

Russia

Norton Rose

Russian Legislation on Energy, Natural Resources, Mining, Metals and Precious Stones for the Second Half of 2003

Division of Northern Floor of Caspian Sea

The Agreement between the Russian Federation and Kazakhstan on the division of the northern floor of the Caspian Sea (Caspian Sea Agreement), together with a Protocol (the Protocol) annexed to the Caspian Sea Agreement, have been ratified. The Caspian Sea Agreement was originally signed in Moscow on 6 July 1998, and the Protocol on 13 May 2002. It is noteworthy that a similar agreement between the Russian Federation and Azerbaijan was ratified in July 2003.

Since the collapse of the Soviet Union there has been disagreement about how to share the Caspian Sea's vast energy resources among the five countries bordering the Caspian Sea, i.e. Russia, Kazakhstan, Turkmenistan, Azerbaijan and Iran. The Caspian Sea Agreement (being the first interstate agreement of the post-Soviet period relating to the division of the northern floor in the Caspian Sea) and the Protocol (dealing with concrete geographic co-ordinates of the floor and establishing the general rules of development of certain Caspian deposits) allow for the formation of a new legal regime for the Caspian Sea.

The Caspian Sea Agreement divides the northern part into national sectors. However, Iran disagrees with this approach. With Azerbaijan and Turkmenistan having made claims to oil-rich areas close to their coasts, Iran is alone among the Caspian states insisting on a "proportion-based" sharing of the Caspian reserves. Iran's position is that that regional treaties signed in 1921 and 1940 between Iran and the Soviet Union, which provide for joint sharing of the Caspian resources between the two countries, ought to constitute the basis for adopting a new legal regime. Iran insists that either the sea should be used in common, or its floor and water basin should be divided into equal shares. Iran's preference is for the countries around the sea to use it by consensus. Under this plan, the development of the Caspian Sea would be undertaken jointly by all of the littoral states.

Iran has indicated a willingness to divide the Caspian Sea into national sectors, but only if there is an equal division of the sea, giving each country 20% of the sea floor and surface of the Caspian.

Using the method of dividing the seabed on which Kazakhstan, Azerbaijan, and Russia have already agreed, Iran would only receive about 12% of the Sea.

The Caspian Sea Agreement stipulates that the seabed of the northern Caspian shall be divided along a median line equidistant from each country's shores. The Protocol defines "a modified median delimitation line of the seabed in the northern Caspian" between Russia and Kazakhstan. The Protocol implies that three hydrocarbon fields divided by the median line, i.e. Kurmangazy, Central and Khvalynskoye, will be exploited by the two countries on a parity basis.

Under the Caspian Sea Agreement, the parties must exercise their sovereign rights when conducting exploration, development and resource management of the Caspian floor and subsoil. The water itself is treated as common property of the parties; as such, fishing and environmental issues can only be managed by the parties bordering the Caspian working together.

Another important provision of the Agreement is that Russia and Kazakhstan have agreed to cooperate on issues regarding development and usage of oil and gas pipelines which are crucial for the exploration of the Caspian's mineral reserves.

Federal Law No.40-FZ dated 5 April 2003 "On Ratification of the Agreement between Russian Federation and Kazakhstan Republic on Division of Northern Floor of Caspian Sea [etc.] dated 6 July 1998";

Federal Law No.90-FZ dated 2 July 2003 "On Ratification of the Agreement between Russian Federation and Azerbaijan Republic on Division of Borderline/Contiguous Sections of the Floor of Caspian Sea [etc.] dated 23 September 2002".

Re-registration of Subsoil Licences

A new Order has been adopted, establishing a procedure for re-registration (transfer) of subsoil licences without the holding of a tender or auction (which is the general procedure of granting subsoil licences).

The Order repeals the previous Order on this subject of 1995. However, no essential modifications have been made to the procedure itself.

The amendments relate to the terminology used and this is driven by the adoption of new legislation and by changes to the names of relevant authorities.

The new Order lists documents to be filed with the authorities for re-registration purposes and specifies the procedure and time periods to be followed for the review of relevant documentation. The Order also sets out the basis on which re-registration may occur. This is based on Article 17.1 of the Subsoil Law and may be briefly summarised as follows:

- ! Reorganisation of the licence holder (by transformation, merger, consolidation, partition or spin-off) and transfer of the licence to the legal successor.
- ! Transfer of the licence to a subsidiary/dependant company of the current licence holder provided that certain assets are transferred to the subsidiary as well and provided further that the parent company holds at least 50% of the capital of the transferee at the moment of such re-registration.
- ! Bankruptcy of the licence holder and transfer of the licence to the purchaser of all the licence holder's assets (as more specifically provided in the Federal Law "On Insolvency (Bankruptcy)").

Transfer of the licence to a PSA investor in connection with entering into a PSA in respect of the subsoil plot in question.

Order of the Ministry of the Natural Resources of the Russian Federation No. 1026 dated 19 November 2003 "On Approval of the Procedure of Re-registration of Subsoil Use Licences".

Clarification of Licensing Regime

The Russian Government has adopted a Resolution which abolishes and amends several legal acts in order to bring the current licensing regime into line with the 2001 Law on Licensing. This Resolution follows the logic of the 2001 Law on Licensing which substantially shortened the list of activities subject to licensing.

The new Resolution makes it clear that certain "ancillary activities" connected with geological study and use of subsoil are no longer subject to licensing. It is noteworthy that no licence is now required to perform the following types of activities:

- ! Geological survey works.

- ! Compiling and publishing of geological maps (including digital and electronic maps).

- ! Geophysical works (including gravity study) involved in the study of subsoil.

- ! Water drilling and drilling of geological prospecting holes for solid minerals.

Resolution of the Government of the Russian Federation No. 537 dated 29 August 2003 "On the Invalidation of Decisions of the Government of the Russian Federation on Issues of Licensing of Specific Types of Activity Connected with Geological Study and Use of Subsoil".

Ethylated Automobile Gasoline

A new law has been adopted prohibiting the production and circulation of ethylated automobile gasoline in Russia. The purpose of the law is to prevent ethylated automobile gasoline being used and thus having an adverse effect on human health and the environment. The law took effect from 1 July 2003.

Federal Law No. 34-FZ dated 22 March 2003 "On Prohibition of Production and Turnover of Ethylated Automobile Gasoline in the Russian Federation".

Regulation of Tariffs in the Electric Power Industry

The Russian Government has approved a Program (plan) to change the tariffs for electric power. The requirement to introduce a program derives from Article 5 of Federal Law No. 36-FZ dated 26 March 2003 "On the Peculiarities of Functioning of the Electric Power Industry during the Transition Period [etc]".

The main purpose of the program is to bring the tariff rates set by the state into greater harmony with the levels of profitability derived from capital invested in the electric power industry sector. The program also establishes the principles governing the setting of tariffs in the future.

The program envisages that the transition to tariff regulation, based on economically proved profitability levels on investment, will be implemented gradually over the period 2004 to 2006. It is further established that the transition will need to follow the criteria and principles which are to be established by the Russian Federal Energy Commission (FEC).

Based on the principles laid down in the program, the FEC is obliged by 1 April 2004 to lay down the peak rates (minimum and maximum) for electric and thermal energy tariffs (for each region separately) for the period of 2005 to 2006.

Regulation of the Government of the Russian Federation No. 1754-r dated 1 December 2003.

Coal Certification System

The State Committee on Standardisation and Metrology of the Russian Federation (Gosstandart) has approved and registered by resolution the Coal Certification System pursuant to Article 9 "State Regulation of the Quality of Coal" of the Federal Law No. 81-FZ dated 20 June 1996 "On State Regulation in the Sphere of Extraction and Use of Coal [etc.]". The Coal Certification System has been established for organising the measurement of levels of compliance with the standards for coal quality and health and safety in relation to coal production.

The resolution also establishes the structure of the Coal Certification System, the functions of participant state-bodies and the procedural rules for coal certification.

Resolution of the State Committee on Standardisation and Metrology of the Russian Federation No. 29 dated 24 March 2003 "On Approval of the 'Coal Certification System'".

New Customs Code

A new Customs Code (the Code) has been adopted, replacing the old code of 1993. The new code is much more detailed and its provisions are also less ambiguous compared to the old code of 1993.

Commentators argue that the adoption of the revised Code, which meets the standards of the International Convention on the Simplification and Harmonisation of Customs Procedures, substantially increases Russia's prospects of joining the WTO.

The customs control procedure has been liberalised: it may now last no longer than three days, instead of the ten days required by the old Code. Entities that have a "positive customs history" (as more specifically laid down in the Code) may now:

! Enjoy a simplified customs clearance procedure called a "green corridor".

! Store goods not yet released by a customs authority in their own warehouses instead of in special "customs' temporary storage warehouses".

The New Code substantially limits the rights of the Russian State Customs Committee ("GTK") to issue normative acts, replacing it with the Government of the Russian Federation as the regulatory body in respect of customs activities. This change is expected to make customs regulations more stable in comparison with the present situation. Unlawful acts or omissions committed by customs bodies may now be declared invalid by an arbitrazh (state commercial) court.

A further liberal development is a requirement included in the Code that GTK provide an exhaustive list of documents dealing with customs clearance procedures.

After the Code was adopted, there has been abundant discussion on whether it needs amendments to be introduced before 1 January 2004 when it comes into force. Amongst other things, some commentators are of the opinion that some provisions of the Code seriously complicate the activities of customs brokers and that some other provisions are drafted ambiguously, eg the chapter dealing with intellectual property does not comply with the WTO rules. However, the Russian Government recently decided, after discussing the issue, not to introduce any amendments to it this year. It is anticipated that the first amendments are to be considered in Spring 2004.

The Customs Code of the Russian Federation No. 61-FZ dated 28 May 2003.

Export Duty System Scrapped

President Putin has signed a new law cancelling the existing mechanism for setting petroleum product tariffs. From 1 January 2003, the Government was prevented from setting the tariffs for petroleum products at rates higher than 90 per cent of the crude oil export tariff. The 90 per cent rate cap was introduced after intensive lobbying by Russian oil exporters.

Recent changes effectively restore the federal Government's right to set export duties at its own discretion. In the past the Government had used this right to set high export duties on petroleum products to discourage exports and reduce domestic product prices.

The new law came into force in mid-January 2004. New tariff rates are expected to be introduced in February 2004.

Federal Law No. 159-FZ dated 8 December 2003 "On Amendments to the Law of the Russian Federation "On Customs Tariff" and to the Federal Law "On the Amendments and Additions to Part Two of the Tax Code of the Russian Federation and to Certain Legal Acts of the Russian Federation".

Export customs duties

From April 2003 until the present time, the export duty rates for oil, gas and related products have changed on several occasions. The table below contains an overview of the changes in rates applicable to (i) light and middle distillates, gas oil and fuel oil, benzol, xylol, propane, butane, other gas liquids and some other chemicals ("**distillates, gas and fuel oil, gas liquids**") and (b) crude oil and crude oil products obtained from bituminous rocks ("**crude oil and crude oil products**").

Russian Government Resolution No. and date	Rate: US\$ per 1,000 kilograms of distillates, gas and fuel oil, gas liquids	Rate: US\$ per 1,000 kilograms of crude oil and crude oil products
No. 156 dated 14 March 2003	36.30	40.30
No. 289 dated 16 May 2003	24.10	26.80
No. 439 dated 17 July 2003	22.60	25.10
No. 573 dated 15 September 2003	30.40	33.80
No. 689 dated 15 November 2003	28,10	31,20
No. 13 dated 15 January 2004	30,50	33,90

The rates apply to products exported from Russia to states which are not parties to the Customs Union Agreement¹.

Customs Registration of Oil, Gas and Electricity

The State Customs Committee has approved recently an Instruction on the customs registration of goods (ie crude oil, oil products, natural gas and electric energy) transported by pipelines and electrical power transmission lines. It repeals the previous Order on the same subject of 2002.

In particular, the new Instruction deals with customs declaration procedures, which describe the following:

- ! The procedure for filing a usual or temporary customs declaration.
- ! Sale under several (ie more than one) contracts.
- ! Consequences of export or import of goods in amounts different to the levels declared.

The Instruction also lays down the procedure and terms of payment of customs tariffs in quite extensive detail.

The Order adopting the Instruction identifies a list of customs authorities, where crude oil, oil products, natural gas and electric energy must be declared. The Order also contains a list of documentation and data which is to be submitted to the customs authorities in case of import or export of crude oil, oil products, natural gas and electric energy.

Order of the State Customs Committee of the Russian Federation No. 1013 dated 15 September 2003 "On Customs Registration of Goods Transferred by Pipeline Transport and Electrical Power Transmission Lines".

Kimberley Certificate

By way of implementation of the international scheme of certification of rough diamonds (the Kimberley process), the Russian Government had provided in early 2003 that each lot of rough diamonds exported from Russia must possess a special export certificate. The Ministry of Finance had also adopted a procedure for completing and issuing such certificates.

For the purposes of compliance with the international certification scheme, the Russian Government established in August 2003 that each lot of rough diamonds imported into the Russian Federation must also be accompanied by a certificate of Kimberley process confirming that the lot does not contain diamonds derived from "conflict zones".

The Ministry of Finance, which supervises import of rough diamonds into Russia, has been instructed by the Russian Government to control the conformity of the certificate of Kimberley process to the international scheme of certification of rough diamonds.

The State Customs Committee has been obliged to ensure the return of diamonds not accom-

¹ The parties to this Agreement are five CIS countries.

panied by such a certificate to the country from which they were imported.

Resolution of the Government of the Russian Federation No. 527 dated 27 August 2003 "On Certificates of Import of Rough Diamonds into the Russian Federation".

The Russian Ministry of Finance has adopted an Order on the procedure for exercising state control over the import and export of rough and cut diamonds. This measure is one of the steps implementing the international scheme to certify the origin of rough diamonds (the Kimberley process).

State control is exercised by the state supervisors of the Russian Ministry of Finance. The new Order sets forth a list of documents to be filed with state supervising bodies and outlines specific control procedures performed by them.

Upon completion of its supervisory procedure, the state supervisor issues an "act" and, where rough diamonds are being exported, a certificate confirming that the diamonds have not been derived from any "conflict zones".

Order of the Ministry of Finance of the Russian Federation No. 84n dated 16 September 2003 "On Approval of the Procedure to Implement State Control over Import Into the Russian Federation and Export from the Russian Federation of Rough Diamonds and Cut Diamonds".

Customs Procedures for Import and Export of Precious Metals and Precious Stones

The Russian State Customs Committee has adopted an Order providing for a list of special places where precious metals and precious stones may be declared for customs purposes.

The new Order comes into force on 1 January 2004 and replaces Russian State Customs Committee's Orders No. 833 dated 22 August 2001, No. 1195 dated 20 December 2001 and No. 92 dated 4 February 2003 which previously regulated the customs clearance procedure.

The Order sets forth the list of specialised customs offices and departments where precious metals and precious stones have to undergo customs clearance. Rough and partly cut diamonds are to be declared at the Specialised Customs Office of the Central Excise Customs located in Moscow.

State supervisors of the Russian Ministry of Finance must participate in the customs clearance procedure.

Order of State Customs Committee of the Russian Federation No. 1005 dated 11 September 2003 "On Setting Forth the Places of Declaration".

Secrecy Regime for Platinum and Diamonds

President Putin has signed a law excluding information regarding reserves of platinum, platinum-group metals and rough diamonds from the list of information which is deemed to constitute a state secret. Information on the extraction, transfer and consumption of such precious metals and stones is also excluded from the ambit of information constituting a state secret. It should be noted, however, that the preceding types of information will constitute a state secret where storage occurs in the state fund of precious metals and precious stones or in the Russian Central Bank.

Information on reserves, extraction, production and consumption of strategic natural resources (as defined by the Russian Government) remains a state secret. Currently, such list of strategic resources includes information on the reserves and, depending on the type below, also on the production of oil, gas dissolved in oil, nickel, cobalt, tantalum, niobium, beryllium, lithium, yttria group of rare earths and high-purity quartz.

The adoption of this Law is prompted by the general move towards liberalisation of the precious metals and precious stones market, the participation of the Russian Federation in the Kimberley Process and the involvement of the Russian Federation in negotiations to join the WTO. It is also envisaged that some Russian mining companies (such as Alrosa and Norilsk Nickel) will be able to increase their capitalisation substantially as a result of this liberalisation; they will be able to make public their activities in respect of the minerals removed from the "secrecy list" and this, in turn, will make them more attractive to domestic and foreign investors.

The above amendment will come into force in late February 2004. A number of subordinate laws will need to be adopted in due course to ensure the consistency of the overall legal framework on this issue.

Federal Law No. 153-FZ dated 11 November 2003 "On Amending Article 5 of the Law of the Russian Federation 'On State Secret'".

Precious Metals and Stones – no longer “Hard Currency Values”

A new Federal Law “On Currency Regulation and Currency Control” was adopted in Russia recently and this will come into force in June 2004.

In terms of its relevance to the metals and precious stones sector, the new law will no longer define precious metals and precious stones as “currency values”. This is to be contrasted with the position under the currently effective Law No. 3615-1 dated 9 October 1992 “On Currency Regulation and Currency Control”.

In practical terms, this will mean that precious metals and precious stones will cease to be subject to hard currency laws and restrictions. The Russian Central Bank, moreover, will not be able to exercise control in this area.

A logical consequence of this deregulation is that no criminal law sanctions will be applicable to non-compliance with hard currency rules and regulations in respect of precious metals and precious stones. This is likely to simplify the regime regulating their circulation.

Federal Law No. 173-FZ dated 10 December 2003 “On Currency Regulation and Currency Control”.

Sale of Diamonds Extracted in Perm Oblast

The Russian President has abolished Decree No.1003 dated 31 August 1998 “On Use of Diamonds Extracted in the Territory of the Perm Oblast” (the “1998 Decree”). This is a logical further step in the liberalisation of the Russian diamond market.

The Perm Oblast (Perm region) is one of the few Russian regions where diamonds are mined. Profits from the sale of diamonds mined there in 2002, for instance, totalled approximately US\$15 million.

The 1998 Decree provided that not less than 75 per cent of rough diamonds extracted in the Perm Oblast were to be sold by mining companies directly to cutting companies located in the Perm Oblast. It should be noted that there is only one diamond cutting company in the Perm Oblast, called “Kama-Crystal”. Therefore, one of the drivers for the abolition of 1998 Decree was the intention of the government to procure an effective competition policy.

Decree of the President of the Russian Federation No. 1024 dated 1 September 2003 “On the Invalidation of the Decree of the President of the Russian Federation No. 1003 dated 31 August 1998 “On Use of Diamonds Extracted in the Territory of the Perm Oblast”.

Russian State Assay Chamber

The Ministry of Finance has issued an Order setting out the procedure for maintaining a special register of companies and individual entrepreneurs (“Companies”) using precious metals and precious stones in their activities (for various purposes). Such special register is to be maintained by the Russian State Assay Chamber (“*Rossiyskaya Gosudarstvennaya Probirnaya Palata*”) through its State Inspectorates of Assay Supervision (“*Gosudarstvennaya Inspektsiya Probirnogo Nadzora*”).

The Order lists the types of Companies which are under an obligation to register themselves:

- ! Companies deriving, producing, processing and using precious metals and precious stones for industrial, scientific, military, medical, academic and social and cultural purposes.
- ! Companies pledging and accepting pledges of precious metals and precious stones.
- ! Companies buying, trading, exhibiting, storing or transporting precious metals and precious stones.
- ! Companies storing, carrying out primary processing and/or processing scrap and waste from precious metals and waste from precious stones.
- ! Companies using products derived from precious metals and its alloys in equipment.

The Companies listed above must register themselves in the State Inspectorate of Assay Supervision located in the place of incorporation of the Company.

The State Inspectorates of Assay Supervision issue registration certificates to Companies. Registration certificates are valid for five years, after the expiration of which the Company may apply for an extension on the basis of the same procedure.

The Order does not apply to, among others, the following activities:

- ! Extracting precious metals and precious stones in accordance with licences for use of the subsoil issued by the Ministry of Natural Resources.
- ! Acquiring precious metals in credit institutions (for example, banks) without obtaining physical possession of them, namely when precious metals are credited to nominal metal accounts.

Order of the Ministry of Finance of the Russian Federation No. 51n dated 16 June 2003 “On Special Registration of Companies and Individual Entrepreneurs Carrying out Operations with Precious Metals and Precious Stones”.

The Ministry of Finance has authorised the Russian State Assay Chamber to control Companies buying, selling and purchasing precious metals and precious stones, jewellery and scrap derived from such jewellery where the Companies are registered with State Inspectorates of Assay Supervision.

The control functions relate to compliance by the Companies specified above with Russian anti-money-laundering and anti-terrorism legislation. In particular, control is being exercised in respect of recording, storage, submission of information and internal control functions for Companies to put in place.

In addition, the Russian State Assay Chamber has been empowered to appear before authorised state bodies in order to impose liability on individuals and companies breaching laws on money laundering and on financing of terrorism.

Order of the Ministry of Finance of the Russian Federation No. 153 dated 23 May 2003 "On Introduction of Amendments and Additions to the Regulation on the Russian State Assay Chamber".

Criminal Law Sanctions

The criminal liability regime for the "illegal turnover" (i.e. illegal trading) of precious metals, precious stones and pearls has been modified. A Federal Law has been enacted amending Article 191 (imposing criminal sanctions for such misconduct) of the Russian Criminal Code.

In summary, prison sentences were reduced, but the levels of financial sanctions (such as fines and confiscation of salary for a particular period) have become slightly more severe.

Federal Law No. 162-FZ dated 8 December 2003 "On Amending and Supplementing the Criminal Code of the Russian Federation".

Administrative Law Sanctions

Additions have been made to the Russian Code of Administrative Offences.

The new provisions penalise breaches of regulations dealing with treatment, storage, transportation and disposition of scrap and waste derived from non-ferrous and ferrous metals.

An administrative fine is the sanction imposed for a breach. The levels of fine are as follows:

! Up to 2,500 Roubles (approximately US\$ 75) – for individuals.

! Up to 5,000 Roubles (approximately US\$ 150) – for officers and officials of governmental bodies.

! Up to 100,000 Roubles (approximately US\$ 3,000) – for legal entities.

An administrative fine may be accompanied by confiscation of the goods which are the subject matter of the offence.

Federal Law No. 103-FZ dated 4 July 2003 "On Introduction of Additions to the Code of Administrative Offences of the Russian Federation".