The Need for Comprehensive Legislation in the Russian Oil and Gas Industries

Laura A. Wakefield
THE NEED FOR COMPREHENSIVE LEGISLATION IN THE
RUSSIAN OIL AND GAS INDUSTRIES

Laura A. Wakefield*

I. INTRODUCTION

To successfully develop a market-oriented economy, the Russian Federation must carefully protect and encourage its newly privatized oil and gas industries, the bulwarks of its economy. To foster growth and development of these industries, the country must immediately develop a comprehensive energy law that will encourage foreign investment while limiting waste and environmental degradation, both of which threaten the nation’s financial health.

Part II of this Note describes the Russian oil and gas industries and the privatization process. Next, it demonstrates Russia’s extensive dependence on its energy industry. Part III then analyzes the development of Russian energy law and other applicable laws and their current status. Lastly, Part IV argues that comprehensive energy law and related legislation is necessary to encourage foreign investment and financial stability.

II. PRIVATIZATION AND FOREIGN INVESTMENT

The Soviet Union ceased to exist in 1991.¹ By 1993, the Russian Federation had emerged as an independent state with its own constitution.² However, other states that had previously emerged from the shadow of the Soviet Union like Poland, Hungary, and the Czech Republic are farther along than Russia in the process of creating market-oriented economies.³ Because Communist rule so pervaded Russian society, Russia faces a greater challenge in privatization than these other states.⁴ Nonetheless, Russia, which is in the early stages of its new existence, is just beginning to privatize its state-owned industries and property, has the

---

* B.A., University of Dayton, 1993; J.D. Candidate, Case Western Reserve University School of Law 1997. The author wishes to thank Professor Edward A. Mearns, Jr., Case Western Reserve University School of Law, for his guidance and encouragement.

³ See Doran Doeh & Mathieu Fabre-Magnan, Russia, in PRIVATIZATION: A WORLD PRIVATIZATION GUIDE 65 (Christopher Zach ed., 1994).
⁴ BIRENBAUM, supra note 1, ch. 2, at 18.
advantage of being able to learn from the experiences of other former Communist states that gained independence before Russia.5

Russia earnestly began its privatization plan in 1993, even before it adopted its constitution.6 On May 8, 1993, the government issued the decree State Guarantees for the Right of the Citizens of Russia to Participate in Privatization.7 This decree guaranteed each Russian the right to obtain a share of state property.8

Once the privatization process began, it was carried out primarily by two state organizations: the Committee for the Management of State Property (Goskomimuschestvo or GKI) and the State Property Fund.9 The GKI organizes and oversees the privatization process and creates the regulation and policy behind privatization.10 The State Property Fund carries out the specifics of actual privatization transactions, such as organizing auctions and distributing vouchers to Russian citizens.11 The Property Fund also holds the state's interests in the enterprises to be privatized until those enterprises are sold.12 By the close of 1993, these two organizations assisted in the privatization of an estimated 39,000 formerly state-owned enterprises.13

After this initial push towards privatization, the country experienced a privatization backlash, in which large portions of the public sought to stop the privatization of more state property. Much of the oil and gas industry was placed on a list of government-owned property not to be converted to private ownership.14 Privatization in general came to a standstill, but desperate for cash, the government began a second phase

5 See id.
6 See Doeh & Fabre-Magnan, supra note 3, at 65.
9 See Doeh & Fabre-Magnan, supra note 3, at 66.
10 See BIRENBAUM, supra note 1, ch. 2, at 27.
11 See Doeh & Fabre-Magnan, supra note 3, at 66.
12 See BIRENBAUM, supra note 1, ch. 2, at 27.
13 See Doeh & Fabre-Magnan, supra note 3, at 65.
14 See Russia's Second Privatization Wave, FIN. TIMES LTD. EAST EUROPEAN ENERGY REP., Aug. 25, 1995, available in LEXIS, World Library, Cumws File [hereinafter Russia's Second Privatization]. The privatization of the Russian oil and gas industry refers to state-owned enterprises, rights to extract or transport oil or gas, and so forth. The oil and gas resources themselves are prohibited from being privatized and will remain the property of the Russian state. BIRENBAUM, supra note 1, ch. 2, at 25.
of privatization in the fall of 1995.\textsuperscript{15} "Unlike the first stage of voucher privatization in 1993, the government [in 1995 was projected to] sell its shares in enterprises for cash to help fund the . . . federal budget deficit and inject money into the privatized companies."\textsuperscript{16} However, much of the energy industry is deemed too important for the government to relinquish control. Accordingly, 1,019 fuel and energy companies were placed on a "strategic enterprises" list of companies to be withheld from privatization.\textsuperscript{17} Even so, seven percent of the shares in the oil company, Yukos, and fifteen percent of the shares in the oil company, Lukoil, are among the state property to be sold to Russian and foreign investors.\textsuperscript{18} The Russian government is depending on the privatization of the energy industry to attract foreign investment and strengthen the nation's economy.

\section*{A. The Oil and Natural Gas Industry}

Russia's oil and gas resources are vast and of great importance to the country and the rest of the globe. Russia possesses what are believed to be the world's largest undeveloped oil fields.\textsuperscript{19} Because of their size, these fields, located in the area around the Caspian Sea, potentially are of immeasurable value to the world at large.\textsuperscript{20} According to one source, "[T]he magnitude of Russia's reserves is believed to be greater than that of Saudi Arabia and many other potent oil-producing nations."\textsuperscript{21} Russia's gas supplies are equally impressive. The country is currently the world's largest producer of natural gas.\textsuperscript{22}

During Soviet rule, the oil and gas industries in Russia were well-funded and technologically advanced, but extremely wasteful and polluting. For several years, the Soviet Union expended at least half of its nondefense capital budget on the natural gas industry alone.\textsuperscript{23} This

\begin{itemize}
  \item \textsuperscript{15} See Russia's Second Privatization, supra note 14.
  \item \textsuperscript{16} Id.
  \item \textsuperscript{17} See Russian Energy Firms 1/3 of Privatization Delay List, PLATT'S OILGRAM NEWS, July 17, 1995, at 5.
  \item \textsuperscript{18} See Russia's Second Privatization, supra note 14.
  \item \textsuperscript{19} See Bill White, Energy Industry Leading Way to Capitalist Russia, HOUS. CHRON., Aug. 17, 1995, at 39.
  \item \textsuperscript{20} See id. at 39.
  \item \textsuperscript{21} Sheila S. Hollis & John W. Berresford, Oil and Gas Law Reform in Russia: Through the Smoke of Battle, 1 TULSA J. COMP. & INT'L L. 111, 111 (1993).
  \item \textsuperscript{22} White, supra note 19.
  \item \textsuperscript{23} See id. Compared to defense expenditures, this large investment figure seems impressive, but considering that investment in oil and gas is to make the industry
enormous investment, however, paid off because Russia became the world’s largest natural gas producer during this period.\textsuperscript{24} As far as oil was concerned, Soviet geologists and engineers helped to “[o]vercom[e] immense institutional obstacles” to raise oil production to almost eleven million barrels per day during the late 1980s.\textsuperscript{25} This accounted for more than one-sixth of the world’s consumption of oil and was a production level higher than that of any other country.\textsuperscript{26}

Although Russia’s production levels, its technology, and its investment in the energy industry were tremendous during the Soviet era, environmental and efficiency concerns were ignored as they are today. For instance, one 1989 estimate put the amount of oil lost by Russian oil companies “through leaky pipes and wasteful refineries” at one-third of the total processed.\textsuperscript{27} Additionally, to “speed up construction” of pipelines, builders installed cutoff valves at thirty-mile intervals instead of at three-mile intervals, adding to the potential for large oil spills.\textsuperscript{28}

Little has changed under the new Russian government. According to some estimates, one out of every ten barrels of oil produced today in Russia is spilled, amounting to 920,000 spilled barrels each day.\textsuperscript{29} There currently exists in Siberia a pool of spilled oil six feet deep, four miles wide, and seven miles long.\textsuperscript{30} Because pollution was ignored during the Soviet period, much of the scarce investment money now available to the industry must be utilized to purchase safer and more efficient equipment, rather than to increase production.\textsuperscript{31}

Russia’s immense gas and oil resources, combined with its mixed history of advanced technology and wastefulness and the current shaky economic status of the country, make the position of the energy industry today precarious. Nevertheless, the energy industry is more stable than other Russian industries. Russia’s energy sector remains relatively successful, as the country is currently the world’s second largest energy productive enough to “underwrite the country’s military-industrial complex” and not for other reasons, lessens the impression. Marshall I. Goldman, \textit{The Russian Economy: Still Murky}, \textit{Newday} (Nassau), Oct. 12, 1995, at A35.

\textsuperscript{24} See White, \textit{supra} note 19.

\textsuperscript{25} \textit{Id}.

\textsuperscript{26} See \textit{id}.


\textsuperscript{28} See \textit{id}.

\textsuperscript{29} See Douglas Stanglin et al., \textit{Toxic Wasteland}, \textit{U.S. News & World Rep.}, Apr. 13, 1992, at 40, 42.

\textsuperscript{30} See \textit{id}.

\textsuperscript{31} See Dr. A. Konoplyanik, \textit{Russia Struggling to Revive Production, Rebuild Oil Industry}, \textit{Oil & Gas J.}, Aug. 2, 1993, at 43, 44.
producer, producing 13% of total world output. Even as its overall economy in general still desperately seeks some kind of stability since privatization, Russia has managed to lift most price controls in the oil sector. However, domestic natural gas prices remain below cost.

Other portions of the economy, though, have not seen the same success as the energy sector. Since Russia gained its independence from the Soviet Union, the economy nearly collapsed. One well-accepted estimate is that the gross national product decreased by 50% between 1991 and 1994. Total inflation for 1995 is expected to be over 100%. Potential economic disasters prevent most industries from attracting foreign investment. Conversely, production levels of natural gas have been maintained, and oil production has declined only slightly.

Because of the energy industry’s success, the importance of oil and gas to Russia’s development of a continued and prosperous market economy and to the maintenance of its current economy continues to be great. Sales of oil and gas provide over half of the hard currency Russia earns. Additionally, most of the foreign investment in Russian industry is in the energy industry. Even so, Russia still lacks the capital necessary to effectively develop its large reserves of oil and gas. “Oil and gas are not ‘just another commodity’ in Russia.” They are tremendously important to the nation because of its dependence on income derived from the industry, as well as its dependence on the energy it provides to operate the nation’s other industries and activities.

---


33 See id.

34 See Goldman, supra note 23. Much of Russia’s gross national product today, though, may be hidden as new businesses fail to report much of their income to hide it from tax authorities. See id.


36 See White, supra note 19.

37 See id. But see Hopson, supra note 32 (estimating that forty-five percent of Russia’s hard currency receipts come from energy exports).

38 See White, supra note 19; Russian Production Sharing Legislation Passed into Law, Reuters, Jan. 25, 1996, available in LEXIS, News Library, Wires File [hereinafter Russian Production Sharing Legislation].

39 Hollis & Berresford, supra note 21, at 111.

40 See id.
B. Current Developments

Understanding the importance oil and gas play in the country’s future, Russia is seeking to protect and improve the industry by cooperating with other countries, especially the United States, to obtain expertise to successfully develop oil and gas policies. Russian Prime Minister Viktor Chernomyrdin and U.S. Vice President Albert Gore Jr. are “spearheading efforts to improve the efficiency of the Russian oil and gas sector, thereby raising productivity and reducing that industry’s high levels of pollution.”41 In addition, American energy lawyers and engineers are working with Russians to shape new energy law.42

Russia is also cooperating with the American company Conoco in developing an Arctic oil field.43 This project is “the single largest direct foreign investment in Russia,” and is being touted as setting a “new standard for environmental safeguards in the fragile far north.”44 In addition to this project, Russia is teaming up with the Agency for International Development.45 The Agency is funding an Oil and Gas Technology Center in Russia whose goals will be to help stop the decline in Russian oil production and ensure that U.S. technology is used to do this.46 All of these joint efforts have resulted in a “rapid evolution of Russia’s energy sector that has drawn heavily on American experience.”47

Russia is doing more, though, than just cooperating with the United States and U.S. corporations. In July 1995, Russia signed a joint declaration with the International Energy Agency (IEA), whose stated goals are to reduce world dependence on oil conservation and research alternative energy sources.48 In September 1995, the agency released a 345-page report on the energy policy of the Russian Federation.49 The report con-

42 See White, supra note 19.
43 See id.
44 Id.
46 See id.
47 See White, supra note 19.
tained IEA recommendations to the Russian government on how to best "extricate the [energy] industry from crisis." Thus, Russia is taking an active role to protect its oil reserves from over-exploitation.

Although Russia is cooperating with outsiders to maintain and improve its oil and gas industries in this new atmosphere of privatization, Russia may lack the infrastructure necessary to accomplish these goals. To create and maintain a viable market-oriented economy, Russia must first have the proper institutional infrastructure to run the new economy. Such institutions are well-developed in countries like the United States, but are non-existent in the former Soviet states. According to Alan Greenspan, what fuels the process of innovation necessary to a market economy is "a whole infrastructure of market institutions," including business professions like accounting, auditing, and marketing.

An adequate banking system is a necessary part of the infrastructure needed to develop a successful market economy. For Russia to reform its banking system to stimulate its newly emerging free market, large amounts of investment capital must be infused into the system. Then, after an adequate banking system is established in Russia, these banks "will facilitate the flow of foreign investment by making loans to venturers and providing a facility for savings and investment." Without these institutions, foreign investment will not flow into Russia. Without foreign investment, the nation's economy, which needs hard currency, will continue to flounder.

---

50 Id. Recommendations include things such as separating the production of energy sources from their transportation to foster competition and revoking preferred pricing for former Commonwealth of Independent States trading partners. See id.

51 See generally Goldman, supra note 23 (describing Russia's lack of institutional infrastructure to support strict monetary policy); Alan S. Greenspan, Thoughts About the Transitioning Market Economies of Eastern Europe and the Former Soviet Union, 6 DEPAUL BUS. L.J. 1, 8-9 (discussing infrastructure necessary for market institutions); Susanna V. Pullen, United States Foreign Banking and Investment Opportunities: Branching Out to the Russian Federation, 8 TRANSNAT'L LAW. 159 (1995) (arguing the need for a strong banking system in Russia).

52 Greenspan, supra note 51, at 8-9.

53 Two problems with the current Russian banking system are a rigid application of monetary policy and widespread corruption. The strict monetary policy kills new businesses, while corruption, in the form of the Russian mafia, kills bankers—27 of them have been killed between 1991 and 1995. See Goldman, supra note 23.

54 See Pullen, supra note 51, at 163.

55 Id.
III. THE STATUS OF THE LAW

Before concluding that there is a need for a comprehensive legal framework for the oil and gas industry, it is first necessary to understand the current status of Russian law, both generally and as it relates specifically to the oil and gas industry. This section of the Note first discusses the Russian constitution as it relates to the oil and gas industries. Next, various Russian statutes affecting the new market-based economy are analyzed; followed by a discussion of the Law on Subsoil Resources, which governs oil and natural gas collection along with the extraction of other resources. Finally, this section of the Note analyzes the various proposals for an oil and natural gas law and the recently passed production sharing agreement legislation.

The Constitution of the Russian Federation states that "[a] unified economic space, the free movement of commodities, services and finances, and support for competition and freedom of economic activity shall be guaranteed." The Constitution also provides for the recognition and protection of private property, and nationally and municipally, government-owned property. These concepts were the beginning of the new market-oriented economy in Russia.

In addition to the Russian Constitution, various Russian statutes, most of which were enacted when Russia first became an independent state, govern private property and business in the more market-oriented economy. The Law of the Russian Federation on Ownership in Russia was the first statute to begin addressing market economy concerns such as mortgages, inheritance, and joint ventures, all of which were deemed legal by this law. The Law on Ownership also states that foreigners have the same property rights as Russian citizens, a provision that presumably offers a measure of safety to foreign investors. The Law on Ownership provides additionally that preferences in determining the rights of ownership (that is, preferring one organization or person over another) are not permitted. This statute, which utilizes terms like “private own-

---

56 Law of the Russian Federation, On Underground Resources (1992), available in LEXIS, Intlaw Library, Rrlaw File (describing the laws pertaining to subsoil resources as for February 1992; also called the Subsoil Law) [hereinafter Law on Underground Resources].
57 KONST. RF art. 8 ¶ 1.
58 Id. art. 8 ¶ 2.
60 Id. art. 27.
61 Id. arts. 30-32; see Baev, supra note 8, at 152.
ership” and “private property,” which were previously unknown in Russian or Soviet law, marks an important turning point in Russian legal history, as it codifies many of the principles taken for granted in market economies. The Law of the Russia Federation on Enterprises and Entrepreneurial Activity is another landmark Russian statute because “for the first time in the legislative history of Russia, the guarantees of the Russian Federation were laid out with specificity.” The act provides for equal access to all those participating in entrepreneurial activity in Russia, and states that it applies to all forms of ownership by all persons.

Another important statute governing Russian business is the Law of the Russian Federation on Foreign Investments in Russia. The Law on Foreign Investments deals with losses from possible government expropriation of property, a common source of nervousness for foreign investors who are fearful of Russia returning to its recent past. The Law on Foreign Investments protects against government expropriation by providing that “compensation . . . must correspond to the real value of the investments to be nationalized.” This appears to provide protection for investors worried about government takings of property in this yet untested economic and governmental system. A major problem with this assumption involves valuation. The criteria used to determine the “real value” of taken property in Russia would not likely be the same criteria used in Western nations, so that amounts awarded to foreign owners may be far less than they might expect.

Even so, the laws that exist in Russia illustrate numerous shortcomings. For instance, in the context of joint ventures, “the law regarding the valuation of property in the event the joint venture ceases to exist is vague.” This void in the laws understandably causes potential investors

---

62 See Baev, supra note 8, at 153.
64 See Baev, supra note 8, at 153.
65 Id.
67 Id. art. 8.
69 MARK TOUREVSKI & EILEEN MORGAN, CUTTING THE RED TAPE: HOW WESTERN
to be less likely to enter the market.\textsuperscript{70} Another weakness in current laws involves the uncertainty and propensity of frequent legal change, as well as the tendency for Russian laws to be confusing and in conflict with one another.\textsuperscript{71} For instance, the Moscow City Council annulled leases granted to foreign and domestic businesses for city office space even though Moscow's mayor had previously approved the leases.\textsuperscript{72} One estimate is that Western oil companies might invest almost seventy billion dollars each year to develop oil fields in Russia if it were not for their fear of opportunism by the national and local Russian governments.\textsuperscript{73}

Although Russia is beginning to promulgate laws to provide a framework for expanding its new economic system, laws specifically governing oil and gas are sparse and at a very early point in development. In 1992, Russia enacted the Law on Subsoil Resources to govern oil, gas, nonferrous metal, and precious metal extraction.\textsuperscript{74} The Subsoil Law provides for "the payment of royalties, license fees, excise taxes and payments to a fund for exploration and mineral replenishment."\textsuperscript{75} These payments appear disproportionately high for the oil and gas industries as compared to the metal industries.\textsuperscript{76} For instance, royalties on the "value of the extracted resources" are between six and sixteen percent for oil and gas, between four and ten percent for precious metals, and between two and six percent for nonferrous metals.\textsuperscript{77} Payments to the fund for replenishment are ten percent for oil and gas, but only 8.2% for non-ferrous metals and 7.8% for gold.\textsuperscript{78}

Because these payments under the Subsoil Law are imposed in addition to other general business taxes and fees, they cause a substantial burden on the oil and gas industries. The payments, coupled with the forced subsidization of agriculture and heavy industry, have caused some

\textsuperscript{70} See Tourevski & Morgan, supra note 69, at 73.
\textsuperscript{71} See id. at 166-67; Brenbaum, supra note 1, ch. 2, at 6.
\textsuperscript{72} See Geoff Winestock, Land Tax Hits JV Projects, MOSCOW TIMES, May 27, 1993, at 1.
\textsuperscript{73} Imse, supra note 27, at 30.
\textsuperscript{74} Law on Underground Resources, supra note 56; Russell H. Pollack et al., Russia, in ENERGY AND RESOURCES LAW 48, 49 (Christopher Zach ed., 1994).
\textsuperscript{75} Pollack, supra note 74, at 49.
\textsuperscript{76} See id.
\textsuperscript{77} See id.
\textsuperscript{78} See id.
energy companies to have financial difficulties such as being unable to meet payroll requirements. With all of these financial obligations, "[t]he combined financial burden often is simply too high to enable the investor to realize a return it considers adequate." In fact, according to the IEA, the cumulative effect of taxes and royalties in the Russian energy sector can amount to over 100% of an enterprise's revenue. Such forced expenditures leave an enterprise "unable to cover costs, let alone finance investments." Regardless of the financial ramifications of the Subsoil Law, the statute seems to be "too general to provide a framework" for large-scale investment in the oil and gas industry.

Seeing the need for more specific legislation for the energy industry, several groups have tried to draft a Russian Federation Law on Oil and Gas. The efforts are currently stalled. No legislation has yet been approved. "A proliferation of draft laws has been followed by a period of synthesis of drafts and comments on drafts, but after at least two years of work, no law expressly concerned with oil and gas resources has yet been enacted." However, four major drafts of a Law on Oil and Gas have been proposed. The Gazeev-Hardy Draft was created to supplement the Subsoil Law. Under this draft, a specific regulating body would grant oil and gas rights. The Tishcenko Draft was produced under the guidance of Dr. A.S. Tishcenko, the Director of the All-Russia Scientific Research Institute of Organization, Management, and Economy of the Oil and Gas Industry. Although this draft attempted to push the industry "in a clear

---

79 See id. Russia requires that the energy industry charge agriculture and heavy industry just one-third of the world market price for oil and gas. White, supra note 19.


82 Id.

83 Cameron, supra note 68, at 237.

84 Id. at 236.

85 See id.

86 Id.

87 See Konoplyanik, supra note 31, at 48-50; Cameron, supra note 68, at 239.

88 Cameron, supra note 68, at 239.

89 See id. at 239, 239 n.21.
market direction,” its major emphasis was on state participation. An especially unique feature of the Tishcenko Draft was that technical experts played a major role in its development, something unheard of with similar legislation in the West. The Gazprom Draft was created under the direction of experts from Gazprom, the large Russian gas monopoly. Under this draft, the state would have sole ownership of the gas supply, and would involve private companies in its production, exploration, and processing. The fourth major draft, called the Perchik Draft, was developed as a compromise of the three previous drafts. This draft seemed “to give the local and regional authorities a mandate to negotiate specific deals,” leaving little in the way of specifics to be decided by the law.

By creating only a general statutory framework, the Perchik Draft seems to evidence a distrust for law as providing a workable solution to these problems.

On December 30, 1996, President Boris Yeltsin signed the long-awaited production sharing law that will govern production sharing agreements involving oil, natural gas, and other resources. A production sharing agreement (PSA) is a form of contract in which the host country maintains the title to the resource to be developed and the foreign investor supplies capital, equipment, and personnel to complete the project. PSAs benefit companies by providing a predictable tax structure independent of the country’s tax system and by providing enhanced legal recourse as the company and the country are parties to a joint contract. PSAs benefit the host country by allowing it to retain title to the resource and to share in production. Under the PSA legislation, an investing company would cede a percentage of any oil or gas it finds to the

---

90 See id; see also id. at 240.
91 Id. at 239-40.
92 Gazprom was privatized late in 1992, before the major privatization push began, see supra note 7, and accompanying text, in a process that is “still murky.” Reddaway, supra note 81. One theory is that Gazprom’s top managers received between one and five percent of the newly formed corporation’s stocks. Id. Current estimates of Gazprom’s real worth are between 250 billion and 700 billion dollars, which would make some former managers billionaires. Id.
93 See Cameron, supra note 68, at 239 n.17, 240.
94 Id. at 240-41.
95 See Cameron, supra note 68, at 242; see also Konoplyanik, supra note 31, at 50.
97 Id.
98 See id.
99 See id.
Russian government in taxes and royalties. The Law On Production Sharing Agreements apparently will provide an atmosphere of fair competition by treating both foreign and domestic investors equally, but a number of problems will need to be addressed later in amendments to the law.

Foreign investors had high hopes for the original draft version of the law, but the version that made it to Yeltsin's desk is "vague and rambling" and "severely watered down." One of the main problems Western investors see in the law is the provision which would permit the Russian government to unilaterally renegotiate agreement terms in the event of a "substantial change in circumstances." Other provisions creating hesitation in the minds of Western investors are restrictions on the investor's right to transfer property rights and the failure of the law to guarantee the investor's right to international arbitration.

IV. CONCLUSION

The Russian Federation's failure to effectuate any version of an Oil and Gas Law or to develop another workable statute has left a void in Russian energy law. The PSA legislation may be a step in the right direction, but whether its flaws, especially the provision allowing unilateral renegotiation of agreement terms, can be corrected remains to be seen. Russia has a rather detailed constitution, but the constitution is "merely an enabling document," and legislation that is well-entrenched so as to provide a semblance of security for investors, foreign and domestic alike, is necessary to the success of Russia's oil and gas industry and its economy. Necessary legislation to encourage foreign investment generally should include more refined laws on property rights, accounting principles, foreign currency, and contracts.

100 See Russian Oil: A Little Crude, ECONOMIST, Jan. 20, 1996, at 68, 68.
102 Russian Oil: A Little Crude, supra note 100, at 68.
103 Russian President Yeltsin Sign Weaker Oil Production-Sharing Law, INT'L TRADE REP., Jan. 17, 1996, at 80.
104 Law on Production-Sharing Agreements, supra note 104, ch. 1, art. 17; see also Gregg Jones, Russian Law May Stall U.S. Oil Development: Production-Sharing Policy Raising Roadblock, DALLAS MORN. NEWS, Jan. 6, 1996, at 1F.
105 See Russian Oil: A Little Crude, supra note 100, at 68.
107 See id.; see also Greenspan, supra note 51, at 8-9; Pullen, supra note 51, at 183-84.
To encourage investment in the Russian energy industry specifically, a comprehensive law guaranteeing rights pertaining to oil and gas and its production, processing, or transportation is necessary. Former Communist countries need to “overhaul their legal, managerial and economic systems, as necessary prerequisites for remodeling the former centrally-planned economies into productive and viable capital-based free-market economies.”108 This legislation should first focus on creating a stable system to put investors at ease; it should reduce waste and pollution to protect Russia’s resources from depletion; it should prevent the need for costly clean-up measures; and it should provide an understandable and specific scheme of regulation to prevent local and national bureaucrats from changing the rules mid-stream or developing conflicting policies.

Without a comprehensive system of law governing the Russian oil and gas industries, foreign and even domestic investment will be minimal. Without investment, the industries will not remain productive, and Russia’s supply of hard currency will dwindle. Without a strong energy industry, the country’s other industries will be left without a crutch and will sink further into economic despair, leaving Russia’s people and their great experiment in democracy crushed.

108 Greenspan, supra note 51, at 1.