

Morgan Lewis

SPARK

Q4 | 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.

Over the course of 2021, Russia made significant strides developing its legislation in the areas of energy transition, sustainable development, and environmental protection. Notably, Russia adopted its first-ever law on greenhouse gas emissions and the hydrogen development framework. It also established the foundation for the introduction of “green” finance and other support for sustainable development projects and initiatives, while continuing to develop its regulations incentivizing renewable power production. In addition to new energy and environmental developments, Russia also made significant changes in its conventional energy legislation, introducing major amendments into the Subsoil Law and continuing to develop regulations aimed at implementing such changes into the legislation.

In the most recent legislative initiatives of the fourth quarter of 2021, Russia has followed the above trends, passing regulations in respect of limiting the greenhouse gas emissions and pilot projects in CO2 limitation and trade, and further developed subsoil use regulations applicable for both mining and oil and gas operations.

We will continue to monitor and report on Russian legislative developments with a focus on the core documents and initiatives that will shape the future of the industry as we move through 2022.

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

We continued our energy industry webinar series, "[Reaching Net Zero Together: Energy Transition Challenges and Opportunities](#)." During our series, we address the host of issues facing companies around the globe as they adapt to changes compelled by climate concerns, fluctuations in demand, and fast-paced technology innovation while companies work to pivot their business models to achieve their net-zero goals.

LEGISLATIVE OVERVIEW

FOURTH QUARTER 2021

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

Russia's 2050 Low Greenhouse Gas Emissions Development Strategy

Russia has approved a Strategy for Low Greenhouse Gas Emissions Socio-Economic Development until 2050. It is the first strategy that aims to prepare Russia for the global energy transition, including reducing greenhouse gas emissions and achieving carbon neutrality.

The strategy sets out two scenarios of socio-economic development for Russia: "business as usual" (inert) and target-oriented (intensive), which differ in the level of technological development, necessary changes in the economy, the absorption capacity of natural absorbers and accumulators of greenhouse gases, and other factors.

The “business as usual” scenario involves implementation of decisions already made to achieve national goals and objectives of the sectoral strategic planning documents.

The target-oriented (intensive) scenario assumes additional measures needed to decarbonize the economy and increase the absorption capacity of managed ecosystems.

Implementation of the target-oriented (intensive) scenario would allow Russia to achieve a balance between anthropogenic greenhouse gas emissions and their absorption (i.e., achieve carbon neutrality) no later than 2060.

The strategy is a policy document, and its implementation will require further development and adoption of detailed regulation.

[Russian Federation Government Directive No. 3052-r, “On Approval of a Strategy for Low Greenhouse Gas Emissions Socio-Economic Development of the Russian Federation until 2050,” dated October 29, 2021](#)

Limiting Greenhouse Gas Emissions - Legislative Developments

In 2021, Russia adopted its first-ever law on greenhouse gas emissions that lays ground for regulation in this area. We provided an extensive review of this new law in [Morgan Lewis Q2 2021 Spark](#) (and, also earlier, when this draft law was being discussed, in [Morgan Lewis Q3 2020 Spark](#)).

For the greenhouse gas emissions regulation to be truly robust (including with respect to reporting and trade in carbon units), further legislation needs to be developed. We will continue to closely monitor any developments in this area.

In order to implement the Law “On Limitation of Greenhouse Gas Emissions,” the Ministry of Natural Resources and Environmental Protection has prepared a draft procedure for the development of a register (inventory) of sources of greenhouse gases anthropogenic emissions and absorption. The structure of the register and initial data for its preparation have been defined. The register will be made publicly available on the internet. The data in the register will be used:

- to prepare national communications for submission by the Russian Federation in accordance with its obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol;
- to apprise government and local authorities, organizations, and the general public about greenhouse gas emissions and absorption; and
- to develop the national climate change policy and measures to regulate greenhouse gases emissions and removal.

We have provided a more detailed review of other draft laws seeking to create a legal framework for the carbon units market in Russia in [Morgan Lewis Q3 2021 Spark](#).

[Draft Order of the Russian Ministry of Natural Resources and Environmental Protection “On Approving a Procedure for the Development of an Inventory of Sources of Greenhouse Gases Anthropogenic Emissions and Absorption”](#)

Pilot Projects to Limit CO2 Emissions on Sakhalin Island and Beyond

A draft law has been in development to conduct a pilot test to limit CO2 emissions on Sakhalin Island and potentially in other regions. According to the draft law, the pilot test will be conducted on Sakhalin Island from March 1, 2022 through December 31, 2028 with a view to achieving carbon neutrality by December 31, 2025. Competent agencies may decide to extend the carbon regulation pilot test to other Russian regions. The draft law has been revised to expand the initial pilot on Sakhalin Island to the other Russian regions that express interest in joining the pilot projects.

A detailed program of the pilot projects will be developed at the regional level in order to conduct an inventory of greenhouse gases emissions and absorption and to cap greenhouse gas emissions by regulated organizations, a list of which will be approved annually by the head of the applicable region.

A fine will be set for exceeding the cap. According to the explanatory note to the draft law, the fine will be based on the global average price of greenhouse gas emissions and the average price in the European Union Emissions Trading System.

[Draft Law No. 37939-8 "On Conducting an Experiment to Limit Greenhouse Gas Emissions in Certain Constituent Entities of the Russian Federation."](#)

SUBSOIL USE

Significant Amendments to Subsoil Law

Significant amendments to the Subsoil Law came into effect on January 1, 2022. We described these amendments in detail in [Morgan Lewis Q2 2021 Spark](#), when the respective [federal law](#) was adopted.

In brief, the key amendments relate to the following:

- Auctions have become the only means of competitive bidding for subsoil licenses. Tenders (i.e., the procedure by which the winning bidder is determined based on evaluation of the strengths of its bid with respect to commercial, social, environmental, and other factors) have been abolished. All auctions will be conducted electronically.
- A number of amendments were made to Article 12 of the Subsoil Law that deals with what should be included in the subsoil license.
- Provisions have now been made for transferring licenses for a strategic subsoil plot to a subsidiary of a subsoil user, subject to approval by the Government Commission.
- The procedures for subsoil license suspension, restriction, and termination have also been modified.
- The Subsoil Licensing Regulation adopted by the Russian Federation Supreme Soviet on July 15, 1992 has been repealed. The repealed regulation had the effect of a federal law but retained fairly antiquated provisions, which over the years diverged from the Subsoil Law.

Developments in Subsoil Use Regulation

The Amendments to the Subsoil Law discussed above necessitated alignment of subordinate legislation. In that vein, the following regulations, among others, have been adopted:

- **Rules for Granting Subsoil Use Rights upon Auction:**

The rules establish a new procedure for granting by auction the right to use a subsoil plot of federal significance for exploration and production of minerals or for geological survey of subsoil, exploration, and production of minerals under a combined license, as well as the procedure for granting the right to use such subsoil plot to a person whose bid meets the requirements of the Russian Subsoil Law and the terms and conditions of the announced auction, or to the only bidder at an auction by decision of the auction committee established pursuant to a decision of the Russian Federation Government.

[Russian Federation Government Decree No. 1906 "On Approval of Rules for Granting the Right to Use a Subsoil Plot on Grounds Provided for under clause 2 part one of Article 10.1 of the Russian Federation Law on Subsoil," dated November 2, 2021](#)

Also, a separate procedure has been established for granting a subsoil license by auction for subsurface plots that are not subsoil plots of federal significance, as well as plots provided for the development of technologies for geological survey, exploration, and production of hard-to-recover minerals.

[Order No. 735/04 of the Ministry of Natural Resources and Environmental Protection of the Russian Federation and the Federal Agency for Subsoil Use "On approval of the procedure for granting by auction the right to use a subsoil plot for exploration and production of mineral resources, for geological survey of subsoil, exploration and production of mineral resources under a combined license, or for development of technologies for geological survey, exploration and production of hard-to-recover mineral resources, except for subsoil plots of federal significance and subsoil plots of local significance and, in the event provided for by part eight of Article 13-1 of Russian Federation Law 2395-1, dated February 21, 1992 "On Subsoil," for granting the right to use a subsoil plot to a person whose bid meets the requirements of Russian Federation Law 2395-1, dated February 21, 1992 "On Subsoil" and the terms and conditions of the announced auction, or to the only bidder at an auction \(registered under No. 66283 on December 10, 2021\)](#)

- **Rules for Granting Geological Exploration Rights:**

New rules for granting geological exploration rights have been established. The rules, among other things, regulate (i) the procedure for formation and operation of the Federal Agency for Subsoil Resources (Rosnedra) Commission, which must include representatives of the executive authority of the relevant Russian constituent entity, to consider applications for obtaining geological exploration rights; (ii) types of applicants to which subsoil licenses can be provided for the purposes of geological exploration; (iii) the requirements of the subsoil plots that are eligible for a geological exploration license, and the types of resources and territories in respect of which a geological exploration license cannot be provided.

[Order of the Ministry of Natural Resources and Ecology of the Russian Federation, the Federal Agency for Subsoil Use, dated October 28, 2021 No. 802/20 "On approval of the Procedure for granting the right to use subsoil plots for geological exploration of subsoil, including study and evaluation of mineral deposits, in a subsoil plot not included in list of subsoil plots for geological study of subsoil, with the exception of subsoil in subsoil plots of federal significance and subsoil plots of local significance \(Registered on December 10, 2021 No. 66287\)](#)

- **Procedure for Granting Exploration and Production Rights upon a Deposit Discovery Made During Geological Study:**

A procedure has been established for granting subsoil use rights following a discovery of a mineral deposit by a subsoil user conducting a geological study of a subsoil plot that is not a subsoil block of federal significance.

[Order No. 803/21 of the Ministry of Natural Resources and Environmental Protection of the Russian Federation and of the Federal Agency for Subsoil Use, dated October 28, 2021: "On Approval of the Procedure for Granting Subsoil Use Rights upon Mineral Deposit Discovery in the Subsoil Plot by the Subsoil User Conducting Geological Study of such Plot, for the Exploration and Production of Mineral Resources on the Discovered Deposit, except for the Subsoil Plot of Federal Significance, the Subsoil Plot which is Classified as the Subsoil Plot of Federal Significance as a Result of the Mineral Deposit Discovery, the Subsoil Plot of Local Significance, and the Subsoil Plot if Geological Study of such Plot is Conducted under a State Contract" \(Registered on December 10, 2021 under No. 66279\)](#)

- **Licensing and Re-Licensing Procedures:**

The Ministry of Natural Resources and the Federal Agency for Mineral Resources enacted a number of regulations that approved requirements applicable to the subsoil license form, and the procedure for subsoil license execution, state registration and issuance, grounds for license renewal and amendment, requirements applicable to filing of an application, and the procedure for reviewing an application. The Orders establish the procedure for the creation and operation of the Commission that makes decisions on renewal or amendment of subsoil licenses.

[Order No. 782/13 of the Ministry of Natural Resources and Environment of the Russian Federation and of the Federal Agency for Mineral Resources, dated October 25, 2021: "On Establishing the Form of the Subsoil Use License and the Procedure for the Execution, State Registration and Issuance of Subsoil Use Licenses" \(registered on December 13, 2021 under No. 66307\)](#)

[Order No. 751/10 of the Ministry of Natural Resources and Environment of the Russian Federation and of the Federal Agency for Mineral Resources, dated October 14, 2021: "On Approval of the Procedure for the Renewal of Subsoil Use Licences" \(registered on December 10, 2021 under No. 66280\)](#)

[Order No. 752/11 of the Ministry of Natural Resources and Environment of the Russian Federation and of the Federal Agency for Mineral Resources, dated October 14, 2021: "On Approval of the Procedure for the Amendment of Subsoil Use Licenses" \(registered on December 13, 2021 under No. 66306\)](#)

▪ **Procedure for Establishing the Fact of a Deposit Discovery:**

The procedure for the Federal Agency for Subsoil Resources (Rosnedra) or its territorial agencies to establish the fact of a deposit discovery following an application by an entity that carried out the subsoil geological survey work under a geological survey subsoil license, including prospecting and evaluation of mineral deposits, has been approved.

[Order No. 796/19 of the Russian Federation Ministry of Mineral Resources and Environment and the Federal Agency for Subsoil Resources, dated October 26, 2021, "On Approval of a Procedure for Establishing the Fact of Discovery of a Mineral Deposit, Issuance of a Certificate to Evidence the Fact of Discovery of a Mineral Deposit, and Amendment of Certificates to Evidence the Fact of Discovery of a Mineral Deposit" \(Registered on December 10, 2021 under No. 66282\)](#)

▪ **Procedure for Subsoil License Termination:**

The procedure for terminating the right to use subsoil, including early termination of subsoil use rights and limiting the rights to use the subsoil, has been regulated, as well as the procedure for the creation and operation of the Rosnedra Commission for the purpose of resolving issues related to the early termination, suspension, and limitation of subsoil use rights, as well as the grounds for early termination/suspension of subsoil use rights, the procedures for the suspension of subsoil use rights, and appealing the relevant actions (or inactions) of officials.

Under the new procedure, subsoil use rights may be suspended or limited in the following events:

- there is an imminent threat to life or health of people;
- there is an emergency of natural or technogenic nature, or military operations on the subsoil plot as a whole; and
- the license holder uses the subsoil plot without the duly approved project design documentation, etc.

Under the new procedure, subsoil use rights may be subject to early termination in the following events:

- the license holder breaches the terms and conditions of its subsoil license, where such breach constitutes grounds for early termination in accordance with the terms and conditions of the subsoil license;
- the license holder repeatedly (two or more times within four years) violates the terms and conditions of use of a subsoil area under a subsoil license;
- the license holder fails to begin operations in the subsoil plot within the term stipulated by the subsoil license;
- the license holder violates the requirements for the rational use and protection of the subsoil;

- the license holder does not submit and/or violates the procedures for submission of geological information on subsoil;
- the license holder files an application for the early termination of its subsoil license;
- as well as other events stipulated by law.

[Order No. 743/08 of the Russian Federation Ministry of Mineral Resources and Environment and the Federal Agency for Subsoil Resources, dated October 13, 2021, "On Approval of a Procedure for Termination, including Early Termination, or Suspension or Limitation of Minerals Licenses" \(Registered on December 13, 2021 under No. 66305\)](#)

- **Procedure for the Development and Approval of Mineral Deposits Detailed Development Plans:**

The procedure for preparing, agreeing to, and approving mineral deposits detailed development plans; engineering design projects for the construction and operation of underground structures; and engineering design projects for the abandonment and suspension of mine workings, drilling wells, and other subsoil use-related structures has been updated. The amendments will come into effect from March 1, 2022.

Detailed development plans and engineering design projects agreed upon and approved by a subsoil user prior to March 1, 2022 will be in effect until their expiration and are not required to be brought into compliance with the new regulations.

[Russian Government Decree No. 2127, dated November 30, 2021: "On the Procedure for Preparing, Agreeing and Approving Mineral Deposits Detailed Development Plans, Engineering Design Projects for the Construction and Operation of Underground Structures, and Engineering Design Projects for the Abandonment and Suspension of Mine Workings, Drilling Wells and other Subsoil Use Related Structures, by Types of Minerals and Subsoil Uses"](#)

- **Bad-Faith Bidder Register:**

As we have discussed earlier, the concept of a "blacklist" has long been put forward by regulatory authorities and is stipulated in the Subsoil Law. The winning bidder who fails to pay all or any part of the bid amount will be included in a special "bad faith bidder register" for two years. Such register will be publicly available, and companies included in the register will not be allowed to participate in the auctions and will not be able to apply for the right to use subsoil without an auction. The Ministry of Natural Resources has approved the procedure for keeping such register.

[Order No. 734 of the Ministry of Natural Resources and Environment of the Russian Federation, dated October 12, 2011: "On Approval of the Procedure for Keeping the Register of Bad-Faith Bidders at the Auctions for the Right to Use Subsoil Areas, including the Procedure for Entry into, and Deletion from, the Register of Information, as well as Requirements Applicable to Technological, Software, Language, Legal and Organizational Means Ensuring Keeping of such Register" \(Registered on December 10, 2021 under No. 66281\)](#)

Please note that the above changes in the subsoil use regulation are not exhaustive. If required, we would be happy to address your questions.

ENVIRONMENT

Liability for Failure to Comply with the Requirements Applicable to Oil Spill Prevention and Response

As we discussed in more detail in [Morgan Lewis Q2 2020 Spark](#) and [Morgan Lewis Q3 2020 Spark](#), the oil products spill at CHPP 3 near Norilsk in 2020, which resulted in large-scale pollution, gave the needed impetus for the development of new legal mechanisms aimed at preventing such pollution and environmental damage.

In furtherance of the oil spill prevention and response regulation in Russia, the following liability has been introduced for the failure to comply with the oil spill prevention and response requirements (Article 8.50 of the Code of Administrative Offenses):

- Introduction of an administrative fine for:
 - knowingly submitting for approval an oil spill prevention and response plan that contains inaccurate data (information),
 - failure to comply with the obligation to approve such plan,
 - failure to carry out measures under this plan, failure to perform the obligation to establish a system for monitoring the state of the marine environment in the area of operations,
 - failure to perform the obligation to confirm financial support for the implementation of measures under the plan, and
 - failure to perform the obligation to ensure preparedness of emergency response services and teams.

Notwithstanding the fact that the fine may not be material for large companies, if there are repeated violations, then an administrative offense may result in an administrative suspension of the company's activities for a period of up to 90 days.

- In addition, an administrative fine has been introduced for the failure to notify, or for the improper notification of, the authorized agency with respect to an oil or oil products spill. If such violation is repeated, then this administrative offense may result in an administrative fine of up to 1,000,000 rubles or administrative suspension of activities for up to 90 days.

[*Federal Law No. 419-FZ, dated December 21, 2021 "On Amendments to the Code of Administrative Offenses of the Russian Federation"*](#)

Liability for Failure to Comply with the Requirements to Equip Pollution Sources with Automated Monitoring Systems

Effective from February 1, 2022, Article 8.51 will be added to the Code of Administrative Offenses setting forth liability for failure to comply or late compliance with the requirements to equip stationary sources of pollutant emissions and discharges with automated monitoring systems in accordance with the environmental laws. One might also incur administrative liability for noncompliance with the requirements applicable to automated equipment for measuring and recording of pollutant emissions and/or discharges, and requirements applicable to the equipment for recording and transferring of information on emission values. Such offenses entail liability in the form of an administrative fine, including in the event of a repeated offense.

[Federal Law No. 427-FZ, dated December 21, 2021 "On Amendments to the Code of Administrative Offenses of the Russian Federation"](#)

Information on the State of the Environment

The Russian Government has approved the rules pursuant to which the authorities are to post information related to the environment (environmental information) via the internet. Environmental information includes:

- the list of objects that have incurred cumulative environmental damage, specifying the area/areas of water size;
- information on facilities that are adversely affecting the environment;
- analytical information on the state of the environment;
- information describing the condition and use of the mineral resources base of the Russian Federation;
- analytical information on the water resources of the Russian Federation, their use and water management;
- analytical information on the state of the environment in the Baikal Natural Area;
- information on waste;
- information on the radiation situation; and
- other information.

The federal executive authorities, the executive authorities of the Russian constituent entities, the local government agencies, and their authorized organizations must publish and update the relevant information and are responsible for the accuracy of the published information. If any information is received from any third parties regarding the inaccuracy and/or incompleteness of environmental information, the authority that posted it must review the validity of the information provided and, if the deficiencies are confirmed, amend the posting accordingly.

[Russian Government Decree No. 2314 dated December 16, 2021: "On Approving the Rules for Posting and Updating by the Federal Executive Authorities, the Executive Authorities of the Constituent Entities of the Russian Federation, Local Government Agencies or their Authorized Organizations of Information on the State of the Environment \(Environmental Information\) on Official Websites in the Internet Information and Telecommunication Network or via Governmental and Municipal Information Systems, including the Content of Information on the State of the Environment \(Environmental Information\) and the Form of its Posting"](#)

POWER

In December 2021, several changes were introduced into the legislation regulating the use of renewable energy sources (**RES**). In Russia, new regulations aimed at stimulating the use of renewable energy are being regularly developed. In addition, the most recent changes introduced are focused on power generating facilities that operate on the basis of renewable energy using production and consumption waste as fuel.

The new regulations include:

- regulations governing the qualification of such facilities for the purpose of concluding long-term capacity supply contracts in respect of so-called qualified generating facilities operating on the basis of RES (**RES Capacity Supply Contracts**);
- new provisions of the Wholesale Power Market rules in relation to qualified generating facilities operating on the basis of RES (in particular, the period during which the supply under a RES Capacity Supply Contract must begin has been extended from 12 to 24 months before the supplier is considered to have waived its right to the Capacity Supply Contract);
- the regulations for determining the capacity price (in particular, the procedure for determining the reimbursable costs of the power supplier and calculating the capacity supply price under Capacity Supply Contracts).

[Decree of the Government of the Russian Federation of December 25, 2021 N 2486 "On Amendments to Certain Acts of the Government of the Russian Federation on Encouragement of the Use of Generating Facilities Operating on the Basis of Renewable Energy Sources, Including Production and Consumption Wastes"](#)

NAVIGATING THE NEXT GLOBAL RESOURCE

You may find useful resources on our [**NAVIGATING THE NEXT**](#) webpage that can help 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.

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