

ALRUD

Legal Regulatory Guide Russia

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Introduction

As mentioned in our first regulatory guide for Q2-Q3 2020, Russia is on the verge of the new approach to the administrative regulation of business in general: the number of acts (and requirements contained in them) were cut off and eliminated by the “regulatory guillotine”, at the end of 2020, and the remaining regulatory rules are all due to be highlighted, and marked as an exclusive list of requirements for businesses.

Yet, this reform comes from the Central Government and is still not completely understood by the regions, nor is it reflected in the day-to-day practice of public authorities. Our practice has witnessed multiple cases where companies were either brought, or were to be brought, to administrative liability for non-compliance with the voluntary acts, or with the requirements which cannot be identified clearly in terms of their contents.

While, for certain public authorities such approach is a “heritage” from the previous periods, in several cases, ALRUD was successful in preventing such practices by having them recognised as illegal. Other public authorities keep their focus and strategy on retaining the discretion to judge

whether certain behaviour of the business is in compliance with the regulations or not, regardless of whether the underlying rule is part of the mandatory requirements.

Due to such duality of approaches taken by the legal acts, on one hand, and enforcement practice of the regulatory public authorities, on the other hand, we decided to devote more attention to this topic. We have highlighted the progress of implementation of the “regulatory guillotine” over the course of first year of its existence, in Russia, detailing which new steps have been taken by the Government to crystallize this regulation network ([first article](#)).

Together with that topic, we believe it is very important to touch upon another regulatory supervision update, related to the brand new law on State control, which finally entered into force in July 2021 ([second article](#)).

Another important highlight of this quarterly guide is the development of the situation with the long-awaited Technical Regulations (TR CU) on the safety of chemical products. These set out a significant amount of new regulatory requirements

for various chemical components. Once adopted, they will have a serious impact on various industries importing goods into Russia. Having been in discussion since 2017, completion has been carried over again and again. These new requirements were last expected to be finally adopted in July 2021 ([third article](#)).

Finally, we have decided to reformat our regulatory guide a little. Previously, we included, in each guide, information on all the major areas of our regulatory expertise. However, after receiving your feedback, we decided to break down every new edition into 2 blocks: general regulatory matters, which should be important for every industry, and an industrial block, which will cover news in one specific industry. This time, we decided to focus on the Oil&Gas / Mining industries, since the law on subsoil underwent its most serious changes since its adoption, back in 1992 ([fourth article](#)).

We continue closely monitoring the regulatory environment in Russia and will be keeping you updated on all the most important changes.

Wishing you a very good day and a pleasant reading experience.



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The implementation of the “regulatory guillotine” mechanism

On November 1, 2020 the Federal Law dated July 31, 2020 No. 247-FZ “On Mandatory Requirements in the Russian Federation” (“**Law on Requirements**”) entered into force. It defines the legal and organizational basis for establishing and evaluating the application of the requirements stipulated by law.

In particular, it provides for the implementation of the “regulatory guillotine” mechanism. It implies that all mandatory regulatory requirements must be fully updated by 2021. Since January 1, 2021 State supervision bodies should not assess compliance with mandatory requirements that entered into force before 2020, nor impose administrative responsibility for non-compliance with the outdated requirements.

At the same time, the Government has adopted the Resolution dated December 31, 2020 No. 2467 “On Approval of the List of Regulatory Legal Acts and Groups of Regulatory Legal Acts ... in respect of which the provisions of the Federal Law “On Mandatory Requirements in the Russian

Federation” do not apply” (“**Resolution on Surviving Requirements**”). The Resolution on Surviving Requirements sets out the list of acts which remain in force after the regulatory guillotine has removed the rest of the regulatory rules.

According to the Law on Requirements, legal acts containing mandatory requirements will be valid for no more than 6 years from the date of entry into force, after which they will be revised and updated. Exceptions may be provided for by a federal law, or an act of the Government of the Russian Federation, adopted in accordance with it.

To systemize the mandatory requirements, the Prime Minister of the Russian Federation Mikhail Mishustin signed a decree approving the rules for the formation, maintenance, and updating of the register of mandatory requirements in the Russian Federation (“**Register**”) (the Resolution of the Government of the Russian Federation dated February 6, 2021 No. 128 (“**Resolution on Register**”). The Register is a federal State information system that was created in order

to ensure the systematization of mandatory requirements and to inform interested persons about the mandatory requirements, the regulatory legal acts that established them and about the period of their validity.

According to the Resolution of the Register, the Ministry of Digital Development, Communications and Mass Media of the Russian Federation exercises a function of the operator of the Register. On March 1, 2020 the Ministry launched the work of the Register. The Register system exercises

automatic recognition of mandatory requirements in the texts and can check them for duplication, using modern data analysis and machine learning technologies. The Register has already become publicly available at the address <https://ot.gov.ru/>.

The following supervisory bodies have also formed the lists of acts of the mandatory nature to be included in the Register. Below you will find examples of such acts.

SUPERVISORY BODY	LIST OF OBLIGATORY REQUIREMENTS
Federal Service for Supervision of Communications, Information Technologies and Mass Communications	“List of regulatory legal acts containing mandatory requirements, the assessment of compliance with which is carried out within the framework of State control (supervision), approved by Federal Service for Supervision of Communications, Information Technologies and Mass Communications” https://rkn.gov.ru/acts/
Federal Agency for Technical Regulation and Metrology	Order of Rosstandart dated 26.02.2021, No. 174 “On approval of the List of regulatory legal acts containing mandatory requirements, the assessment of compliance with which is carried out within the framework of granting permits” http://www.consultant.ru/document/cons_doc_LAW_378768/
Federal Service for Supervision of Consumer Rights Protection and Human Welfare	List of regulatory legal acts containing mandatory requirements, the assessment of compliance with which is carried out within the framework of granting licenses and other permits approved by Federal Service for Supervision of Consumer Rights Protection and Human Welfare http://www.consultant.ru/document/cons_doc_LAW_377471/
Federal Service for Environmental, Technological and Nuclear Supervision	Order of Rostekhnadzor dated March 19, 2021 No. 104 “On Approval of the List of Regulatory Legal Acts containing Mandatory requirements, the assessment of compliance with which is carried out within the framework of granting licenses and other permits, accreditation” http://www.gosnadzor.ru/service/perechen-normativnykh-pravovykh-aktov-ikh-otdelnykh-polozheniy-soderzhashchikh-obyazatelnye-trebovan/



New specifics of State control (supervision) and municipal control

The Federal Law dated July 31, 2020 No. 248-FZ “On State Control (Supervision) and Municipal Control in the Russian Federation” (“**Law on Control**”) establishes the system and procedure for conducting control (supervision) measures, guarantees for the rights of controlled persons, and introduces new institutions and tools aimed at reducing the administrative burden on economic entities.

The Law on Control contains a new, more comprehensive definition of the concept of State control (supervision) and municipal control, which sets priorities for the work of regulatory bodies in a different way. Now, instead of preventing, detecting and suppressing violations of the established requirements by controlled entities, the focus has been shifted to preventing and suppressing harm to the life, health of people, morals, rights and legitimate interests of citizens and companies. It clarifies that State control (supervision) and municipal control should be aimed at achieving socially-significant results, related to minimizing

the risk of harm (damage) to legally-protected values caused by violations of mandatory requirements.

The Law on Control contains the following key provisions:

- creation of a full system of risk analysis and accounting, which will apply to more than 200 types of State control;
- consolidation of the principles of State control and municipal control (legality and validity, promotion of conscientious compliance with mandatory requirements, proportionality of interference in the activities of controlled persons, protection of rights and legitimate interests, respect for the dignity of the individual, business reputation of controlled persons, inadmissibility of abuse of the right, observance of legally-protected secrets, openness and availability of information about the organization and implementation of control, efficiency in the implementation of State control);

- clearer systematization of control (supervisory) measures, their differentiation into two groups – control (supervisory) measures with interaction with controlled persons (control procurement, monitoring procurement, sample control, inspection visit, raid inspection, documentary and field inspections) and without interaction (monitoring compliance with mandatory requirements and offsite inspection);
- creation of a special electronic register of types of control (supervision), live) since July 1, 2021 (it will become impossible to carry out the relevant control measures not specified in the register);
- the expansion of the list of preventive tools (besides informing and compilation, the Law on Control provides for measures such as the promotion of integrity, counseling, preventive visit, etc.);
- systematization of the types of control (supervisory) actions (inspection, survey, receipt of written explanations, request for documents, instrumental examination, test, experiment, examination, etc.) and specification of their content;
- introduction of independent assessment of compliance with mandatory requirements (it is provided that planned control (supervisory) measures in relation to the controlled person, during the term of the conclusion on confirmation of compliance with mandatory requirements are not carried out, unless otherwise provided by the federal law on the type of control);
- the introduction of a mechanism of pre-trial appeal against decisions of the control body, actions (omission of action) of its officers (enabling the possibility of filing a complaint electronically, with the use of the unified public services portal, or regional portals, in reduced processing time and responding to complaints);
- the need to coordinate on-site control and supervisory measures with the prosecutor's office;

- consolidation of the right of all subjects of the Russian Federation to establish types of regional control over the subjects of their own jurisdiction, as well as to approve provisions on the types of federal control (supervision), carried out within the framework of the delegated powers.

The new rules came into force on July 1, 2021, except for certain provisions for which other terms of their commence are established. In general, the document is aimed at eliminating such shortcomings of the current system of State control (supervision) and municipal control as the focus of control and supervisory activities for punishment of entrepreneurs, collecting administrative fines from them (for this purpose, the main goal of state and municipal control has been changed from identifying violations, and applying penalties for them, to ensuring compliance with mandatory requirements).

Earlier, the prime measurement was the use of a penalty encouragement system, in which the activities of control bodies were evaluated by the number of inspections carried out and fines collected. Now, instead of preventing, detecting and suppressing violations of the established requirements by controlled entities, the discussed law clearly states that its primary aim is preventing and suppressing harm to the life, health of people, morals, rights and legitimate interests of citizens and companies. It is clarified in the cited act that state control (supervision) and municipal control should be aimed at achieving socially significant results related to minimizing the risk of harm (damage) to legally protected values caused by violations of mandatory requirements.

It is of course too early to analyze the actual effect of the regulations in place; however, we believe that similarly to the “regulatory guillotine” this legal incentive will lead to more transparent administrative procedures and protocols.



Postponement of technical requirements for chemical products

On June 2, 2021 the new Technical Regulation 041/2017 “On the safety of chemical products” (“**Regulation**”) was to enter into force. However, the entry date has been postponed.

The Regulation establishes the uniform mandatory requirements of chemical products put into circulation, in the customs territory of the Eurasian Economic Union, as well as rules and forms for assessing their compliance, identification rules, requirements for terminology, labeling and rules for its application.

The entry date of the Regulation was postponed since the key condition for it was not met within the established time limit. Particularly, the procedure for maintaining the Register of Chemical Substances and Mixtures of the Eurasian Economic Union (“**Register**”) and the procedure for notifying new chemicals had not been adopted before December 1, 2018.

Currently, the Eurasian Economic Commission is working on the issue of postponing the entry into force of the Regulation to November 30, 2022. At the same time, the Register is still at the stage of formation and its inventory of chemicals (including those contained in mixtures) is being created.

In addition, the draft decision of the Board of the Eurasian Economic Commission “On the transitional provisions of the Technical regulation of the Eurasian Economic Union On the safety of chemical products” has been prepared and will be sent for approval to the member states of the Eurasian Economic Union, after the decision on the date of entry into force of the Regulation is adopted.

Subsoil revolution: myth or reality

The Russian State Duma has adopted amendments¹ of the current Law of the Russian Federation No. 2395-1 “On Subsoil” (the “**Subsoil Law**”).

The changes, incorporated into the Subsoil Law, are the first major changes since the reforms carried out in 2012, which represented only partial modifications of the legal basis for use of subsoil.

As declared, the main purpose for revising current legislation is to establish uniform terminology, eliminate legal and technical inaccuracies in effective Subsoil Law’s provisions. At the same time, some significant procedural issues will be implemented.

Please note that the new rules will come into force on **January 01, 2022** and generally will not substantially affect the existing subsoil license holders.

Obtaining of subsoil license and requirements to it

- New grounds for obtaining rights of subsoil use are set forth: (i) decision of the Government of the Russian Federation, adopted in accordance with an international treaty of the Russian Federation, which provides the provision of rights of subsoil use; (ii) a governmental task, providing for the State geological study of subsoil by a federal governmental institution, under the jurisdiction of the Federal Subsoil Resources Management Agency (*Rosnedra*).

In order to obtain a license for use of federal, or regional, subsoil landplot, a special government auction commission will be established.

- Exploration will be carried out on the basis of a license for the use of mineral resources for exploration and production of minerals, or geological study of mineral resources, exploration

¹⁾ Federal Law No. 123-FZ “On Amending the Law of the Russian Federation “On Subsoil”, Article 1 of the Federal Law “On Licensing Certain Types of Activities” and invalidating the Resolution of the Supreme Council of the Russian Federation “On the Procedure for Enacting the Regulations on the Procedure for Licensing the Use of Subsoil” and certain provisions of legal acts of the Russian Federation” dated April 30, 2021

and production of minerals. License for exploration of mineral deposits will not be provided separately.

- One of the main amendments, introduced into the Subsoil Law, is the amendment relating to the form of obtaining subsoil license: only an electronic auction remains in place, while the tender, as the form of obtaining subsoil license, has been excluded. This means that the winner will be determined solely based on the highest bid. The issuance of a license has been made contingent on the payment of a one-time sum, within 30 days after the announcement of the auction results. In contrast, currently the license is issued prior to when such payment is made.
- The persons recognized as winners of an auction, but ones have not paid the one-time payment on time, will be listed in the register of unfair auction participants. This means that they will not be allowed to register an application for participation in an auction, or application for obtaining the right to use subsoil, without holding an auction (Article 14 of the Subsoil Law). The record, in the register of unfair auction participants, will be valid for 2 years and can be challenged by an interested person in court. The procedure for holding auctions will be established by the Government.
- The list of information, contained in the license will expand and, starting from 2022, a license will include the auction terms.

Change and extension of terms of subsoil license

- The list of grounds for amending the license has been significantly expanded.
- Apart from that, extension of a term for use of a subsoil plot, which is terminated before the expiry date, will be directly prohibited. We see that this ban has been implemented as a reaction to the existing court practice, when the term in the mentioned conditions has been restored. Therefore, it will be possible to extend the license term only if the right to use the subsoil plot has been suspended, or limited, but not terminated.

- The list of grounds for termination, suspension and restriction of the right to use subsoil is expanded and concretized as follows:

- A) termination of license will be contingent on, *inter alia*, systematic (2 or more times within 4 years) violation of the terms of use of a subsoil plot;
- B) termination, suspension and restriction will be subject to, *inter alia*, violation of the requirements for the rational use and protection of subsoil, which wording is rather vague and gives State authorities wider powers.

- Besides, kindly note that the broadly construed “violation of the conditions of the license” (which in fact are not listed), as a ground for termination of license, will be removed.

New rights and obligations of license holders

- The rights and obligations of the subsoil user have been clarified and supplemented. The license holders will include legal entities and individuals (i) who are required to have the technical means and qualified specialists necessary for the use of subsoil in the subsoil plot, and (ii) in cases especially stipulated by the Subsoil Law, they shall also need permits (licenses) to carry out the respective activities related to use of subsoil.

Extension of powers and increasing control of state authorities in the filed of subsoil use requirements

- Powers of federal and regional authorities in matters of subsoil use have been adjusted, while the powers of local governments have been completely eliminated. In particular, the federal authorities will have more grounds to restrict the right to use a subsoil plot, since a new evaluation category has been introduced, the consequences of which are difficult to predict now. Federal authorities will be entitled to introduce restrictions, or bans on subsoil plots based on the purposes of “defense of the country and security of the State, rational use and protection of mineral resources, environmental protection”.

- Further, in by the provisions on protection of security, the Government will have authority to establish the specifics of the auction procedure for the federal subsoil plots. It will be allowed to establish (upon the proposal of the Ministry of Defense of the Russian Federation, or the FSB) restrictions on participation in auctions of legal entities owned by foreign investors.

Liability

- Since March 20, 2021, liability for violation of the terms of the license for the use of subsoil occurs regardless of whether the person uses the subsoil or not, according to the Federal Law No. 38-FZ “On Amendments to Article 7.3 of the Code of Administrative Offenses of the Russian Federation” dated March 09, 2021.

Perspectives

- Upon review of the amendments to the Subsoil Law, we see that the changes made have affected the aspects of acquisition, suspension and termination of right for subsoil use, entitling of users with new rights and obligations, as well as further accretion and extension of state powers.
- At the same time, those expected modifications, i.e., to separate licenses facilitating efficient use of subsoil plots and mining, are out of scope of the amended Subsoil Law. Supposedly these issues will be elaborated separately, as and when they have been recently deliberated over. We will track the changes and give a press release on the updates. Besides, a number of priorly- existing gaps remain unchanged, thus, requiring the related problems to be solved on a case-by-case basis.



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