

JURIDICAL SCIENCES

INVESTMENT IN THE COAL INDUSTRY

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Abstract

The author examines the issues of investment in the coal industry. The article draws a number of conclusions regarding the current state, prospects, legal regulation and the appropriate type of investment in the coal industry.

The article proves that every year the export component of coal will constantly increase, which is due both to the presence of gas fields on the territory of Russia, and, as a result, cheap gas, and the state's adherence to the basic principles of the «green economy».

It is noted that the desire of developed countries to follow the «green economy» can negatively affect both the industry itself (since developed countries plan to reduce the actual use of coal in the economy) and the investment attractiveness of the industry, due to the negative attitude of potential investors to projects related to the coal industry due to the increasing spread of the principles of socially responsible investment.

Keywords: energy, coal industry, fuel and energy complex, investments, capital investments, coal, fuel and energy complex.

The problems of legal regulation of the energy sector of the economy have always been in the focus of attention of scientists due to its importance for the economy and security of any state, since ensuring security is a condition for the survival of the country, without which it is impossible to achieve any other goals [16, 21]. Occupying one of the most important places in the fuel and energy complex, the coal industry is also of great interest from the point of view of the legal regulation of public relations.

General issues of legal regulation of the coal industry in recent years are devoted to the work of V. V. Romanova and A. F. Bikmurzin [15], the legal problems of patenting in the coal industry in the digital era are described in the article by V. K. Shaidullina, V. P. Pavlov, V. N. Sinelnikova, N. A. Efimova, L. Yu. Novitskaya [20], the competitive advantages of domestic coal mining companies are indicated by V. P. Berzhnov in the work of the same name [1].

It should be noted that the general issues of legal regulation of the energy industry are not left without the attention of scientists. Thus, the integration issues of the EAEU in the field of electric power are reflected in the work of L. I. Cherkesova [4], in the field of comparative law, the work of A. H. Ulbashev is devoted to the legal regulation of energy in Israel [23], in Canada – an article by A. Ingelson [9], and the legal issues of energy security in Russia are studied by S. S. Zankovsky [27].

Scientific interest in the legal regulation of relations in the field of energy led to the active development of the direction «Energy Law» at the Institute of State and Law of the Russian Academy of Sciences [26] and the creation, ultimately, of an Interdisciplinary Center for Legal Research in the field of energy.

Despite the fairly broad interest of the scientific community in the legal regulation of relations in the energy sector in general, and the coal industry in particular, not so much research has been devoted to the problems of investment in this area, among which one can

note the work of Fr. E. Kovaletov, devoted mainly to the justification of the consolidation of electric power enterprises into regional energy complexes in order to increase investment attractiveness [10] and D. V. Voiko, containing an analysis of promising investments in various areas of the electric power industry [24].

The work of V. M. Volokitina and T. G. Gedich, which considers the economic component of investment in the coal industry [25], as well as the article by V. K. Shaidullina on ways to attract investment by small coal companies, is devoted to the issues of attracting investment directly to the coal industry [19].

At the same time, in recent years there have been global political and economic changes associated with a decrease in investment activity in the Russian energy sector in general and the coal industry in particular due to both the general economic downturn due to the pandemic and the economic sanctions regularly imposed by foreign partners on our country.

A negative role in the investment attractiveness of the coal industry can be played by the «green economy» proclaimed by the leading countries, and, first of all, the rejection of hydrocarbons.

Against the background of these negative trends, in 2020, our country adopted a Program for the development of the Russian coal industry for the period up to 2035 [11].

Thus, the consideration of the issues of legal regulation of investments in the coal industry is quite relevant.

The decade that began in 1991 can be safely called the decade of the formation of the modern coal industry in Russia, and this formation was not easy at all. This difficult period for the industry is characterized by constant mining strikes and pickets, the lack of transparency and unfairness of schemes for the privatization of mines and mines, systematic underfunding of the industry and the provision of foreign loans, which were then stolen, which even the first Deputy Minister of Finance

Vitaly Artyukhov had to admit, and the coal industry was recognized as one of the most criminalized.

In this situation, an important step towards restoring order in the coal industry was the adoption of Federal Law № 81-FZ of June 20, 1996 «On State Regulation in the field of coal Mining and Use, on the features of social protection of employees of coal industry organizations» [6] (hereinafter – the Law on the Coal Industry).

The preamble of this law contains the fundamentals of state policy in the coal industry, largely determined by the peculiarity of the coal industry, and includes the following main provisions:

- coal and the results of its processing are the most important energy source from the point of view of reliability and social significance;
- the process of coal mining, due to its mining and geological features, is particularly complex and dangerous, relative to the extraction of other minerals;
- coal industry enterprises are highly capital-intensive and require regular reconstruction, and the technological process of mining and processing requires regular capital investments;
- the use of coal as a fuel, as well as the process of its extraction, causes significant harm to the environment;
- the reduction of inefficient enterprises leads to the emergence of a large number of workers on the labor market who are not able to immediately perform other work, which entails the need for additional social protection of these workers.

It should be noted that two important details concerning investment in the coal industry are set out in the preamble of the Coal Industry Act itself:

- first, it lists many (but not all) factors that have a significant impact on both the industry itself and its investment attractiveness;
- secondly, the law clearly defines that the coal industry is a highly capital-intensive industry, and the technological process requires regular capital investments, as a result of which investments are extremely necessary for the successful functioning and further development of the sphere under consideration.

The measures taken helped to change the situation in the industry and in 1999, for the first time in the previous 10 years, the coal industry registered an increase of 8.1 percent [2].

At present, Russia has a sufficient number of explored and projected coal deposits, which gives every reason for the further development of the coal industry in order to both provide domestic coal products and export supplies.

The coal industry has adapted to the new realities of the market economy relatively quickly, relative to other sectors of the fuel and energy sector. The vast majority of enterprises in the industry are private companies. Investment projects in the industry are carried out mainly at the expense of the own funds of these enterprises, as well as the attracted capital.

The main direction of the development of the coal industry is export, since domestic coal consumption in Russia is declining every year, which is primarily due

to low gas prices. After the statement by Russian President Vladimir Putin on May 22, 2021 at the Summit of Leaders on Climate Issues about the successes achieved and Russia's commitment to the «green economy», there is no doubt that Russia will continue to reduce the use of coal in the economy.

This is a very positive moment both for the ecology of our country and for the economy, since the presence of our own significant reserves of natural gas, and, consequently, a small price for this type of fuel, will allow us to painlessly reduce the consumption of coal within the country on the one hand, and on the other, will force us to more actively engage in the use of renewable and the development of promising, including hydrogen-based, energy sources.

Thus, the domestic coal industry is still export-oriented, since, taking the fifth place in the world in coal production, we take the third place in its export [5].

The most important buyers of Russian coal are currently South Korea, China, Japan, Ukraine, Germany and Poland, while China, as the leader, accounts for more than 50 percent of global coal consumption [12, 68].

In recent years, there has been a noticeable trend to reduce the share of coal in the energy balances of developed countries and replace it with either natural gas, according to the price criterion, or renewable energy sources, according to the criterion of reducing the harmful impact on the environment due to the declaration of these countries on the transition to a «green economy».

Germany and Poland, despite the fact that these countries are among the top ten consumers of coal, have recently significantly reduced the increase in its consumption, which is primarily due to the decarbonization of the economy, which allows us to highlight the East Asian region as a priority for foreign economic development [12, 67].

It is important to note that at present, India is not among the main buyers of Russian coal, while it is the second largest global consumer. Thus, this market, which is one of the largest consumers of coal, is very promising for Russian suppliers, especially since the growth of coal consumption in India will grow due to the low price relative to natural gas and the need for steel production. However, to solve this important task, it is necessary to significantly increase the capacity of coal in the ports of the Far East.

One of the current challenges is the creation by China, Australia, Japan and 12 other countries in the Asia-Pacific region of the largest free trade area to date - the «Comprehensive Regional Economic Partnership» (VREP). This decision was made on November 12, 2020, following the summit of the Association of Southeast Asian Nations (ASEAN) in the capital of Vietnam, Hanoi [3].

In order to maintain its position in foreign economic activity, the domestic coal industry enterprise, with the help of the state regulator, must implement the following legal and economic measures:

- prepare programs to preserve the export potential of the domestic coal industry in the uncertain conditions of the world economy and politics;

- to make the transition to the use of innovative technologies in the industry, including with the use of such projects as the Internet of Things, Smart Mine, Smart Cut, as well as to equip mines with modern additional equipment using intelligent cyber-physical systems;

- develop new technologies for both deep processing of coal and efficient degassing of coal seams;

- continue work on the creation of coal-energy and mining-metallurgical clusters with the provision of necessary subsidies to the subjects of the Russian Federation for these purposes;

- continue the construction of new and modernization of the old infrastructure of ports and coal terminals [13, 44].

Among the main areas of investment in the coal industry are:

- investments in fixed assets related to the technological need for regular updating of machinery and equipment directly involved in coal mining;

- investments in production facilities for processing and enriching coal based on innovative developments aimed primarily at improving the quality of processed products and reducing the harmful impact on the environment;

- investments in scientific and innovative developments aimed both at increasing labor productivity and the quality of the coal processing product, and at reducing harmful effects on the environment;

- investments related to the gradual transition of the industry (following the entire economy) to the digital sphere;

- investments in the development of railway lines that provide timely and inexpensive delivery to the consumer or to storage terminals, since coal is the main cargo for railways;

- investments in coal terminals, including in the ports of the Far East, in order to reduce the size of the logistics component of the final price of coal for the consumer.

Thus, the coal industry needs, as we noted above in the preamble of the Law on the Coal Industry, regular capital investments.

At the same time, the coal industry itself is an industry associated with increased investment risks, which in particular include:

- the need for systematic replacement of fixed assets of production due to its specifics;

- long term turnover of invested capital, in contrast to other sectors of the economy;

- a large share of imported components for advanced machinery and equipment for coal mining and processing;

- significant dependence on world coal prices and their unpredictability;

- the complexity and danger of operations related to coal mining due to its mining and geological features;

- the harmfulness of production and the harm caused to the environment in the process of using coal as fuel.

In recent years, investment risks in the coal industry have increased in connection with the declaration by

developed economic countries of the desire to develop a «green economy», and in this aspect, two negative directions are visible.

First, these countries (and especially the developed countries of Western Europe) are really making every effort to reduce the consumption of coal and its products as a fuel in order to reduce the negative impact on the environment, and strive to switch to renewable energy sources as much as possible. These efforts are bearing fruit, which is clearly seen in the volume of declining growth in coal consumption by countries such as England, Germany, Poland and others.

Secondly, it will be increasingly difficult for mining and processing coal enterprises to find long-term and reliable investors in the near future, due to another actively developing trend in the form of social investment. Indeed, earlier, with ordinary investments, the investor did not care about anything other than getting the maximum profit for the minimum period.

And if ordinary investments were aimed at obtaining the maximum market return in the shortest possible time, then socially responsible investments are already "harmless" investments, in which investments in coal mining enterprises can be considered environmentally and socially questionable, and already ESG investments by definition should not participate in the development of the coal industry, as incompatible with environmental principles [21, 43].

As a separate negative factor for making a decision to invest in the coal industry, it is necessary to indicate China's plans to significantly reduce coal consumption, which is extremely important for the domestic foreign economic portfolio, since its share was 11 percent, has grown significantly recently, and Russian enterprises expected to further expand this market [12, 68].

To attract investment in small companies in the coal industry, some authors suggest using such a type of investment as «initial coin placement», which allows you to attract the necessary capital investments by selling «coins» created using blockchain technologies for investors' cryptocurrency [19, 40], but this method of investment in one of the largest sectors of the economy is very doubtful.

With such investment risks, multiplied by the negative political environment for Russia in recent years, it is not worth counting on significant foreign investment in the domestic coal industry.

Despite the fact that investments in coal industry projects have recently been mainly made by the enterprises themselves, given the necessary investment directions listed above, the coal companies themselves may not be able to cope with such a volume of necessary capital investments.

And then, given the socio-economic importance of the industry, the state can come to the rescue.

At the same time, it should be noted that the usefulness of the state's participation in a particular concession agreement is not limited in this case to the criteria of investment attractiveness familiar to other business projects, but should take into account the socio-economic, and even political aspects associated with

the development and development of vast geological and economic areas [22].

A special feature of the coal industry is the use of concession agreements and production sharing agreements in relation to mineral deposits [8, 66], while the objects of such agreements are often the infrastructure that provides the main production, including terminals, railways, pipelines.

A typical example of such a concession agreement is the Concession Agreement for the infrastructure of the railway transport line Eleget – Kyzyl – Kuragino, concluded with JSC «TEPC Kyzyl-Kuragino».

An important stage in the development of public-private partnership and concession relations in railway transport, including in the coal industry, was the creation of the Commission on Public-Private Partnership Projects and Concessions in Railway Transport [14].

Despite the successful experience, after the adoption of Federal Law № 225-FZ of December 30, 1995 «On Production Sharing Agreements» [7], no production sharing agreements were concluded in Russia, which may be related to:

- a complex procedure for the State Duma to adopt a list of subsurface areas that may be subject to an agreement, which requires the adoption of a federal law, the consent of the Government of the Russian Federation and a positive decision of the representative authorities of the subject of the federation;

- the requirement to purchase less than 70 percent of its domestic technological equipment, while the Russian industry often simply does not have the necessary technologies;

- a system of «double auctions», associated with a confusing procedure for obtaining state permission and a license;

- additional requirements from the Federal Law of November 30, 1995 № 187-FZ «On the Continental Shelf of the Russian Federation» [18, 97].

Thus, one of the most promising types of public-private partnership has not been used in the Russian economy for more than twenty-five years, due, among other things, to the fact that sometimes legislative regulation is situational and chaotic without taking into account the application of existing acts [17, 6].

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ВЛИЯНИЕ ГЛОБАЛИЗАЦИИ И ИНТЕГРАЦИИ НА РАЗВИТИЕ РОМАНО-ГЕРМАНСКОЙ ПРАВОВОЙ СЕМЬИ

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THE IMPACT OF GLOBALIZATION AND INTEGRATION ON THE DEVELOPMENT OF THE ROMANO-GERMAN LEGAL FAMILY

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Аннотация

В статье затронута тема глобализации, которая чаще ассоциируется с экономическими переменами в государствах, а именно с высокими темпами импортной и экспортной деятельности, зонами свободной торговли и едиными денежными зонами, географическим разделением промышленной деятельности и др. Безусловно, именно это и является основными характеристиками, т.к. одной из фундаментальных основ глобализации (равно как и ее ведущим мотивационным элементом) является удовлетворение экономических интересов. Тем не менее, экономическая часть жизни общества не может существовать отдельно от других ее элементов, и столь значительные изменения в экономике при переходе к глобализационному типу торговли влекут за собой значительные изменения в других сферах жизни общества. Таким образом, глобализация влечет за собой интеграцию на различных уровнях, т.к., как правило, сопровождается миграцией по всему миру. Следует отметить, что в данных условиях право занимает особую роль.

Abstract

The article touches on the topic of globalization, which is more often associated with economic changes in states, namely, with high rates of import and export activity, free trade zones and single monetary zones, the geographical division of industrial activity, etc. Of course, these are the main characteristics, since one of the fundamental foundations of globalization (as well as its leading motivational element) is the satisfaction of economic interests. Nevertheless, the economic part of the life of society cannot exist separately from its other ele-