

AREAS OF THE LEGAL REGULATION OF SOLVING THE OIL INDUSTRY PROBLEMS IN THE MODERN RUSSIA WITHIN THE FRAMEWORK OF THE ENERGY STRATEGY

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In market conditions, the economic assessment of oil and gas resources is dual in nature. It should reflect both the interests of the state, which is the owner of the subsoil, and the subsoil users acquiring a license (permit) from the state for the right to retrieve, explore and develop hydrocarbon fields. It seems that it would be reasonable to provide for a mechanism for testing and presenting the results of assessing undiscovered resources to include the information on undiscovered resources in the state cadastre of deposits and occurrence of oil and gas. It is also necessary to substantiate and develop measures aimed at increasing the investment attractiveness in the sphere of geological study of subsoil including subsoil containing fields with unconventional hydrocarbon types as well as improving the efficiency of works in this sphere carried out both at the expense of a subsoil user and at the expense of the state.

Keywords: energy law, legal regulation in the oil industry, legal regulation of hard-to-recover resources.

In accordance with the Energy Strategy, the oil industry has the following tasks aimed at meeting the demands of the socioeconomic development of the Russian Federation by ensuring the appropriate volumes of production and export of products and services of the fuel and energy complex industries:

Ensuring a stable, growing level of oil production in favorable conditions;

Improving the efficiency, availability, and quality of meeting the national demand for petroleum products.

The Energy Strategy also defines a set of key measures to accomplish these tasks. In particular, such measures include:

Transformation of the taxation system from turnover taxation to taxation of financial results and other measures to create conditions for the growth of investments in the industry

ensuring monetization of the resource potential of the oil industry and achievement of a strong multiplicative effect in the related sectors of the economy;

Comprehensive encouragement of the development of mature fields;

Introduction of small fields, marginal and high-water-cut wells, hard-to-recover reserves (including the Bazhenov suite) into economic circulation as well as creation of conditions for the development of small and medium-size enterprises in this sphere, primarily based on innovative national technologies and equipment;

Creation of technological test sites for the development of technologies for economic production of crude hydrocarbons from hard-to-recover reserves;

Development of a national market for maintenance, engineering and construction services in the oil industry and expanding the involvement of Russian companies in it.

The measures listed in the strategy require appropriate legal regulation. Based on the provisions of the strategy, one can single out the main legal regulation areas in order to accomplish the planned tasks and mark the relevant legal means.

1. The first area is laying the legal groundwork for the conditions of the growth of investments in the industry ensuring monetization of the resource potential of the oil industry and the development of the related industries.

The improvement of legal regulation of subsoil use should be attributed to one of the legal means in this area. The Government of the Russian Federation has approved the Action Plan for the Implementation of the Strategy for the Development of the Mineral Resources Base of the Russian Federation until 2035 (for 2019 to 2024). One of the important issues is the assessment of undiscovered resources. Since the presence of mineral resources in the subsoil remains one of the most important competitive advantages of the Russian economy, the issues

of assessing mineral reserves and undiscovered resources are equally relevant. Oil, gas, and gas condensate resources are assessed from the geological and economic standpoint in order to develop realistic views of the scale, structure, qualitative characteristics, and economic significance of the potential mineral resources base of the oil and gas industry. In market conditions, the economic assessment of oil and gas resources is dual in nature. It should reflect both the interests of the state, which is the owner of the subsoil, and the subsoil users acquiring a license (permit) from the state for the right to retrieve, explore and develop hydrocarbon fields. It seems that it would be reasonable to develop a mechanism for testing and presenting the results of assessing undiscovered resources to include the information on undiscovered resources in the state cadastre of deposits and manifestations of minerals with respect to oil and gas. It would be advisable to regulate at the level of the Ministry of Natural Resources of the Russian Federation the procedures for the geological and economic assessment of undiscovered resources and the procedure for presenting information for the inclusion of data on undiscovered resources in the state cadastre by types of minerals, as the state cadastre includes information on fields with mineral reserves not yet registered by the State Register of Mineral Reserves but having assessment works (provided that the geological and economic assessment is positive) or exploration completed.

It is also necessary to substantiate and develop measures aimed at increasing the investment attractiveness in the sphere of geological study of subsoil including subsoil containing fields with unconventional hydrocarbon types as well as improving the efficiency of works in this sphere carried out both at the expense of a subsoil user and at the expense of the state. Such measures can be provided for in regulatory acts in the form of tax and other benefits as well as in the

form of state support and state participation in financing by concluding agreements on investment, joint venture, public-private partnership aimed at the encouragement of the introduction of promising production technologies and intensification of retrieving and exploration operations.

2. The second area can be legal regulation of comprehensive encouragement of the mature field development. This area stipulates further improvement of laws on the revenue added tax (RAT). Thus, for example, Federal Law No. 342-Φ3 of October 15, 2020, *On Amendments to Chapters 25.4 and 26 of Part Two of the Tax Code of the Russian Federation* [1] expanded the list of group 3 subsoil plots where RAT is applied to the extraction of crude hydrocarbons due to depleted fields and fields located in the territory of the constituent entities of the Russian Federation located in the North Caucasian Federal District and on the territory of the Sakhalin region.

3. Another area is legal regulation of the introduction of small fields, marginal and high-water-cut wells, hard-to-recover reserves (including the Bazhenov suite) into economic circulation as well as legal regulation of creation of conditions for the development of small and medium-size enterprises in this sphere, primarily based on innovative national technologies and equipment.

Subject to the provisions of Article 3.1. of the Law of the Russian Federation *On Subsoil*, Article 26.3. of the Law of the Russian Federation *On General Principles of Organization of Legislative (Representative) and Executive Government Authorities of Constituent Entities of the Russian Federation*, it seems reasonable to use the opportunity to transfer the powers to manage fields that are small and extra small by volume of recovered reserves (where “small” means 1 to 5 million tons of oil, and “extra small” means less than 1 million tons of oil) and (very) complex in terms of geological structure to the constituent entities of the Russian Federation. Such

approach to management of subsoil use can contribute to solving economic, as well as social issues and facilitate the development of small and medium-size enterprises in the fuel and energy complex, creation of scientific test sites for the development of environment friendly technologies for the production of unconventional sources of crude hydrocarbons and application of the innovative design of equipping and development of fields containing unconventional hydrocarbon types. Authors of legal and economic publications have repeatedly expressed opinions about the advisability of allocating objects to support the operation of small businesses. [2]

The idea of creating such legal mechanism has been put forward earlier in several program documents. Thus, Order of the Government of the Russian Federation No. 494-p of April 21, 2003, *On the Approval of Fundamentals of the State Policy in the Use of Crude Minerals and Subsoil Use* included the statement that «In order to ensure the efficient operation of mining enterprises, it is necessary to: facilitate the development of extracting companies that are highly competitive on the global crude mineral extraction and processing market; expand the participation of small and medium-size businesses in activities in the sphere of the use of crude minerals and subsoil use». Order of the Government of the Russian Federation No. 1039-p of June 21, 2010, *On the Approval of the Strategy for the Development of the Geological Industry of the Russian Federation until 2030* emphasized that «the following measures are envisaged in order to attract small and medium-size businesses to the development of fields that are of no interest to large companies:

Development of criteria for identifying subsoil areas that are of no interest to large companies;

Simplification of the procedure for the provision of such subsoil areas for use for the purposes of the development and production of minerals;

Ensuring the possibility of transferring the rights to use such subsoil areas to small and medium-size businesses on market conditions».

The new Strategy [3] indicates that the following measures are envisaged in order to expand the activities of small and medium-size businesses:

Improvement of the application of the declarative principle of granting subsoil use rights;

Creation of special information and trading (exchange) platforms that ensure turnover of shares in small and medium-size businesses holding licenses for the geological study of subsoil.

Obviously, these measures have to be supported by appropriate regulatory acts.

4. Another important area is legal regulation of the creation of technological test sites for development of technologies for economic production of crude hydrocarbons from hard-to-recover reserves.

In accordance with Federal Law No. 396-Φ3 of May 31, 2020, amendments have been introduced to Part 1 of Article 23.2 of the Law *On Subsoil* in view of the need to create a legislative framework for the provisions on the development of technologies for geological study, exploration and production of hard-to-recover minerals. In particular, Part 1 of Art. 23.2. of the Law *On Subsoil* stipulates that the development of technologies for geological study, exploration and production of hard-to-recover minerals should be carried out in accordance with the approved project documentation for the development of technologies for geological study, exploration and production of hard-to-recover minerals as well as in accordance with the rules for the preparation of project documentation for the development of technologies for geological study, exploration and production of hard-to-recover minerals established by the management body of the Federal State Subsoil Fund with the approval of the federal executive

bodies authorized by the Government of the Russian Federation. In accordance with the outlined new provisions on the preparation of project documentation for the development of technologies for geological study, exploration and production of hard-to-recover minerals, the need for the development and adoption of the appropriate rules for the preparation of project documentation for the development of technologies for geological study, exploration and production of hard-to-recover minerals (hereinafter referred to as the «new Rules») will arise. Obviously, the new Rules need to reflect the specifics of works related to the development of technologies for geological study, exploration and production of hard-to-recover minerals. The difficulty lies in the fact that the regulatory documents still contain no definition of the «hard-to-recover minerals» concept. In fact, it is now impossible to license such new type of subsoil use as the development of technologies for geological study, exploration, and production of hard-to-recover minerals established by Federal Law No. 396-Φ3 because there is no list of types of hard-to-recover minerals to which this subsoil use type can be applied.

Decree of the Government of the Russian Federation No. 1499 of September 19, 2020, established what refers to types of hard-to-recover minerals, in respect of which the right to use a subsoil area may be granted for the development of technologies for geological study, exploration and production of hard-to-recover minerals. [4]

The explanatory note to the draft of this resolution [5] stated that based on the law enforcement practice of geological study, calculation of reserves and development of hydrocarbon fields as well as the results of the inventory of reserves carried out in 2019, it was reasonable to refer only unconventional natural hydrocarbon accumulations that are characterized by such manifestation peculiarities as significant dispersion, the absence of controlling factors (boundaries,

contacts and structural factors), the presence of hydrocarbons, *inter alia*, in a solid or adsorbed form, to the types of hard-to-recover minerals.

Such accumulations include oil contained in the Bazhenov, Domanic, Abalak, Khadum suits. as well as super-viscous oil (10,000 mPa-s and more).

According to expert estimates, the below named productive sediments contain the following volume of geological resources of hard-to-recover oil:

Bazhenov and Abalak suits: up to 60 billion tons;

Domanic suits: up to 6 billion tons;

Khadum suits: up to 2 billion tons.

Along with the above estimate, the level of oil production from the Bazhenov, Domanic, Khadum sediments, as well as production of oil with the viscosity of 10,000 mPa-s over the past ten years is about 0.6 million tons per annum, 0.3 million tons per annum and 3, 5 million tons per annum respectively.

Apparently, it would be reasonable to fix the attributes of fields containing hard-to-recover minerals in the Law on Subsoil for the purposes of uniform and systemic regulation of relationships on the development of subsoil areas containing hard-to-recover oil reserves. ■

References

1. Federal Law No. 342-AP of October 15, 2020, *On Amendments to Chapters 25.4 and 26 of Part Two of the Tax Code of the Russian Federation* // Official Internet portal of legal information. URL: <http://www.pravo.gov.ru>, October 15, 2020.
2. Gavrin A.S. A Market without Small and Medium-size Enterprises Does not Exist / A.S. Gavrin // Oil, Gas and Business. 2000. No. 6. P. 5. ; Gorety M.V. On the Issue of Defining the Concept and Characteristics of Small-size Enterprises in the Oil Industry / M.V. Gorety // Taxes Newspaper. 2006. No. 20.
3. Order of the Government of the Russian Federation No. 2914-p of December 22, 2018, *On the Approval of the Strategy for the Development of the Mineral Resources Base of the Russian Federation until 2035* // Legislative Corpus of the Russian Federation. December 31, 2018. No. 53 (part II). Art. 8762.
4. Decree of the Government of the Russian Federation No. 1499 of September 19, 2020, *On the Establishment of Types of Hard-to-Recover Minerals, in Respect of Which the Right to Use a Subsoil Area May Be Granted for the Development of Technologies for Geological Study, Exploration and Production of Hard-to-Recover Minerals* // Official Internet Portal of Legal Information. URL: <http://www.pravo.gov.ru>, September 23, 2020.
5. Federal Portal of Drafts of Regulatory Acts. URL: <https://regulation.gov.ru/projects#npa=97371>.