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Russian Oil and Gas Sector Regulatory Regime: Legislative Overview

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Russia continues to be one of the world's largest producers of crude oil and natural gas. Based on 2015 statistics, Russia's proven gas reserves are the largest in the world, totaling approximately 32 trillion cubic meters of gas, or 17.3% of global reserves, and its proven oil reserves total approximately 109.5 billion barrels, which equates to 6.4% percent of the world oil reserves.[1] Russia's hydrocarbon reserves play a fundamental role in its geopolitical policies and its internal economy (with oil and gas revenues traditionally accounting for at least half of the federal budget revenues).

Licensing of Subsoil Use Activities – Legislative Framework and Authorities

In Russia the exploration and production of subsoil resources, including oil and gas, is primarily a tax royalty regime that is administered through the granting of subsoil use licenses. The main body of legislation is contained in the Federal Law "On Subsoil," dated 21 February 1992 (the "Subsoil Law"), and the Regulations on the Licensing of Subsoil Use issued pursuant to that law. In addition, a large number of ministerial orders and governmental resolutions have been issued in implementing the regulations.

Subsoil usage is overseen by the Ministry of Natural Resources and Ecology of the Russian Federation ("MNR") and federal agencies under its jurisdiction. The Federal Agency for Subsoil Use ("Rosnedra") is the central administrative agency. It is headquartered in Moscow and has branches throughout the Russian Federation. Rosnedra is responsible for the issuance, suspension and revocation of subsoil use licenses; the approval of deposit development plans; and the transfer and storage of geological information. Oversight of compliance with the legislation regulating subsoil use and protection of the environment is conducted by the Federal Service for Supervision of Nature Use ("Rosprirodnadzor").

Petroleum Economist named King & Spalding "Energy Advisory Firm of the Year" in both 2014 and 2016.

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[1] According to *BP Statistical Review of World Energy, June 2017*

About King & Spalding

King & Spalding's global energy practice has handled matters in more than 90 countries across six continents. The practice of choice for LNG matters and long considered an industry leader in international oil and gas law, our lawyers handle matters at every stage of the oil and gas value chain, from exploration and production to midstream and pipelines, oilfield services, gas storage, trading and refining.

King & Spalding has an experienced team of oil & gas lawyers on the ground in its Moscow office who are leaders in their field. These lawyers advise on complex energy transactions in Russia and the CIS, often joined by King & Spalding's energy and arbitration lawyers in key global energy cities such as London, Houston, New York, Paris, Dubai, Abu Dhabi, Riyadh, Singapore and Tokyo. Their combined knowledge and expertise cover the entire energy value chain, from upstream oil and gas to LNG, power and pipelines.

Types of Subsoil Licenses

Russian subsoil legislation provides for the following three types of subsoil use licenses with respect to the development of mineral resources:

- Exploration Licenses – Permit the license holder to conduct above ground exploration activities and exploratory drilling. Production may not be undertaken under an exploration license. The maximum term for an exploration license is generally five years; however it can be up to seven years if geological survey works are carried out on subsoil plots located within the regions of Yakutia, Kamchatka, Khabarovsk, Sakhalin and certain other regions specified in the Subsoil Law and up to ten years for geological survey works that are carried out on subsoil plots located within internal seawaters, the territorial sea and the continental shelf of the Russian Federation. Exploration licenses are awarded without a tender/auction upon the decision of a special commission formed by Rosnedra. If hydrocarbons are discovered during the term of an Exploration License, a production license should be issued without a tender/auction to the holder of the exploration license.
- Production Licenses – Production licenses are issued with respect to deposits that have been explored, for which reserves have been registered in the state balance of reserves. The term for a production license may be as long as is required (as shown in the feasibility study) for the rational and full exploitation of the deposit. Production licenses are awarded by tender or auction unless the deposit is discovered under a pre-existing Exploration License.
- Combined Licenses – Combined exploration and production licenses are issued with respect to deposits that already have proven reserves required for production but require further substantial exploration of the deposit. The term of a combined license is split between the period required for the exploration and the period required for production. Combined licenses are awarded by tender or auction.

Components of Subsoil Licenses

Subsoil licenses have a number of integral components, the most important of which is the licensing agreement. The licensing agreement must include:

- the commencement date and term of the license,
- the boundaries of the field (which need to be additionally confirmed by a mining allotment before production can commence),
- the agreed level of production,
- the title to recovered hydrocarbons and agreement as to the title to geological information obtained in the course of operations, and
- the terms and conditions for compliance with standards of environmental protection and safety.

Transfer of Subsoil Use Rights

The subsoil use license evidences the rights of a particular entity to develop a particular subsoil deposit within a mining allotment limited by defined borders. The subsoil use license itself and the rights evidenced by it may not be sold, assigned or pledged. However, the law provides a procedure for a limited number of instances in which such rights may be transferred and the subsoil use license reissued.

Permitted Transfers

The transfer of subsoil use rights is possible when the licensee:

- changes its organizational form or legal status,
- merges with another legal entity,
- undergoes a division or spin-off, or
- is declared bankrupt.

A licensee may also transfer its subsoil use rights to *a newly created subsidiary established in order to carry out operations* on a particular field, provided the following conditions are met:

- Incorporation in Russia: the new subsidiary must be a Russian company;
- Adequate facilities/assets: the property (physical assets) required to perform the

operations (including the facilities located within the particular field) must be transferred to the new subsidiary;

- Operational permits: the new subsidiary must have available the permits (operational licenses) necessary to carry out the operations; and
- Share in the charter capital: at the time of the transfer and reissuance of the subsoil license, the original licensee must own at least 50 percent in the charter capital of the new subsidiary.

Intragroup transfers

The Subsoil Law also permits the transfer of subsoil use rights *within a group of companies*:

- from a parent company to its subsidiary,
- from a subsidiary to the parent company, and
- between subsidiaries as directed by the parent company.

Obligations of the Licensee

The licensee generally undertakes certain commitments under the subsoil use license, the most important and capital intensive of which are to:

- meet certain annual exploration and/or production targets, and
- keep environmental contamination within specified limits and remedy instances of environmental pollution.

The subsoil user also has certain reporting obligations. In particular, it is obliged to periodically provide information about its operations to state geological funds. In 2016, the amendments were introduced into legislation which provided that the information submitted by subsoil users into the state geological funds becomes the property of the state and also becomes publically available within (i) three years – for raw data, and (ii) five years – for interpreted data from the date of its submission to the geological state fund. Such data is to be held confidentially by the geological state fund with the original owner retaining the commercial use and commercial secrecy rights until the expiration of the previously mentioned time periods.

The licensee may also be obliged to fulfill certain social obligations in the area in which it operates, such as paying compensation to local indigenous groups and providing other types of support to the local communities. Failure to comply with the terms of the subsoil license (or with the provisions of the Subsoil Law or implementing regulations) can lead to penalties, suspension of production and revocation of the subsoil use license. Rosprirodnadzor is the federal agency currently empowered to oversee compliance with the terms of the subsoil license.

Termination of Subsoil Licenses

The subsoil use license terminates upon expiration of the term specified in the license itself. It can also be revoked by state authorities prior to expiration of its term for the following reasons:

- appearance of immediate danger to the health of the people working or living in the areas affected by operations related to subsoil use,
- violation by the subsoil user of material terms of the subsoil use license,
- systematic violation by the subsoil user of the established rules for subsoil use,
- occurrence of emergency situations (including natural disasters and war),
- the subsoil user's failure to commence operations in accordance with the established scope and term of the subsoil use license,
- liquidation of an enterprise or other subject of economic activities that holds the subsoil use license,
- the subsoil user's failure to file the reports required by Russian law, or
- at the initiative of a subsoil user upon submission of the appropriate application.

In situations involving the first and fourth circumstances above (appearance of immediate danger and occurrence of emergency situations), the subsoil use rights are terminated immediately after the authorities decide that such termination is necessary, provided that the subsoil user has been served a written notice of the decision. In the second, third and fifth instances described above (violation of material terms, systematic violations and failure to

commence operations within established scope), the subsoil use rights may be terminated if the subsoil user fails to remedy violations within three months of receiving written notice of such violations.

Upon termination of the subsoil use rights, the subsoil user has to provide for liquidation and conservation of the operations at the field at its own cost.

Production Sharing Agreements

The Russian production sharing regime is set forth in the Federal Law "On Production Sharing Agreements," dated 30 December 1995 (the "PSA Law"), which has been subject to substantial amendments. The rules set forth in the PSA Law for designating a particular deposit for development under a PSA regime are rather restrictive. Since the date of the PSA Law, almost 15 years, not a single PSA has been entered into pursuant to the PSA Law.

Currently the only PSAs in existence in Russia are the PSAs that were entered into prior to the enactment of the PSA Law: Sakhalin I (ExxonMobil, Rosneft, SODECO, ONGC), Sakhalin II (Gazprom, Shell, Mitsui and Mitsubishi) and Kharyaga (Zarubezhneft, Total, Statoil and Nenets Oil Company). These PSAs are "grandfathered in", which means that certain provisions of the PSA that are inconsistent with the PSA Law will prevail over the PSA Law.

Transportation and Export of Hydrocarbons

Transportation and Export of Oil

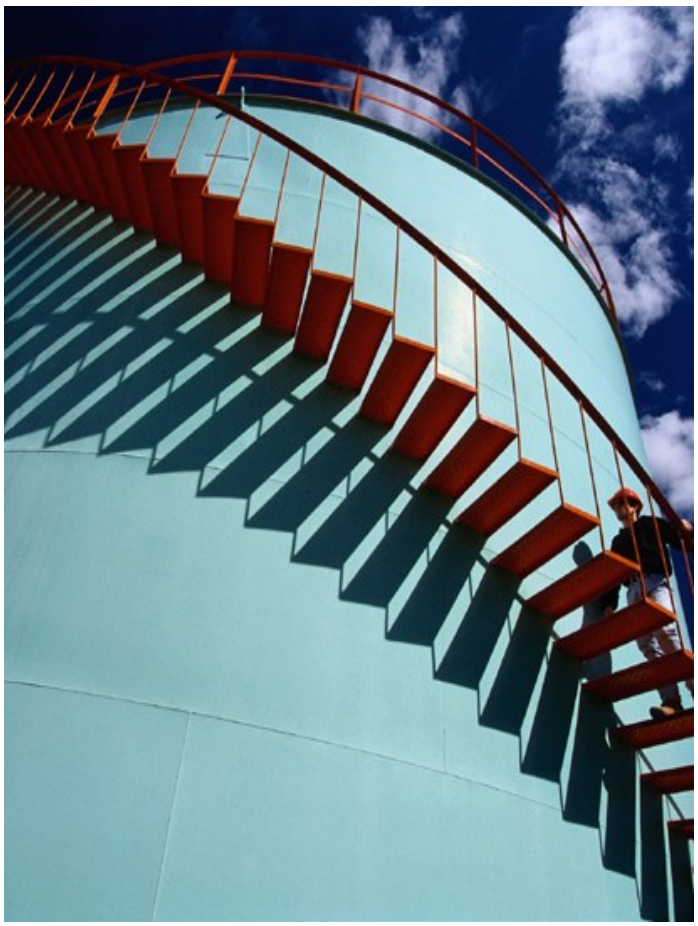
Transneft is the state-controlled monopoly engaged in the transportation of crude oil and refined products.

For the purpose of exporting oil, access rights to the pipeline and the sea terminals are allocated among oil producers and large oil retailers in proportion to the volume of oil produced and delivered to the Transneft pipeline system (and not in proportion simply to oil production volumes).

The Ministry of Energy quarterly approves the schedules that detail the precise volume of oil that each oil producer can pump through the Transneft system. Once access rights are allocated, oil producers generally cannot increase their allotted capacity in the export pipeline system, although they have limited flexibility in altering delivery routes. Oil producers are generally allowed to assign their access rights to others.

Oil products are transported though Russia by another state monopoly, Transnefteprodukt. Because oil and oil products transportation are considered a monopolistic activities (pursuant to Federal Law "On Natural Monopolies," dated 17 August 1995 (the "Natural Monopolies Law")), both Transneft and Transnefteprodukt are deemed natural monopolies. As such, the tariffs for the transportation services rendered by these entities within Russia are established by the Federal Antimonopoly Service.

The Russian government regulates the export of oil and oil products from the country through export duties. The export duty is varied to ensure that internal demands are met and that internal prices for oil and oil products are aligned with government policy.



Transportation and Export of Gas

Gazprom and the Unified Gas Supply System

The regulatory framework for the supply and transportation of natural gas is set forth in the Federal Law "On Gas Supply in the Russian Federation," dated 31 March 1999 (the "Gas Supply Law") and Natural Monopolies Law, pursuant to which the transportation of natural gas through pipelines is considered a monopolistic activity and the entities engaged in it are deemed natural monopolies. The state monopoly Gazprom plays the central role in the supply and transportation of natural gas.

The Unified Gas Supply System ("UGSS") is the centralized system for natural gas production, transportation, storage and supply throughout Russia. Gazprom owns the UGSS and, pursuant to the Gas Supply Law, it is responsible for the operation, maintenance and safety of the UGSS. At any time, the state or state companies (i.e., companies owned more than 50 percent by the Russian Federation) must own not less than 50 percent plus one share in the entity that operates the UGSS (i.e., Gazprom).

Gazprom is required to give independent suppliers access to the UGSS. This obligation is subject to:

- the availability of spare capacity in the UGSS,
- the natural gas from independent suppliers meeting certain quality specifications, and
- the availability of connecting and branch pipelines to consumers.

If consumers fail to make payments for natural gas supplies and transportation services, suppliers have the right to limit or suspend their natural gas supplies in accordance with specific procedures (the Russian government has issued a number of resolutions regulating the restriction or suspension of supplies to certain customers, such as military institutions and fire prevention services).

Priority Purchases of Gas

The following categories of purchasers have a priority right to enter into natural gas supply agreements:

- purchasers that purchase natural gas for state needs and municipal/domestic services and
- purchasers that extend their existing natural gas supply agreements.

Export of Gas

Pursuant to Federal Law No. 117-FZ, "On the Export of Gas," dated 18 July 2006 ("Law on Export of Gas"), the operator of the UGSS (i.e., Gazprom) or its wholly owned subsidiary (i.e., Gazpromexport) holds the exclusive right to export natural gas outside the Russian Federation.

This exclusive right to export natural gas initially extended to the export of LNG as well. However, in December 2013 the export of LNG was partially liberalized, in addition to Gazprom (and its subsidiaries) the right to export LNG has been given to:

- companies that, as of 1 January 2013, have provisions in their subsoil use license that envisage (i) construction of an LNG plant, and/or (ii) transportation of gas extracted under such subsoil use license for liquefaction at an LNG plant; or
- companies operating on subsoil plots situated within Russia's inland sea waters, territorial sea or continental shelf, as long as state companies (or their subsidiaries) make up at least 50% of their charter capital.

Pursuant to those provisions, Yamal LNG (on the basis of the first bullet) and Rosneft (on the basis of the second bullet) can potentially exercise a right to export LNG.

Price Regulation

Pricing is governed by the General Provisions on Formation and State Regulation of Gas Prices and Tariffs for the Services of Gas Transportation. The Federal Antimonopoly Service establishes and regulates wholesale gas prices for the sale to refineries of gas produced by Gazprom and its affiliates; it also regulates gas prices for retail sale to the general public, irrespective of the entity that produced the gas. Gas prices are not subject to indexation with crude oil prices. The prices may differ for different regions of the Russian Federation. Although the prices charged for the supply of gas by independent producers are not regulated, those prices are closely aligned to the prices at which gas is supplied by Gazprom and its affiliates.

State Control Over Foreign Investments in the Development of Major Oil and Gas Deposits

Strategic Investment Law

Significant legal implications with respect to transactions related to major oil and gas deposits have arisen as a result of the Federal Law "On the Procedure for Making Foreign Investments in Business Entities of Strategic Importance for the National Defense and Security of the Russian Federation," dated 7 May 2008 (the "Strategic Investments Law"), and the related amendments to the Subsoil Law. Following the adoption of this legislation, the development of deposits "of federal significance" was deemed a strategically important activity for Russia.

Deposits of Federal Significance

Pursuant to the Subsoil Law, for a deposit to be considered "of federal significance", it must meet the following requirements:

- contain *recoverable* oil reserves of 70 million tons or more;
- contain gas reserves of 50 billion cubic meters or more;
- be located in internal waters, territorial waters or on the continental shelf of the Russian Federation; and/or
- require the use of land plots designated for defense or security purposes.

Consent for Acquisition

The Strategic Investment Law requires a foreign investor to obtain the prior consent of the Governmental Commission, chaired by the Russian prime minister, if the foreign investor will *acquire control* over a strategic company as defined in the law. Transactions made without obtaining the required prior consent will be deemed void.

A company engaged in the use of a subsoil deposit of federal significance shall be deemed as under the control of a foreign investor if the foreign investor:

- has (direct or indirect) control of 25 percent or more of the votes represented by the shares (interest) in the capital of such company;
- has (pursuant to an agreement or otherwise) the right to determine decisions of such company, including determining the terms of its business operations;
- has the right to appoint the general director or 25 percent or more of the members of the collegiate executive body (i.e., management board) of such company and/or has an unconditional ability to procure the election of 25 percent or more of the members of the board of directors (i.e., supervisory board) or other collegiate management body of such company; or
- acts as a management company for such company.

Special rules apply with respect to investors controlled by foreign states or established in certain off-shore jurisdictions specified by law that intend to

invest in a legal entity holding a subsoil license for a deposit of federal significance. In such a case, the foreign investor must obtain consent from the Governmental Commission if it acquires more than 5 percent of the shares of the legal entity. In addition, such investors are not permitted to acquire more than 25 percent of the voting shares in the charter capital of a company engaged in the use of a subsoil deposit of federal significance.

Prior Governmental Commission approval is not required for transactions with international financial institutions of which Russia is a member, or with whom Russia shares treaty obligations. The application of this exception is, however, dependent on inclusion of relevant financial institution into a list of exempted international financial institutions. As of today, the list includes 14 financial institutions, such as the International Bank for Reconstruction and Development, the European Bank of Reconstruction and Development, the Multilateral Investment Guarantee Agency, etc. The legislation does not require a prior approval for acquisitions by foreign investors that are ultimately owned or controlled by Russian entities or persons without having to obtain the Governmental Commission approval provided that such entities are not established in certain off-shore jurisdictions specified by law, as discussed above.

In addition, amendments introduced in July 2017 entitle the authorities to require that any transaction by any foreign investor be approved pursuant to the same procedure as the acquisition of control over a company engaged in the use of a subsoil deposit of federal significance as "required to ensure national defence or state security". Therefore, a foreign investor can be required to obtain the strategic investment approval also when acquiring shares in a subsoil user that holds licence to a deposit that does not qualify as a deposit of federal significance.

Restrictions Related to Deposits of Federal Significance

The Russian government may restrict the participation of Russian entities in which foreign investors directly or indirectly hold shares in any auction or tender for the right of subsoil use of a deposit of federal significance. Such restrictions may apply to entities in which foreign investors have any amount of equity interest (i.e., not only those entities in which the participation of foreign investors meets the criteria for control pursuant to the Strategic Investment Law, as described above).

With respect to deposits of federal significance, subsoil use licenses for exploration and production as well as combined licenses (geological study, exploration and production licenses) are issued pursuant to a decision of the Russian government, based either on the results of a tender or auction, or upon the discovery of a deposit of federal significance or of a subsoil block that becomes one of federal significance. Under a combined license, advanced exploration and production operations in a deposit of federal significance may commence only after the geological study operations are fully completed, and after the commencement has been authorized by a Russian government decision. (This is different from the general rule - applicable to other deposits - that advanced exploration and production under a combined license may be conducted simultaneously with geological study.)

Only advanced exploration and production or combined licenses may be issued for deposits of federal significance. Geological study licenses may be issued for subsoil blocks that do not qualify as deposits of federal significance. If a discovery is made that results in the relevant block meeting the deposits of federal significance criteria in the course of such geological study, the Russian government may deny issuing the advanced exploration and production license to the subsoil user that made the discovery. If the relevant discovery is made under a combined license by an entity in which a foreign investor has an interest, the Russian government has the right to terminate the subsoil use license. The subsoil user in such case is entitled to compensation of its costs incurred for obtaining the relevant geological study license and operations thereunder. The procedure for calculation and payment of such compensation is established by Resolution of the Government No. 206 dated 10 March 2009.

Offshore Operations

General Information

Operations in offshore areas beyond the 12-nautical-mile territorial sea limit are separately governed by the Federal Law "On the Continental Shelf of the Russian Federation," dated 30 November 1995, as amended (the "Continental Shelf Law"), and the Federal Law "On the Exclusive Economic Zone of the Russian Federation," dated 17 December 1998, as amended (the "Exclusive Economic Zone Law").

Offshore hydrocarbons operations on the continental shelf within a 200-nautical-mile zone fall under the jurisdiction of the agencies operating under the auspices of the MNR, as well as several other governmental entities, including the Federal Security Service and the Federal Agency for Fisheries.

The exclusive economic zone of the Russian Federation is the marine area located from Russia's 12-mile territorial sea up to 200 nautical miles from the coastal state baseline (or as provided by international law or treaty), including all islands located within the area. The Exclusive Economic Zone Law sets up a framework for protective measures with regard to dumping, accidents at sea and protection and conservation of icebound areas and specially designated areas.

Right to Offshore Subsoil Use

The Subsoil Law essentially limits the development of offshore fields only to Russian state-controlled companies. According to the Subsoil Law, oil and gas deposits located on or extending into the Russian continental shelf may be used only by Russian legal entities:

- that have no less than five years' experience developing continental shelf blocks in Russia and
- in which the Russian Federation holds more than 50 percent of the total votes represented by the share capital of such entity, or otherwise controls (directly or indirectly) more than 50 percent of the total number of votes.

Tax Breaks and Customs Privileges for Offshore Operations

In September 2013, the Russian legislature adopted a package of amendments that aimed to provide special tax treatment for the implementation of offshore projects. The amendments establish a number of tax breaks and customs privileges for offshore operations including:

- exemption from customs duty;
- discounts ranging from 5% to 30% on the mineral extraction tax;
- various privileges with respect to a number of other taxes, including property tax, VAT, import duty, etc.

The amendments came into force in January 2014, with the respective tax breaks and customs privileges applying to offshore fields with commercial operations beginning in January 2016.

JV Operators on the Shelf

The amendments enacted into the Russian Tax Code and the Continental Shelf Law in September 2013 (discussed above), also provide a legal basis for cooperation between Russian companies holding combined licenses for Russian offshore acreage and other companies (including foreign companies) based on a modified risk service model, as discussed in more detail below.

In particular, the amendments formally recognize the notion of a third-party joint venture company that acts as the operator for field exploration and development (a "JV Operator") (as opposed to the subsoil license holder itself), which was previously not recognized under Russian law and thus created the possibility that the risk sharing structure would be deemed invalid. The amendments also clarify that the special tax treatment for offshore operations is equally available to both the JV Operator and the subsoil license holder.

Qualification Requirements for JV Operators

The amendments provide that all of the following criteria must be satisfied in order for a company to qualify as a JV Operator:

- **Shareholding**. The Russian subsoil license holder of the offshore field and/or one of its affiliated companies (the "License Holder") must directly or indirectly own shares in the JV Operator; however, the amendments do not establish any requirements with respect to the percentage of shares that must be held by the License Holder.
- **Offshore Operations Agreement**. The JV Operator must enter into an operation/service agreement with the subsoil license holder for the conduct of work related to the production of hydrocarbons from the offshore field (an "Offshore Operations Agreement").
- **Offshore Operations**. The JV Operator must actually conduct work related to the production of hydrocarbons on the respective offshore field (in addition to exploration and production of hydrocarbons per se, such work can include the construction of facilities (including artificial islands), design or survey works).

The status of a JV Operator must be officially granted by the Russian tax authorities after they receive notice that the parties have entered into an Offshore Operations Agreement. Only one company may hold the status of JV Operator with respect to any given offshore field. The conclusion of an Offshore Operations Agreement with a new company terminates the status of any previous JV Operator with respect to relevant offshore field.

Environmental Obligations of Offshore Operators

Pursuant to another set of amendments introduced into the Continental Shelf Law in 2013, offshore operators (i.e., subsoil license holders and/or JV Operators) must provide an oil spill prevention and clean-up plan as well as a financial guarantee prior to commencing any new offshore subsoil operation in Russian waters. The financial guarantee must cover (i) the cost of performing the work envisaged by its oil spill prevention and clean-up plan, and (ii) compensation for potential damages to the environment and/or third parties as a result of an oil spill. The financial guarantee may be provided by means of:

- a bank guarantee;
- an insurance agreement; or
- an operator's reserve fund.

The methodology for determining the amount of guarantee necessary is still to be elaborated by state authorities.

Unconventional Resources

The unconventional resource boom that hit the US and Europe went relatively unnoticed in Russia until recently. That was until in the fall of 2012 when Russia re-engaged in intense drafting of legislation for tax incentives related to tight oil, which came to life in 2013.

Stimulus Measures for Unconventional Oil - In May 2012 then-Prime Minister Putin issued an order that envisaged the drafting of a package of measures to stimulate the development of unconventional oil. Pursuant to that order, in September 2013 the federal law establishing tax breaks for tight oil was adopted.

The tax breaks reduce the subsoil use rates in the mineral extraction tax for fields that (i) are located in specific geological formations enumerated in the law (i.e., the Bazhenov, Abalak, Khadym, Domanic, and Tymen formations) or (ii) meet certain criteria with respect to the level of rock permeability and effective oil formation thickness as determined based on data from the official balance of reserves. These lower tax rates can only be applied after the reserves are registered in the balance of reserves, which requires an expert opinion and a formal decision by the authorities as discussed above.

The tax breaks can be applied starting from the first

year in which the level of reserve extraction of the deposit exceeds 1%. The level of reserve extraction is calculated by the subsoil user in accordance with the procedure established in the Tax Code, taking into account the amount of cumulative production and the initial recoverable reserves. The law envisages that for deposits in the Bazhenov, Abalak, Khadym and Domanic formations, the subsoil user will be exempt from the mineral extraction tax for a period of 15 years. The deposits in the Tymen formation also benefit from a 15 year tax break, but the tax discount is only 20%. For the other deposits, the subsoil user will be eligible for a tax discount of either 60% or 80% of the total mineral extraction tax, depending on the level of rock permeability and effective oil formation thickness, for the period of 10 years.

The ECT

Russia is not a party to the Energy Charter Treaty ("ECT"), the multinational treaty governing inter-governmental cooperation and private investments in the energy industry of the participating countries. Initially Russia signed the ECT in 1994; the signing, however, was not followed by official ratification, and application of the ECT, therefore, was provisional for Russia.

In 2009 Russia withdrew from the ECT by sending notice to the Portuguese Government, which acted as the ECT's depositary. In accordance with Article 45(3(a)) of the ECT, such notification resulted in the termination of Russia's provisional ECT application upon expiration of 60 calendar days (i.e., 18 October 2009) from the date on which the notification was received by the depository.

That being said, the tribunal in the Yukos case found that according to Article 45(3)(b) of the ECT, Russia's obligations with respect to investments made prior to the date of its withdrawal from the ECT, remain in effect for 20 years following the date of withdrawal.

Information of State Secrecy

General Information

Under Russian legislation certain information with respect to oil and gas operations can be treated as "information of state secrecy." The list of information that is deemed to be a state secret is set out in Article 5 of Law of the Russian Federation No. 5485-1 "On State Secrets" dated 21 July 1993 (as amended). For example, state secrets include information on the location of infrastructure and military objects that are important for state security. Such objects could be located within or nearby the licence territory. The topographic maps with a chart scale of 1:50,000 or more also qualify as a state secret. In addition, reserves of certain specified mineral resources and their production in the Russian Federation as a whole, in any particular Russian region or with respect to any major deposit is treated as a state secret. Such reserves, however, do not currently include oil and gas.

Dealing with Information of State Secrecy

In order for a subsoil user and its employees to be able to deal with information constituting a state secret, the subsoil user is required to obtain a license for dealing with data constituting state secrets issued by the Federal Security Service. The procedure for the issuance of such a license involves a special expert review of the subsoil user and state certification of the employees responsible for the protection of state secrets.

Foreign citizens and/or companies cannot be limited in their rights to use any kind of information, provided they have received that information in compliance with Russian laws. Several ministers are authorized to supervise the management of information constituting state secrets.

In practice, oil and gas companies, including foreign companies operating in Russia, are free to disclose information on the reserves of their subsoil blocks unless their block falls under the definition of a subsoil deposit of federal significance.

Export of Geological Information

An issue that is closely linked to state secrecy relates to the export of geological information. Pursuant to the Subsoil Law, geological information includes "information on the geological structure of subsoil, mineral resources located in subsoil, terms of their development and other qualities and characteristics of subsoil, contained in geological reports, maps and other materials". Export of geological information from Russia in any form is subject to special export licensing. Arguably, publically available information does not require a licence for its export. The licensing requirements apply to all commercial entities operating in Russia regardless of their ownership or place of incorporation.