Amendments to Federal Law No. 44-FZ due to take effect from 1 January 2022

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Customers as defined in Law No. 44-FZ include state bodies, municipal budget-funded institutions, state-managed extrabudgetary funds, unitary enterprises that make budget-funded procurements, and Rosatom and Roscosmos. Companies that are 50 per cent or more owned by the state, budget-funded companies that make procurements out of their own funds, utility companies and natural monopoly holders act as customers and carry out procurements in accordance with Federal Law No. 223-FZ of 18 July 2011.
Key changes

As from 1 January, no requests for proposals will be made. The range of competitive frameworks for state procurements will be limited to competitive tenders, auctions, and requests for quotations. The amending law also introduces the new concept of an individual phase of contract performance.

In our view, one of the most important changes is the introduction of further deoffshorization rules. In addition to the ban on the participation of offshore companies in state procurements, companies will now also be excluded from procurements where:

- their participants (members) include a corporate legal entity or their founders include a unitary legal entity of an offshore company
- there are offshore companies among persons that own, directly or indirectly (via a legal entity or legal entities), more than 10% of the voting shares of the business company or a participating interest of more than 10% in the charter (pooled) capital of the business partnership or company

The list of offshore zones was established by Ministry of Finance Order No. 108n of 13 November 2007. According to that Order, offshore zones include Panama, Malaysia, the British Virgin Islands and a number of other territories and countries.

Purpose of the changes

The introduction of the additional deoffshorization rules is part of the National Anti-Corruption Plan for 2018-2020 approved by Presidential Edict No. 378 of 29 June 2018.

What are the consequences?

Direct or indirect ownership (including via multiple chains) of 10 per cent or more of the capital of an offshore entity is a basis for being barred from state procurements.

It is possible that participants will be required to prove that they are not connected to offshore companies by disclosing ownership chains and beneficiaries.

Given that participants are obliged to confirm their compliance with statutory requirements by submitting a declaration of conformity, there is a risk of a participant being declared a bad-faith supplier if information submitted is found to be inaccurate. This might lead to the participant being entered in the register of bad-faith suppliers (“the Register”), which would preclude participation in state or other procurement tenders where there is a requirement to confirm that the participant is not listed in the Register. A participant’s details remain in the register for two years after they are entered.

We would therefore recommend analysing the impact of the new restrictions on your company’s business in terms of participation in state procurements under Law No. 44-FZ.

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