

Morgan Lewis

SPARK

From our team to yours

As both Russia and countries around the world are beginning the process of reopening, we hope that you and your family are safe and healthy as you receive this update. Please know that, through all of this, our team remains focused, connected, and ready to support you and your colleagues in any way that we can.

In these unprecedented times, we are seeing the uncertainty as to commodity price and demand, as well as the inability to conduct business as usual, play havoc with the negotiation of new projects/acquisitions, but we have also begun to see new opportunities for projects and joint ventures appear in the energy and mining sectors.

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.

During the second quarter of 2020, there have been a number of important legislative changes, including significant amendments to the Russian Constitution, an update of the National Energy Strategy, and multiple legislative acts addressing the coronavirus (COVID-19), including certain decrees expressly benefiting subsoil users.

The next edition of **Morgan Lewis Spark** will be published following the end of the third quarter. We will continue to watch for legislative developments, with particular interest in business support during the COVID-19 recovery, the continuing developments of the OPEC+ agreements, and the development of the energy transition in Russia.

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

Be well.

Q2 | 2020

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MORGAN LEWIS NEWS

[Find helpful legal analysis on COVID-19 measures around the globe and our focus on Now.Normal. Next. - How to Reopen, Rebuild, Restructure, Recover.](#)

We will be hosting AIPN's Live Webinar ["Outlook on Russia: Oil Price, Energy Politics and Carbon Footprint"](#) on Thursday, July 16, 2020 at 16:30 p.m. MSK.

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

Thank you to our clients and friends for helping us be recognized as **The Law Firm of the Year for Energy and Natural Resources Law in Russia** (Best Lawyers 2021 Edition)

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LEGISLATIVE OVERVIEW

SECOND QUARTER 2020

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

CONSTITUTIONAL AMENDMENT

Russia Votes for Amendments to the Constitution

Following months of discussion and a national referendum, Russia has enacted substantial amendments to its 1993 Constitution, effective 4 July 2020. The amendments affect many areas of Russia's social and political landscape, including issues directly relating to the authority of the President and the possibility for Vladimir Putin to run again in the next presidential election. In addition, the amendments address the supremacy of international law, create a new category of land—"federal territories"—and increase the role of the State Council (*Gosudarstvennyi Sovyet*). [For more, read our client alert.](#)

ENERGY

New National Energy Strategy - 2035

The Russian Government approved the Energy Strategy of the Russian Federation for the period until 2035 (**the Energy Strategy**), which replaces the previous Energy Strategy for the period until 2030.

The Energy Strategy is Russia's key strategic and planning document for the energy sector—defining the course and priorities of the state energy policy, as well as objectives and key measures for long-term energy development.

The Energy Strategy aims to contribute to Russia's social and economic development as well as to strengthen and maintain Russia's role in the global energy industry. To achieve Russia's goals, Russia needs to make a so-called "modernization leap" toward a more efficient, flexible, and sustainable energy industry. The Energy Strategy sets out the following key objectives:

- (1) structural diversification of the energy sector, which contemplates (i) carbon energy to be supplemented by noncarbon, (ii) centralized energy supply to be diversified by decentralized energy supplies, (iii) export of energy resources to be supported by export

of Russian energy-sector technologies, equipment, and services, and (iv) growth of application of electric energy, LNG, gas, and gas engine fuel;

- (2) digital transformation of the energy sector, to improve quality levels and bring new rights and opportunities to consumers of fuel products and services;
- (3) optimization of energy infrastructure location through the creation of oil and gas mineral resource centers and chemical facilities in Russia's Eastern Siberia, the Far East, and the Arctic zone; expansion of the energy transportation infrastructure; and a focus on Russia's becoming a leading player in the Asia-Pacific markets; and
- (4) reduction of the energy sector's negative impact on the environment – Russia will make a significant contribution to the global transition to low-carbon development and to international efforts to preserve the environment and combat climate change.

The Energy Strategy will be further elaborated by a midterm implementation plan, specific plans to develop particular fuel and energy sectors, and other strategic and long-term planning documents.

Energy Strategy of the Russian Federation for the period until 2035, approved by the Decree of the Government of the Russian Federation No. 1523-r dated 9 June 2020.

SUBSOIL USE

New Measures to Support Russian Subsoil Users During COVID-19

In light of the COVID-19 pandemic, in April 2020 the Russian Government adopted two Decrees—No. 440 dated 3 April and No. 557 dated 22 April (the **Decrees**)—aimed to support certain businesses affected by the pandemic, including measures that specifically address subsoil license holders.

Under the Decrees, subsoil users holding subsoil licenses that expire in the period between 15 March and 31 December 2020 have been granted an extension for an additional 12 months from the license's expiry date. Thus, these subsoil licenses will not be terminated in 2020. (But the license holder is under no obligation to use the extension, and can request that the license be terminated upon expiration of its initial term.)

Further, a one-year extension to 31 December 2021 has been granted to subsoil users to rectify violations of their subsoil license terms if the deadline for rectification of the violation falls within the period 15 March to 31 December 2020.

The deadline for submitting documents to obtain exploration or production rights upon completion of geological study has also been extended from 15 March 2020 to 31 December 2020.

In addition, the Decrees allow subsoil users to suspend or limit their rights under their subsoil license for a period of up to two years starting from 24 April 2020. Such suspension extends the term of the license for a period equivalent to the suspension. In order to receive approval of such a suspension, a subsoil user must file an application with Rosnedra in accordance with Rosnedra's Administrative Regulations, approved by the Ministry of Natural Resources Decree No. 315 on 29 September 2009.

[Government Decree No. 440 dated 3 April 2020:](#)
"On Extension of Permits and Other Aspects of Permitting Activities in 2020"

[Government Decree No. 557 dated 22 April 2020:](#)
"On Amending Certain Acts of the Government of the Russian Federation regarding the Establishment of Specifics of the Implementation of Control, Supervisory and Permitting Activities in 2020"

Amendments to List of State Secret Information in Respect of Strategic Mineral Recourses

On 8 June 2020, President Putin signed an Edict amending the list of mineral resource information in respect of strategic mineral resources that are classified as state secret (the **List**). The List exists under Government Decree No. 210 dated 2 April 2002 and includes such mineral resources as nickel, cobalt, tantalum, and lithium (oil and gas were excluded from the List in 2013).

In particular, the List formerly provided that data regarding the extraction (production), transfer, or consumption of strategic mineral resources from a large deposit was deemed to be state secret and therefore protected and required to be kept pursuant to a special regime. The new amendments have removed the word "large" from the reference to "large deposits," resulting in the potential risk of data on reserves of any deposit of strategic mineral resources being classified as state secret (but subject to possible further determination by authorized state bodies of exact volumes being classified as state secret).

As amended, the List also indicates that in addition to the volumetric data on consumption of strategic mineral resources in respect of Russia overall, the volumetric data on consumption by any particular organization can qualify as state secret (here again, subject to possible further state-secret volume determinations by authorized state bodies).

[Edict of the President of the Russian Federation No. 381 dated 8 June 2020:](#) *"On Amendments to the List of Information Classified as State Secret, approved by the Decree of the President of the Russian Federation No. 1203 dated 30 November 1995"*

OIL & GAS

Extension of the List of LNG Exporters

In May 2020, amendments to the Gas Export Law extending the list of eligible LNG exporters came into effect. The amendments effectively give LNG export rights to the newer Novatek-controlled joint ventures that hold subsoil licenses issued after 2013.

In our 1st Quarter 2020 edition of *The Spark* we discussed these amendments (while they were in draft) in more detail. For more, read our [Q1 Edition of The Spark](#).

Preventing and Eliminating Oil Spills

The State Duma approved draft amendments to the Law on Environmental Protection aimed at preventing and eliminating spills of oil and oil products in Russia.

The draft was initially introduced and adopted in first reading in 2018, but further progress of the draft was suspended due to disagreements between ministries. However, a significant spill of petroleum products at the TPP-3 power plant near the city of Norilsk on 29 May 2020, resulting in large-scale contamination of both soil and water, revived the discussions on the draft and the legislative push to elaborate new mechanisms aimed at preventing such potential pollution and environmental damage.

The draft law requires 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 approved by the Federal Service for Supervision of Natural Resources (Rosprirodnadzor).

The company operating the project must put in place sufficient financial security to ensure full compensation of damages caused to the environment; to the life, health, and/or property of individuals; and to legal entities. The security can be provided in any of the following forms: a bank guarantee, insurance, a document confirming creation of a reserve fund, or a letter of guarantee issued by a federal, regional, or municipal body acting as an owner of the operator.

Under the draft law, if there is an oil or oil product spill, the operator of the project is required to notify the federal and regional executive authorities of the incident;

ensure the organization and progress of containment and relief efforts in accordance with the approved plan using its own emergency and rescue services (and/or request the authorized state bodies to provide assistance to localize the incident); and, once the incident is contained, rehabilitate the contaminated soil, vegetation, and water resources as required by law.

The Duma adopted this draft law in second and third reading on 7 July. If adopted by the Federal Council and signed by the President, the amendments will become effective from 1 January 2021.

[Draft Law No. 376642-7](#): “On Amendments to Article 46 of the Federal Law on Environmental Protection and Certain Legislative Acts of the Russian Federation”

Split Licenses for Hard-to-Recover Resources

On 31 May 2020, amendments to the Subsoil Law allowing a subsoil user to spin off a portion of its license area into a new subsoil license to explore/produce “hard-to-recover resources” came into effect.

In our 1st Quarter 2020 edition of *The Spark* we discussed these amendments (while they were in draft) in more detail. For more, read our [Q1 Edition of The Spark](#).

Plans to Establish a Fund for Unfinished Oil Wells

Following President Putin’s instructions given on 29 April during a videoconference with government and energy company representatives, on 26 May the Government Commission on Increasing Sustainable Development tentatively agreed to support proposals of the Russian Energy and Finance Ministries to help oil producers to set up a fund of “unfinished oil wells” in order to support Russia’s oil field services industry.

The initiative is aimed to help oil producers prepare for restoration of oil production and to help oil field services companies overcome the reduction in demand for their services. Reportedly, the establishment of an unfinished oil wells fund will create a potential resource base for the fast recovery of oil production from confirmed reserves after the expiration of the OPEC+ agreements.

According to Energy Minister Novak, the oil producers will order services and equipment from the Russian oil field services companies for drilling wells in 2020-2021 with financial help from local banks. The criteria for oil field services companies to qualify as “Russian” for purposes of this regulation is yet to be clarified. Wells drilled in 2020-21 will stay idle for several years as demand recovers allowing oil production to grow, which is planned to begin after April 2022.

According to the Energy Minister, the plan is expected to help maintain the employment levels and solvency

of the Russian oil field services companies, as well as further encourage the development of Russian high-tech equipment for the oil and gas industry and stimulate investment in the further development of fields.

The Ministry of Energy was instructed to finalize the plan together with the banking community and submit a draft bill for consideration of the Government.

MINING

New Associated Minerals Amendments Adopted

On 8 June 2020, President Putin signed a federal law on stimulating the geological study and extraction of associated minerals during exploration and production of hydrocarbons. This law will become effective within 90 days after its official publication, i.e., from 7 September 2020.

The amendments allow all subsoil users, not only state companies, to extract associated minerals under a subsoil license together with the main mineral. Before the enacted amendments, under the Subsoil Law a subsoil user (save for state companies) could use the extracted mineral resources only in accordance with the terms and designated purpose of the underlying subsoil license. If during geological exploration a subsoil user discovered a new type of associated mineral that was not specified in the license, the subsoil user was not authorized to further use and sell it. Thus, subsoil users were not motivated to carry out comprehensive geological study in order to extract such associated minerals. As a result, the State has been unsuccessful in replenishing a significant portion of certain minerals (precious, nonferrous, rare metals, and others), and subsoil users have lost the opportunity to gain additional profit from the use and sale of same.

In addition, the amendments exclude fields containing deposits of lithium dissolved in subsoil waters from the list of fields of federal significance, since these deposits are not currently accounted for in the State Register of Mineral Reserves and the economic and technological feasibility of extraction from such deposits is not yet confirmed. Only primary (ore) deposits of lithium will be recognized as fields of federal significance.

[Federal Law No. 179-FZ dated 8 June 2020](#): “On Amendments to the Subsoil Law of the Russian Federation in Connection with Development of Extraction of Mineral Resources Not Related to Crude Hydrocarbons from Subsoil Waters, Associated Waters, and Waters Used for Own Production and Technological Needs During Exploration and Extraction of Crude Hydrocarbons”

POWER AND RENEWABLES

Draft Amendments to Support Localization in the Use of Renewables

Amendments to a series of laws have been developed in furtherance of the Russian Government's plan for the development of legislation further incentivizing renewable power producers that benefit from state support to use local Russian equipment and services.

The draft revises the point system used to classify (based on various criteria) products (and works and services) manufactured or conducted in Russia for the purposes of meeting the localization requirements applicable to renewable power generators that benefit from long-term capacity agreements. In Russia, renewable generators are allowed to bid (through a competitive selection process) for the opportunity to enter into long-term contracts to supply capacity. Capacity is traded separately from energy, and capacity supply agreements aim to ensure that investors secure a return on their investment in renewable energy projects through guaranteed capacity payments, payable over a 15-year period. The updated point system, if adopted, will become effective for generating facilities operating on solar energy starting from 1 January 2023, and for generating facilities operating on wind or hydro energy starting from 1 January 2025.

According to the draft amendments, more points will be assigned to high-tech operations and components produced in Russia, including solar cells, power converters, generators for direct-drive wind power installations, and components (spare parts) for wind turbines.

The draft also proposes to amend the terms for setting export targets (including extending the targets until 2035) for industrial products (and works and services) used in the construction of wind and solar energy generating facilities.

[Draft Amendments](#): "On Amendments to Certain Acts of the Government of the Russian Federation Regarding Stimulating the Use of Renewable Sources of Energy"

ARBITRAZH PROCEDURE CODE

New Russian Law Allows Sanctioned Parties to Move Contract Disputes to Russian Court

On 8 June 2020, President Putin signed into law a set of amendments to the Arbitrazh Procedure Code (Russia's main civil procedural law for litigation of commercial matters) by which, in a significant range of circumstances, Russian individuals and companies (and foreign companies) that have been sanctioned under the US, EU,

and other anti-Russia sanctions programs may now (i) insist that a contract-based dispute involving them be heard only in Russian arbitrazh court (that is, the state commercial court system) and (ii) apply to a Russian arbitrazh court for an injunction ordering the foreign claimant to halt a pending or threatened foreign litigation or arbitration regarding such dispute. For more, read our [client alert](#).

COVID-19 UPDATE

Following the lifting of the national lockdown in early May, the restrictions in Moscow were gradually lifted in June after two months of stay-at-home orders, and the country has commenced the process of returning back to "normal" business. Below we briefly outline key legislative developments with respect to the lifting of the COVID-19 restrictions and measures supporting businesses affected by the pandemic. More information on COVID-19 legislative actions in Russia, and around the globe, can be found on [our website](#).

Russia Ends Mandatory Nonwork Days But Restrictions Continue

Russia ended the mandatory nonwork days introduced to curb the COVID-19 pandemic, initially issued for 30 March through 3 April and then ultimately extended through 11 May. For more, read our [client alert](#).

Moratorium on Bankruptcy and Freeze on Transactions

In response to the COVID-19 pandemic, Russia has changed its bankruptcy laws to provide for a moratorium on bankruptcies and a freeze on certain transactions. For more, read our [client alert](#).

Russia Adopts Rules Regarding Renegotiating Leases and Postponing Payments

Russia has adopted rules allowing the renegotiation of real estate leases and the postponement of lease payments in certain cases. These rules affect both landlords and tenants. For more, read our [client alert](#).

Russia Reopening the Workplace: A Preliminary Guide for Moscow Employers

As Russian regions are lifting pandemic-related workplace restrictions, employers must start considering how best to cope with a vast array of issues, including restarting operations, reintegrating remote-working employees, implementing new and existing requirements, and protecting the safety of employees and customers. For more, read our [client alert](#).

Morgan Lewis

ABOUT US

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

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