds from the license area development are divided into the "compensatory portion" (i.e., covering the costs of development) and the "profit". The proceeds are distributed between the parties in accordance with the contract. If no commercial production can be achieved in the license area, or the proceeds are insufficient to cover the costs of development, the operator has no recourse against the licensee for the expended costs. (This reflects the risk basis of these contractual relations.)

Under a financing management contract, one party undertakes to finance the activities of the other party (being the operator of a risk-based services contract), and the operator's revenues under the services contract are to be distributed per the procedure established in the financing management contract between its parties. The operator acts as a "managing partner" under the financing management contract (and if the operator is composed of several companies, the responsible operator will essentially be the managing partner). The financing management contract also provides for participating interest shares, and some of its parties may enter into a carry finance arrangement, subject to management partner notification.

The Draft Hydrocarbon Contract Law provides that

matters not regulated by it are subject to Russian subsoil and civil law. It remains to be seen how these projects will be implemented in practice, given that so far unincorporated ventures have been very rarely used in the Russian oil & gas project context.

At this point, there is no information as to when the Draft Hydrocarbon Contract Law will undergo its first reading in the Duma. It is possible that further revisions may be made to the text before its final approval.

[\*Draft Law No. 1048788-7 "On Contracts Entered into in the Course of Activities for the Development of Hydrocarbon Fields and Introduction of Amendments to the Russian Federation Law On Subsoil."\*](#)

## HYDROGEN

### Hydrogen Development Roadmap

As governments and businesses (including many oil & gas majors) around the world turn their attention ever more seriously to energy transition, the potential commercialization of the use of hydrogen technologies could play a key role in the global clean energy agenda.

Russia has recently produced its own hydrogen roadmap. It is at this stage short-term-focused, covering the years 2021-2024, and is meant to be an initial step for Russian government, businesses, and institutions to better understand the potential of hydrogen opportunities and to encourage the implementation of hydrogen pilot projects.

The envisaged incentives include state support for the development and testing of projects for hydrogen generation and use as fuel in the power generation and transport sectors, as well as development of the required legal framework for these projects. For details please read our [client alert](#).

[\*Government Directive No. 2634-r dated 12 October 2020.\*](#)

## POWER AND RENEWABLES

### Energy Efficiency and Renewables - Amendments to Guidelines

In October 2020, the Russian government introduced certain amendments into the Guidelines for the State Policy for Improving Energy Efficiency Based on the Use of Renewable Power Sources, initially adopted in January 2009. The amendments extended the term of the guidelines to 2035, and amended the target levels for localization of equipment used in power generation from renewable sources and for export of such power.

[\*Government Directive No. 2749-r dated 24 October 2020.\*](#)

## REGULATORY

### Plans for Oil Spills Prevention and Elimination

In July 2020, President Putin signed amendments to the Law on Environmental Protection aimed at preventing and eliminating spills of oil and oil products in Russia. We discussed them in detail in the [2020 Q2 Edition of Morgan Lewis Spark](#). The amendments came into force on 1 January 2021.

These amendments require that all projects involving the production, refining, transportation, storage, and/or sale of oil and oil products in Russia have a plan for the prevention and elimination of oil and oil product spills and any other negative environmental impacts (**Plan for Oil Spills Prevention and Elimination**) approved by the Federal Service for Supervision of Natural Resources (*Rosprirodnadzor*).

In December 2020, the Russian government adopted the new rules for organizing measures for preventing and eliminating oil spills (separate rules for offshore and onshore operations). They establish the requirements applicable to the elaboration and approval of the Plans for Oil Spills Prevention and Elimination. In particular, the plans should contain information on the potential sources and maximum estimated volumes of oil and oil products spills, as well as on the predicted areas of their spread and the estimated response time. The new rules also require that each company conduct comprehensive testing of the measures envisaged by its plan with involvement of the state emergency response authorities, and forms an emergency response unit within its employees or outsources such function to a specialized service provider.

[Resolution of the Government of the Russian Federation No. 2451 dated 31 December 2020](#) "On Approval of the Rules for Organizing Measures for Preventing and Eliminating Spills of Oil and Oil Product in the Territory of the Russian Federation, except within the Internal Waters and Territorial Sea of the Russian Federation"

[Resolution of the Government of the Russian Federation No. 2366 dated 30 December 2020](#) "On Approval of the Rules for Organizing Measures for Preventing and Eliminating Spills of Oil and Oil Product on the Continental Shelf of the Russian Federation, within the Internal Waters and Territorial Sea of the Russian Federation"

### "Regulatory Guillotine" - Updated HSE Regulations

The Russian regulatory landscape continues to go through extensive changes within what is informally called the "regulatory guillotine", i.e., a program for the review of all existing rules and regulations aimed at removing outdated or unreasonably burdensome restrictions (we briefly mentioned this in our [2020 Q1 Edition of Morgan Lewis Spark](#))

In August 2020 the Russian government [decreed](#) the cancellation of some 155 safety, health, and environmental and other industry regulations pertaining to oil & gas, mining, power, and other industries that had been issued over many years primarily by the Russian Technical, Environmental and Nuclear Supervisory Authority (*Rostekhnadzor*, and its predecessor, *Gosgortekhnadzor*), as well as 25 regulations in the same area earlier adopted by the Russian government itself.

The cancellation is effective from 1 January 2021, but it was not clear what rules/regime would replace the repealed regulations. In December 2020, the Russian government and *Rostekhnadzor* were [reported](#) to have adopted all of the necessary replacing regulations, though not all of these regulations were published before the new year. These regulations include such important energy sector regulations as the industrial safety regulations for the oil & gas industry, requirements to the mining allotment, and many others.

We do not attempt to summarize these new rules here due to their vast volume and specific technical character. These new replacement regulations are set to expire on 1 January 2027. During this interim period the existing regulatory regime will apparently be further reviewed with proposals for additional fine-tuning, or perhaps at some point the regulatory approach for certain actions will change more substantially, e.g., to self-regulation.

### Inspection Rules - Draft Amendment

Another aspect of the "regulatory guillotine" concerns government inspection rules and procedures. The Federal Law "On State Control (Supervision) and Municipal Control in the Russian Federation" (adopted in July 2020, coming into force July 2021) sets forth such a general rules-and-procedures framework. In furtherance of that law, a draft law has been developed to amend various other laws, including the Subsoil Law, the Power Industry Law, and many others reflecting the new inspection rules and procedures. The draft law was adopted by the Duma at first reading on 16 December 2020. The timing for the second reading is not yet clear.

[Draft Law No. 1051647-7](#) "On Amendments of Certain Legislative Acts of the Russian Federation in connection with the Adoption of the Federal Law 'On the State Control (Supervision) and Municipal Control in the Russian Federation.'"

### Special Investment Contract Awards - Application Form

In October 2020, the Ministry of Energy published a form of proposal to be used by an investor wishing to enter into a so-called special investment contract for operations in the oil/gas refining, petrochemical, coal, or power industry.

Special investment contracts were introduced by the Federal Law “On Industrial Policy in the Russian Federation” in 2014. The sphere of use for special investment contracts was essentially limited by the Law amendments of 2019 to investment projects aimed at development/implementation of innovative technologies promoting the manufacturing of competitive products in Russia (and the list of such technologies was approved by the Russian government in November 2020). Under a special investment contract, the investor must fund (with its own or borrowed funds) a project for the implementation of a designated technology subject to certain requirements for related minimum levels of production, jobs to be created, taxes paid, etc., and the government provides in return a range of incentive and stability measures depending on the proposed investment amount. Under the Law, various ministries are authorized to establish the form of investor’s proposal to enter into a special investment contract in the area that such ministry regulates.

[Order of the Ministry of Energy No. 869 dated 1 October 2020](#) “On the Approval of the Form for the Investor’s Proposal to Enter into a Special Investment Contract with respect to Oil Refining, Gas Processing, Petrochemical, Coal and Electric Power Industries.” And see [Government Directive No. 3143-r dated 28 November 2020](#) for a list of technologies eligible for SpIC-based implementation.

## ENVIRONMENTAL PROTECTION

### Environmental Protection Law Amendments

In December 2020, the Environmental Protection Law was amended to provide that the decisions of an inter-governmental body based on the interpretation of an international treaty that contradict the Russian Constitution shall not be enforced, with the contradiction to be confirmed by the Constitutional Court. This rule is based on the provisions included into the Constitution in July 2020 ([see our briefing on the amendments of the Constitution](#)) and subsequently amended Constitutional Court Law. In fact, this legal amendment was effected by a law inserting similar provisions into many other laws. We wanted to highlight it here because the interaction between domestic and international law may be quite important for environmental protection regulation, as the status of some such areas is based on international conventions (e.g., the Ramsar Convention on Wetlands).

Later in December, the Environmental Protection Law was further amended to reflect specifics of protected zones located in urban areas, e.g., the retention of land ownership and the possibility of exceptions from the general preserve regime there.

[Federal Law No. 429-FZ dated 8 December 2020](#) “On Amendments of Certain Legislative Acts of the Russian Federation.”

[Federal Law No. 505-FZ dated 30 December 2020](#) “On Amendments of the Federal Law ‘On Specially Protected Natural Areas’ and Certain Legislative Acts of the Russian Federation.”

### Greenhouse Gas Emission Reduction

By Edict of 4 November 2020, the president directed the Russian government to take steps in order to ensure greenhouse gas (GHG) emission reductions to 70% against the 1990 level. The government is also required to develop a social and economic strategy for up to the year 2050 featuring low greenhouse emission measures.

These measures are taken in furtherance of Russia’s obligations under the 2015 Paris Agreement. The Paris Agreement commits the parties to keep the global average temperature increase “well below 2 degrees Celsius” above the pre-industrial levels and urges the countries to pursue efforts to limit global warming even further to 1.5 degrees Celsius.

But the indicated target may not be that ambitious for Russia. After the fall of the Soviet Union and decline of Russian industry that followed, the levels of GHG emissions actually decreased by almost half. While Russian industry and the levels of GHG emissions began to increase again in the early 2000s, Russia still remains well below its 1990 levels. This implies that Russia may even be able to increase its GHG emissions levels to a certain extent and still comply with the established target.

Separately, per press reports, a draft law designating a low-carbon certification procedure (on which we reported in the first quarter, see the [2020 Q1 Edition of Morgan Lewis Spark](#)) was introduced to the Russian government by the Ministry of Energy. The government will introduce the bill into the Duma once satisfied with its contents.

[Edict of the President No. 666 dated 4 November 2020](#) “On Reduction of Greenhouse Gas Emissions.”

## COVID-19 UPDATE

Our [COVID-19 Legal Issue Compendium](#) brings together in one place an overview of our key publications covering the legal and regulatory landscape, including matters related to business operations and industry-specific issues faced by many companies around the world amid the pandemic.

You may find useful resources on our [Navigating the NEXT](#) webpage, helping 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.

# 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).

## PRIMARY CONTACTS



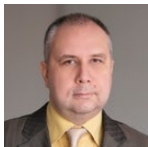
**Jonathan H. Hines**

jon.hines@morganlewis.com  
+7.495.212.2552



**Jennifer A. Josefson**

jennifer.josefson@morganlewis.com  
+7.495.212.2535  
+44.20.3201.5429



**Alexander Marchenko**

alexander.marchenko@morganlewis.com  
+7.495.212.2534



**Alexandra Rotar**

alexandra.rotar@morganlewis.com  
+7.495.212.2515

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