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THE LEGAL CONSEQUENCES OF CONTRACTOR INSOLVENCY ON GOVERNMENT CONTRACTS: A STUDY WITHIN THE FRAMEWORK OF SAUDI PROCUREMENT LAW

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ABSTRACT

This research investigates the mandatory termination of administrative contracts arising from insolvency within the purview of the Saudi Government Tenders and Procurement Law (GTPL). Utilizing an analytical methodology, the study is organized into an introduction, two primary chapters, and a conclusion. The first chapter defines the essential terminology, whereas the second chapter scrutinizes the legal nature and necessary conditions for mandatory termination due to insolvency. The study concludes, inter alia, that the contractor's insolvency—which necessitates contract termination—must be substantiated by a final judicial ruling, as indicated by the Saudi legislator's explicit phrasing "insolvency is established." Furthermore, the administration's authority to terminate in such instances is classified as a bound (restricted) authority. The research recommends differentiating between penal termination, applicable where the contractor's fault or fraud is present, and termination necessitated by the public interest, where insolvency occurs without contractor fault (GTPL, Royal Decree No. M/128, 13/11/1440 AH; Implementing Regulations, Ministerial Decision No. 3479, 11/08/1441 AH).

KEYWORDS: Administrative Contract, Contract Termination, Insolvency..

1. INTRODUCTION

The Kingdom of Saudi Arabia has achieved significant strides in developing its legal infrastructure, particularly in sectors intrinsic to economic and financial activities, such as administrative contracts. The most recent comprehensive reform is the enactment of the Government Tenders and Procurement Law, issued by Council of Ministers Decision No. 649 dated 13/11/1440 AH and ratified by Royal Decree No. (M/128) of the same date, along with its Implementing Regulations amended by Minister of Finance Decision No. 3479 dated 11/08/1441 AH. These legislative measures represent a qualitative evolution in the realm of Saudi administrative contracting. In parallel, recent scholarship highlights a maqāṣid-oriented regulatory approach in the Kingdom, where preventive and supervisory mechanisms are operationalized through clear legal frameworks to safeguard life and property (Alasmari & Zurib, 2025). Given that the termination phase is among the most critical stages of an administrative contract—often revealing defects and precipitating disputes, especially in cases of premature termination—this study focuses on mandatory termination for insolvency. It examines the legal nature and conditions of this termination to clarify the legislator's intent and support the optimal application of the GTPL.

2. CHAPTER ONE: DEFINITIONS OF THE STUDY'S TERMS

2.1. Section 1: Definition of "Administrative Contract" in Language and Legal Terminology

(A) Linguistic Definition

The term 'Aqd (contract) is linguistically the antonym of ḥall (untying) and signifies binding or tightening, such as tying the ends of a rope. An oath is described as Mun'aqida (binding) when the swearer commits to a future act. The term Idārī (administrative) is derived from Idāra (administration), which connotes supervision, execution, and the management of affairs (Ibn Manzūr, n.d.; Al-Rāzī, 1979; Al-Jawharī, 1994).

(B) Legal Definition

A prominent doctrinal definition describes the administrative contract as an agreement concluded by a public legal entity for the purpose of managing or organizing a public utility, wherein the administration demonstrates its intent to adopt public law regimes—manifested either through exceptional clauses or by authorizing the contractor to participate directly in operating the utility (Al-

Ṭamāwī, 1991, p. 52). In the Saudi context, regulations do not explicitly define "administrative contracts" or use the term. Instead, the Board of Grievances Law assigns jurisdiction to administrative courts for "lawsuits related to contracts to which the administrative authority is a party" (Royal Decree No. M/78, 19/09/1428 AH, art. 13). Consequently, the Board adjudicates all contracts involving administrative entities, regardless of whether they are administrative or private/civil in nature (Al-Khuḍayr, 2011, pp. 68–69; Al-Khūlī, 2020, pp. 219–220; Muḥammad Waḥīd, 2017, pp. 18–19; Al-'Ajmī, 2018, p. 69; Al-Muṭawwi', 2020, p. 50).

2.2. Section 2: Definition of "Termination of the Administrative Contract" in Language and Legal Terminology

(A) Linguistic Definition

Inḥā' (termination) denotes the limit or end (ghāyah) of a thing. Expressions like balagha nihāyatahu imply reaching the ultimate point. Inḥā' also conveys the meaning of notification (Ibn Manzūr, Lisān al-'Arab; Al-Fayūmī, al-Miṣbāḥ al-Munīr; Al-Firūzābādī, al-Qāmūs al-Muḥīṭ)

(B) Legal Definition

Termination is defined as putting an end to the contract, dissolving it for the future while leaving prior performance unaffected (i.e., no retroactive effect). This characteristic applies to continuous contracts (e.g., labor, lease), unlike instantaneous contracts (e.g., sale) which revert to the status quo ante upon rescission (Al-Mash'al, 1424 AH, p. 109; Al-Sāmīr, 2018, p. 118; 'Abd al-'Azīz Khalīfa, n.d., p. 90; Al-Muṭawwi', 1432 AH, p. 252; Al-'Ajmī, 2018, pp. 391–392).

Comprehensively, it is defined as "The cessation of the administrative contract's validity before its natural term, whether as a penalty, by mutual agreement, for public interest requirements, or due to the contractor's death".

3. CHAPTER TWO: THE LEGAL NATURE AND CONDITIONS OF MANDATORY TERMINATION FOR INSOLVENCY

3.1. Section 1: The Legal Nature of Mandatory Termination for Insolvency

The administrative contract terminates by force of law in the event of the contractor's insolvency. This is classified as a form of administrative (penal) termination based on specific statutory grounds (Al-'Ajmī, 2018, pp. 392–393, 476; Al-'Anazī, 2010, p. 138; Al-Wuhaibī, 2011, p. 403; Al-Khūlī, 2020, p. 162; Al-Dhunaybāt, 2012, p. 195; Al-Muṭawwi', 2020, pp.

423–425).

The Saudi legislator explicitly stipulated mandatory termination cases in the GTPL, stating: "The government entity must terminate the contract in the following cases: (b) If the contractor is adjudicated bankrupt, applies for a bankruptcy declaration, or his insolvency is established" (GTPL, art. 76(1)(b); Royal Decree No. M/128, 13/11/1440 AH).

The Implementing Regulations further mandate that termination occurs via a decision by the competent authority based on a committee recommendation (Regulations, art. 131(1); Ministerial Decision No. 3479, 11/08/1441 AH). These texts confirm that termination for insolvency is an anomalous ending of the contract before its term by force of law.

The use of the term "must" indicates that the administration's authority here is a bound (restricted) authority; it lacks discretion once insolvency is established (GTPL, art. 76(1)(b); Regulations, art. 131(1)).

Regarding the characterization of this termination, legal scholars argue for a distinction. If the insolvency resulted from the contractor's fault, fraud, or deceit, the termination is properly classified as penal. Conversely, if insolvency arose without contractor fault (e.g., force majeure or evident loss), it is better viewed as termination for the public interest, as an insolvent contractor lacks the financial capacity to fulfill obligations (Al-'Anazī, 2010, pp. 153, 155–157; Al-Khūlī, 2020, p. 155; Al-Muṭawwi', 2020, pp. 423–426; Al-Fawzān, 2008, p. 197).

Doctrinally, insolvency (i'sār) differs from commercial bankruptcy. Insolvency can be factual (debts exceeding assets) or legal (requiring judicial declaration). While both civil insolvency and commercial bankruptcy prevent preferential payments to creditors and freeze asset disposal, civil insolvency does not involve the collective liquidation procedures characteristic of bankruptcy (Al-Sanhūrī, 1968, vol. 2, pp. 1202, 1209, 1211; Al-Shubramī, 2014, pp. 26, 302).

3.2. Section 2: Conditions for Mandatory Termination

Condition One: Issuance of the Termination Decision by a Competent Authority

The Implementing Regulations state: "Subject to the provisions of Articles (76) and (77) of the Law, the contract shall be terminated by a decision of the person possessing authority based on a recommendation from the Bid Examination Committee or the committee competent for purchase, as applicable. The contractor shall be notified in accordance with Article (90) of these Regulations"

(Regulations, art. 131(1)). The competent authority is the head of the government entity or their delegate (GTPL, art. 54(3)). (GTPL, arts. 54(3), 76; Regulations, art. 131(1)).

Condition Two: The Occurrence of the Case (Established Insolvency)

Administrative termination generally presupposes a contractor's fault or a specific status. In this mandatory case, the trigger is "established insolvency" (GTPL, art. 76(1)(b)). The administration cannot rely on non-existent facts or incorrect legal premises (Al-Khūlī, 2020, p. 162; Al-'Ajmī, 2018, pp. 475–476; Al-'Anazī, 2010, p. 138; Al-Wuhaibi, 2011, p. 560; Al-Dhunaybāt, 2012, p. 195). Crucially, "established insolvency" necessitates a final court judgment; mere administrative inference is insufficient (GTPL, art. 76(1)(b)). Analytically, this termination is also an exercise of the privilege of direct execution, allowing the administration to terminate by decision without prior judicial recourse, although some scholars argue a judicial ruling is necessary for concession contracts due to their importance (Aḥmad 'Uthmān, 1973, p. 362; Al-Khūlī, 2020, p. 155).

4. SECTION TWO: INFORMING THE DEBTOR OF LITIGATION RULES IN FINANCIAL RESTRUCTURING

Financial restructuring is defined as "a procedure designed to facilitate the debtor's reaching an agreement with creditors to reorganize the financial affairs of the business, under the supervision of a financial restructuring trustee" (Saudi Bankruptcy Law, 1439/2018, art. 1). The Bankruptcy Law dedicates a full chapter to these rules (Saudi Bankruptcy Law, 1439 AH/2018, ch. 4, arts. 42–91; Bankruptcy Commission, 1440/2019, art. 4).

A review of these regulations reveals a legislative commitment to protecting the debtor by explicitly informing them of procedural requirements, supervised by a specialized trustee who ensures fairness and prevents prejudice (Saudi Bankruptcy Law, 1439 AH/2018, ch. 4, arts. 42–91). Notably, small debtors are subject to similar, albeit streamlined, procedural obligations (Saudi Bankruptcy Law, 1439 AH/2018, ch. 7, arts. 142–159).

5. CONCLUSION

5.1. Findings

1. Administrative contract termination is the cessation of the contract before its term due to penalty, agreement, public interest, or death.
2. Mandatory termination for insolvency requires a final court judgment establishing the insolvency.

3. The administration's power in this case is a bound authority (GTP, art. 76(1)(b); Regulations, art. 131(1)).

5.2. Recommendations

1. Hold periodic specialized seminars on administrative contracts and their termination.

2. Conduct specialized research on the GTP given its recent issuance.
3. Distinguish between penal termination (where contractor fault/fraud exists) and public interest termination (where insolvency is faultless) instead of applying a blanket penal classification.

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