

## **Legal Alert**

# **FAS Powers Expanded: Amendments to the State Defence Procurement Law**

### **INTRODUCTION**

- 1.1. On 30 April 2021, Russian President Vladimir Putin signed the Federal Law No. 132-FZ (the “**Law**”) on amending the Federal Law No. 275-FZ “On State Defence Procurement” dated 29 December 2012 (the “**Law No. 275-FZ**”). The Law will enter into effect as of 30 June 2021.
- 1.2. Amendments to the Law No. 275-FZ were prepared by the Russian Federal Antimonopoly Service (the “**FAS**”) in furtherance of the Russian Government’s law-making plan<sup>1</sup> and in line with the Plan to Improve Russian State Defence Procurement Legislation in 2020.<sup>2</sup>
- 1.3. The Law is primarily targeted at better enabling the FAS to respond quickly to any state defence procurement breaches. For these purposes, a new mechanism of cease-and-desist orders has been added, allowing companies that occupy a dominant position and avoid entering into the state defence procurement contract to eliminate violations without administrative liability being imposed. The Law also provides that the period to comply with the cease-and-desist orders and rulings may be extended, gives the FAS more powers of access to information and clarifies who may be involved in the relevant cases.

### **ISSUANCE OF CEASE-AND-DESIST ORDERS AND EXTENSION OF THE PERIOD TO COMPLY WITH THE REQUIREMENTS**

- 1.4. The Law introduces a new procedure to influence the companies which dominate the market and unreasonably avoid entering into state defence procurement contracts.<sup>3</sup>
- 1.5. Now, if the FAS has identified possibly unlawful actions, it will issue a cease-and-desist order to such companies requiring that they stop engaging in the actions which constitute a violation of the state defence procurement legislation (Article 15.9-1 of the Law No. 275-FZ, as amended).
- 1.6. The time period to comply with the order should be at least 10 days, provided that the FAS may extend it, if the person to whom such order has been issued submits a substantiated request.
- 1.7. The new mechanism allows companies engaged in the state defence procurements to comply with the order of the FAS without administrative liability being imposed on them. In this respect, these orders might be compared to the warnings provided for under the

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<sup>1</sup> Russian Government’s Resolution No. 3205-r dated 26 December 2019 “On Approving the Russian Government’s Law-Making Plan for 2020”, Clause 158.

<sup>2</sup> The Plan to Improve Russian State Defence Procurement Legislation in 2020 approved by Yu. I. Borisov, Deputy Chairman of the Russian Government (dated 27 December 2019, No. 12229p-P7).

<sup>3</sup> A violation under Article 6(6.1) of the Law No. 275-FZ.

Russian antimonopoly legislation.<sup>4</sup> Same as with the warnings, if the orders of the FAS are not complied with, administrative proceedings will be initiated. The FAS will soon develop the form of, and the procedure to issue, the orders.

- 1.8. The procedure in accordance with which the FAS issues its rulings after consideration of the state defence procurement case will also change. Unlike under the previous versions of the Law No. 275-FZ, the Law provides that a period to comply with requirements of such ruling may be extended. Pursuant to a substantiated request of the respondent in the case, the period to comply with the requirements may be extended up to 180 days (Article 15.25(5) of the Law No. 275-FZ, as amended).

### **EXPANDING ACCESS TO INFORMATION AND CLARIFYING WHO MAY BE INVOLVED IN A STATE DEFENCE PROCUREMENT CASE**

- 1.9. The Law puts the FAS in a better position to access information quickly.
- 1.10. Pursuant to Article 6.1(3)(8) of the Law No. 275-FZ, as amended, the FAS will be included in the list of individuals and entities whom the Federal Treasury grants free access to information in the register of state procurement contracts.
- 1.11. Also, when it handles a complaint regarding a violation of the state defence procurement legislation, the FAS will be entitled to request documents, information and clarifications not only from public contracting authorities, general contractors, contractors or state agencies and their officials, but also from individuals and entities, including individual entrepreneurs (Article 15.7(6) of the Law No. 275-FZ, as amended).
- 1.12. In addition, Articles 15.15(1)(1) and 15.20(2) of the Law No. 275-FZ, as amended, clarify who may be involved in a state defence procurement case. In particular, the term “applicant” will be replaced with the term “public contracting authority”. As stated in the explanatory note to the Law, these changes are introduced to prevent the information about the details of performance of the state defence procurement from being disclosed and eliminate the risk of sanctions being imposed against Russian defence companies. As a result of such changes, an applicant in a state defence procurement case will have no access to the materials and details of the case, unless the FAS recognises such applicant as an interested person.<sup>5</sup>

### **SECURING PERFORMANCE OF STATE CONTRACTS**

- 1.13. Apart from expanding the powers of the FAS, the Law introduces novelties with respect to securing the performance of state contracts which are of high practical value.
- 1.14. When a state defence procurement for creating, supplying, upgrading, repairing, maintaining or utilizing weapons, military and special vehicles or airspace vehicles and facilities is placed, no security instrument will be required, if banking or treasury support is provided (Article 6(2.1) of the Law No. 275-FZ, as amended).
- 1.15. A legislative inconsistency will thus be eliminated, where a defence company had to spend extra money on security instruments under a contract with payments being transited through the treasury accounts, while if there was banking support, no such security was required.

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<sup>4</sup> Article 39.1 of Federal Law No. 135-FZ “On Protection of Competition” dated 26 July 2006.

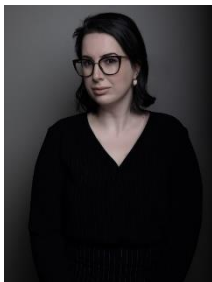
<sup>5</sup> Explanatory note to the draft Federal Law “On Amending the Federal Law on State Defence Procurement” URL: <https://sozd.duma.gov.ru/download/898FF831-CADC-4AEF-9A18-C63EC79EA4FB>.

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