

Impact of the COVID-19 outbreak on public procurement contracts

2 April 2020

Overview

The Presidential Circular dated 1 April 2020 and numbered 2020/5, published in the Official Gazette dated 2 April 2020 (the **Circular**) enable the contractors to request time extension or terminate certain public procurement contracts impacted by the COVID-19 outbreak. The Circular is applicable to the public procurements tendered under the Public Procurement Law No. 4734 (the **PPL**) as well as various other public procurements that are not subject to the PPL. The time extension and termination requests need to be assessed by the Ministry of Treasury and Finance.

Which contracts can benefit?

The scope of public procurement contracts set forth under the Circular is fairly broad. The remedies introduced by the Circular applies both to (a) the contracts awarded by tenders launched according to the PPL; and (b) the contracts awarded by tenders that are exempt from the PPL.

Applicable remedies

According to the Circular, the governmental counterparty may grant time extension to the contractor or terminate the relevant procurement contract.

Application

In order to be able to benefit from the above-mentioned remedies, the affected contractor must make an application to its governmental counterparty and notify that the performance of its obligations has become impossible temporarily or permanently and partially or completely due to the effects of the COVID-19 pandemic.

The application file should also include documents evidencing the effects of the COVID-19 pandemic on the performance by the contractor of its contractual obligations.

Assessment

Upon its receipt of an application from a contractor, the relevant governmental counterparty should assess the request in accordance with Article 10 (*Force Majeure*) of the Law No. 4735 on Public Procurement Agreements and other relevant pieces of legislation and, before making a decision, should also consult with the Ministry of Treasury and Finance.

In order to grant time extension or terminate the contract, the relevant governmental counterparty should confirm the existence of each of the following conditions:

- (a) the impacts of the event should not be attributable to the contractor;
- (b) the impacts of the event should prevent the contractor to perform its contractual obligations; and

(c) the contractor should be unable to prevent the negative impacts of the event.

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