



public procurement - legal changes published in March 2022

Government Emergency Ordinance no. 19/2022 on certain measures relating to performance bonds for public procurement contracts and sectoral contracts was published in the Official Gazette, Part I no. 216 of March 4, 2022, in force from the same date.

In the light of the market background generated by the withdrawal of the operating permit followed by the opening of bankruptcy proceedings against an insurance company that issued a significant number of insurance policies related to public procurement/sectoral contracts, the lawmaker has enacted Emergency Ordinance no. 19/2022 providing measures in relation with the performance bonds already issued, in the event of withdrawal of the insurance company's operating permit.

Hence, for works/services/supply contracts in progress, in the event of withdrawal of the insurance company's operating permit which issued the initial guarantee instrument, the economic operators are required, at the request of the contracting authorities/entities, to obtain a new performance bond within 90 days of the date of the decision to open bankruptcy proceedings, but no later than January 31, 2023.

The new bond may be issued through any means provided for by law, namely: bank transfer, guarantee instrument issued under the law by an insurance company or credit institution, by successive deductions from the amounts due for partial invoices, as well as by any means of issuing bonds provided for in Article 2 para. (1) letter (a) or (b) of G.E.O no. 19/2022, which shall apply only in cases where both contracting parties so agree, respectively:

- by successive deductions from the amounts due for partial invoices without being necessary to check whether this possibility was provided for in the tender documentation;
- the combination of two or more of the means of providing the performance bond provided for by law (*e.g., by bank transfer for part of the amount, successive deductions from amounts due for partial invoices for another part of the amount and by a guarantee instrument issued by an insurance company for the third part of the amount*).

Government Emergency Ordinance no. 26/2022 for amending and supplementing certain normative acts in the field of public investment was published in the Official Gazette, Part I no. 272 of March 21, 2022, in force from the same date.

GEO 26/2022 amends Law 98/2016 on public procurement, Law 99/2016 on sectoral public procurement and Law 101/2016 on remedies and appeals in the award of public procurement contracts, sectoral contracts and concession contracts for works and services, amendments that we have summarized [here](#).