

DOI: 10.5281/zenodo.11425235

BANKRUPTCY AND ITS IMPACT ON THE CONTINUITY OF PUBLIC PROCUREMENT CONTRACTS UNDER SAUDI LAW: A DOCTRINAL ANALYSIS

Ghaleb Mubarak S Alhamami^{1*}, Salih Mohammad M Alhumami², Ahmed S Al-Tuwaili³

¹Najran University, Najran, Kingdom of Saudi Arabia, gmalhamami@nu.edu.sa <https://orcid.org/0009-0001-8981-4603>

²Najran University, Najran, Kingdom of Saudi Arabia, smalhamame@nu.edu.sa <https://orcid.org/0009-0005-3751-347X>

³Najran University, Najran, Saudi Arabia, ahmedaltawily@hotmail.com

Received: 11/11/2025
Accepted: 18/12/2025

Corresponding Author: Ghaleb Mubarak S Alhamami
(gmalhamami@nu.edu.sa)

ABSTRACT

This scholarly inquiry encompasses a detailed examination regarding the mandatory revocation of administrative contracts precipitated by bankruptcy, interpreted through the lens of the Saudi Government Tenders and Procurement Law (GTPL). Adopting a rigorous analytical methodology, the research framework is delineated into an introductory overview, two substantive sections, and a concluding synthesis. The initial section provides a comprehensive definition of the requisite research terminology, whereas the subsequent section meticulously scrutinizes the juridical nature and statutory preconditions governing mandatory termination attributed to bankruptcy. The investigation yields several pivotal findings; most significantly, it posits that a contractor's mere submission of a request for a bankruptcy declaration constitutes sufficient legal grounds for the mandatory dissolution of an administrative contract, independent of and potentially prior to the issuance of a formal judicial adjudication. Furthermore, the study classifies the administrative authority's prerogative regarding mandatory termination for bankruptcy as a bound (restricted) power, devoid of discretionary latitude. The research advances several strategic recommendations, prominently proposing that contractor bankruptcy should not be monolithically subjected to a uniform penal termination ruling. Rather, it is jurisprudentially superior to differentiate based on the bankruptcy classification. Given that the Saudi legislator delineates three distinct categories genuine, negligent, and fraudulent it is argued that contract termination arising from genuine bankruptcy should be categorized under the exigencies of public interest, thereby restricting penal termination exclusively to instances of negligent and fraudulent bankruptcy.

KEYWORDS: Administrative Contract, Contract Termination, Bankruptcy.

1. INTRODUCTION

The Kingdom of Saudi Arabia occupies a distinguished position among advanced nations regarding the foundational establishment of its legal and regulatory infrastructure. This is particularly evident in domains where regulations are inextricably intertwined with economic and financial spheres, a context in which administrative contracts are situated. Consequently, the Kingdom has promulgated a plethora of administrative regulations to govern these contractual relationships. Akin to other dynamic systems, these regulations have been subjected to continuous modernization across successive eras to align with developmental goals. The most recent and comprehensive of these legislative updates is the Government Tenders and Procurement Law (GTPL), enacted via Cabinet Decision No. (649) dated 13/11/1440 AH, and culminated by the Royal Decree No. (M/128) dated 13/11/1440 AH. Furthermore, its Implementing Regulations were refined and amended by the Decision of His Excellency the Minister of Finance No. (3479) dated 11/08/1441 AH. This legislative body of work represents a paradigmatic qualitative leap for the regime of administrative contracts within Saudi Arabia. In a parallel academic context, sector-specific scholarship has documented a maqāsid-driven regulatory orientation within the Kingdom.

This approach operationalizes preventive and supervisory mechanisms through transparent legal frameworks aimed at safeguarding essential values such as life, property, and the environment (Alasmari & Zurib, 2025).

In light of the fact that the administrative contract possesses paramount importance, commands significant regulatory attention, and is governed by an autonomous system, the phase of its termination or dissolution is indisputably among the most critical stages in its lifecycle. It is at this juncture that the majority of latent defects become apparent, and where the preponderance of disputes originate. These complexities are exacerbated when the termination is effectuated prematurely before the contract's natural conclusion due to the materialization of one of the conditions necessitating mandatory or permissive termination as delineated in the aforementioned law. Such premature interruptions may inevitably lead to the stalling or significant delay of vital government projects, resulting in a regrettable squandering of time, effort, and public funds.

Therefore, this study is meticulously dedicated to addressing the topic titled "Mandatory Termination of Administrative Contracts Due to Bankruptcy in

Light of the Saudi Government Tenders and Procurement Law: An Analytical Study." The primary objective is to rigorously examine the scenario of mandatory contract termination caused by bankruptcy, exploring its legal nature and requisite conditions. This analysis aims to facilitate a correct and precise understanding that is consistent with the legislative intent of the Saudi lawmaker, thereby contributing to the optimal implementation of this law and the realization of the objectives behind its enactment. Hence, the conception of this research emerged as a modest yet earnest attempt to provide a comprehensive, analytical legal study of this subject.

Research Structure: The study is organized into an introduction, two main sections, a conclusion, and indices.

- Introduction
- Section One: Definition of Research Terms.
- Section Two: The Legal Nature and Conditions of Mandatory Termination of Administrative Contracts for Bankruptcy.
- Conclusion

1.1. Research Methodology

The methodology adopted in this research is the analytical method, adhering strictly to the following protocols

- Limiting the scope of the study to the statutory articles covering the mandatory termination of administrative contracts for bankruptcy as contained in the law under study and its Implementing Regulations, and subjecting them to deep analysis.
- Relying on original scientific sources for data collection and utilizing printed research and scientific studies published online.
- Documenting laws and regulations from their original sources, citing the name of the law or regulation, article number, and paragraph, while explicitly mentioning the dates and numbers of both valid and repealed laws.

2. SECTION ONE: DEFINITION OF RESEARCH TERMS

2.1. Subsection One: Definition of the Administrative Contract in Language and Legal Terminology

First: Definition of the Administrative Contract in Language The term 'Aqd (contract) serves linguistically as the antonym of Hal (dissolution/untying). This term encompasses a multiplicity of meanings, all of which are unified by

the core concepts of tying, tightening, and documenting. It is colloquially and linguistically said: "He tied ('Aqada) the rope" if he tightened its extremities and knotted them firmly.

Similarly, an oath is referred to as *Mun'aqida* (concluded/binding) specifically when swearing upon a future matter because the swearer has effectively bound themselves to the execution of the act sworn upon (Al-Isfahani, n.d.; Al-Razi, 1979; Ibn Manzur, n.d.). regarding the term "Administrative" (*Idari*), it is etymologically attributed to the word "Administration" (*Idarah*). Linguistically, *Idarah* is the source form of the verb "he managed the thing" (*Adara*), which literally implies that he made it rotate or circulate. This linguistic root is utilized to denote the act of encompassing a thing, supervising it, executing it, and thoroughly managing affairs (Al-Fayoumi, n.d.; Al-Firuzabadi, 1995; Ibn Manzur, n.d.).

Second: Definition of the Administrative Contract in Legal Terminology There exists a variety of definitions which are substantially similar in their content. One prominent definition articulates it as: "That which is concluded by a public legal person for the purpose of managing or organizing a public utility, wherein the intention of the administration to adopt the provisions of public law is evident. The sign or indicator of this is that the contract includes exceptional clauses unfamiliar in private law, or that it authorizes the contractor with the administration to participate directly in the management of the public utility" (Al-Tamawi, 1991).

Regarding its definition within the specific context of Saudi regulations, the laws currently in force in the Kingdom of Saudi Arabia do not provide a specific, explicit definition for the administrative contract as might be found in some other comparative legal systems. Furthermore, the specific term "Administrative Contracts" or "Administrative Contract" does not textually appear in any of the Saudi regulations (Al-Khodair, 2011; Al-Khouli, 2020). However, the Saudi legislator has stipulated that: "The Administrative Courts shall have jurisdiction to adjudicate the following: ... d- Lawsuits related to contracts to which the administrative authority is a party" (Board of Grievances Law, 2007). Consequently, the Board of Grievances holds jurisdiction over all contracts to which the administration is a party, regardless of whether they are technically classified as administrative contracts or private administration contracts (Waheed, 2017). It is crucial to note that the law's determination of the Board of Grievances' jurisdiction over lawsuits for all contracts involving

an administrative entity does not necessarily imply that all such contracts are "administrative" in the technical sense; they may indeed include ordinary contracts (Al-Ajmi, 2018; Al-Mutawa, 2020).

This nuance stands in contrast to the theoretical view that defines an administrative contract as every contract concluded by the administration, thereby making the administrative judiciary the sole authority competent to hear contracts concluded by the administration without regard to artificial distinctions a view that has been adopted by the Saudi system and generally established by its judiciary (Al-Mashal, 2003).

2.2. Subsection Two: Definition of Administrative Contract Termination in Language and Legal Terminology

First: Definition of Administrative Contract Termination in Language The linguistic definitions of "Contract" and "Administrative" have been previously elucidated. regarding "Termination" (*Inhaa*), linguistically, it signifies the limit and the ultimate end (*Ghayah*) of everything. The *Nihayah* (end) is the goal or point a thing reaches.

It is commonly said: "It reached its end," "The thing ended," and "Terminated." The term *Sidrat al-Muntaha* implies the point one reaches and does not exceed. *Inhaa* also carries the meaning of informing or conveying; for instance, "I ended the news to him" means I conveyed it to him (Al-Fayoumi, n.d.; Al-Firuzabadi, 1995; Ibn Manzur, n.d.).

Second: Definition of Administrative Contract Termination in Legal Terminology It has been defined legally as: "Putting an end to the contract, resulting in its dissolution regarding what remains of the contract after termination. As for what was completed before that, termination has no effect on it, meaning termination does not have a retroactive effect" (Samer, 2018).

The assertion that termination lacks retroactive effect applies specifically to time-bound contracts, in contrast to immediate contracts such as a sale, where the contracting parties return to the pre-contractual state upon termination.

In termination, parties return to their status prior to contracting regarding the date of contract creation in immediate contracts (like sales), unlike time-bound contracts (like rent and labor) which resist retroactivity (Khalifa, n.d.).

The phrase "putting an end to the contract" in the previous definition implies termination prior to its natural conclusion or term, as evidenced by the distinction made between the effect of termination on the remainder of the contract versus what was

completed prior.

Others have defined it as: "An inherent right that does not require the obligor to commit a fault for its exercise, although this entitles them to compensation for damages caused by this termination" (Al-Mutawa, 2011).

This definition typically arises in the context of concession contracts, although termination applies to all categories of administrative contracts.

Therefore, administrative contract termination can be defined comprehensively as: "The cessation of the administrative contract's validity before its term, whether as a penalty, by agreement, for public interest requirements, or due to the contractor's death" (Al-Ajmi, 2018).

3. SECTION TWO: THE LEGAL NATURE AND CONDITIONS OF MANDATORY TERMINATION OF ADMINISTRATIVE CONTRACTS FOR BANKRUPTCY

3.1. Subsection One: The Legal Nature of Mandatory Termination for Bankruptcy

The contract terminates by force of law in the event of the contractor's bankruptcy (Al-Mutawa, 2020).

Termination in this specific instance is fundamentally an administrative termination serving as a penalty for the contractor's breach of statutorily defined conditions (GTPL, 2019).

The Saudi legislator has meticulously specified cases of penal termination, including mandatory penal termination. Among these mandatory cases is the scenario: if the contractor goes bankrupt or requests a declaration of bankruptcy.

In this instance, the government entity must terminate the contract. The legislator stated: "The government entity must terminate the contract in the following cases: ... b- If the contractor goes bankrupt, or requests a declaration of bankruptcy" (GTPL, 2019).

Bankruptcy is a legal regime exclusive to merchants, governed by Commercial Law, and applies only to merchants who cease paying their commercial debts on their due dates (Yahya, 2004). Bankruptcy distinguishes commercial acts from civil acts; a merchant who stops paying commercial debts or supports financial confidence only through evidently illicit means becomes subject to bankruptcy provisions, involving the collective liquidation of assets to pay debts (Samer, 2018). The distinction between bankruptcy and insolvency is that the former applies to commercial contexts, while the latter applies to civil ones (Al-Mutawa, 2020). A

bankrupt person is defined as: "A debtor whose debts have exhausted all their assets" (Bankruptcy Law, 2018), or "One whose debts have engulfed all their funds, rendering them unable to pay" (Commercial Court Law, 1970).

Bankruptcy is a procedure with a penal character if it results from gross negligence or fraud, and it is also a judicial procedure, as its declaration requires a court ruling (Al-Masri, 1987; Qarmaan, 2015; Safa, 1992).

Based on this legal framework, a mere request by the contractor to declare bankruptcy is sufficient to mandate the termination of the administrative contract, even before a formal judicial ruling of bankruptcy is issued, as indicated by the Saudi legislator's phrasing. This is predicated on the rationale that the contractor is the most knowledgeable about their commercial activity and true financial position, and most aware of the danger surrounding their assets and creditor confidence.

When signs of inability to pay debts appear, the Saudi legislator allows them to request a bankruptcy declaration to facilitate collective asset liquidation and protect commercial trust and credit (Commercial Court Law, 1970).

Critically, it can be argued that it is preferable not to apply a single, blanket ruling to contractor bankruptcy.

Instead, differentiation should be made based on the type of bankruptcy. The Saudi legislator stipulates that bankruptcy is of three distinct types: Genuine, Negligent, and Fraudulent (Commercial Court Law, 1970).

Therefore, it is more appropriate to classify contract termination in cases of Genuine Bankruptcy as termination for the exigencies of the public interest rather than penal termination. Conversely, termination in cases of Negligent and Fraudulent Bankruptcy should be classified as penal termination (Al-Anzi, 2010). The logic here is that the first type involves no fault by the contractor, warranting no penalty, whereas the latter two involve fault, which warrants a penalty.

Those who assigned a single ruling to administrative contract termination for bankruptcy classifying it as penal likely considered that most types of bankruptcy deserve a penalty (as in negligent and fraudulent cases) and looked at the most common occurrences and causes of bankruptcy, leading to its general classification as a penal termination case (Al-Ajmi, 2018; Al-Anzi, 2010; Al-Khodair, 2011; Al-Khouli, 2020; Al-Mutawa, 2020; Al-Wahibi, 2011; Al-Zunaybat, 2012).

Termination of an administrative contract due to

the contractor's bankruptcy is considered a case related to the person of the contractor. These are cases related to the contractor's personal conduct requiring contract termination, either due to loss of moral suitability to deal, lack of legal capacity to act, or inability/lack of financial competence to fulfill contractual obligations (Al-Anzi, 2010; Al-Wahibi, 2011). Contractor bankruptcy is deemed a case of financial incompetence justifying termination (Al-Anzi, 2010).

Termination is considered an authority of the administrative entity, as described by various legal commentators (Al-Khouli, 2020; Othman, 1973). However, the question arises: is this a discretionary or bound authority? Undoubtedly, the Saudi legislator's use of the term "Must" (Yajib) indicates that it is a bound authority. If this condition occurs, the government entity is obligated to terminate and cannot continue contract execution. Additionally, this termination is considered a privilege of direct execution. The administrative entity possesses the right to terminate the contract before its term, relying on the contractor's violation of contractual obligations, which legally justifies rescinding the contract via an administrative decision without resorting to the judiciary (GTPL Implementing Regulations, 2020). However, some argue that a judicial ruling is required in cases of revoking concession contracts due to their importance in operating vital public utilities (GTPL, 2019).

3.2. Subsection Two: Conditions for Mandatory Termination of Administrative Contracts for Bankruptcy

As established, the legal nature of the administration's authority to terminate an administrative contract for contractor bankruptcy is a bound authority. Accordingly, the conditions for exercising this authority are:

Condition One Issuance of the Termination Decision by a Competent Authority The Implementing Regulations of the Government Tenders and Procurement Law stipulate: "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" (GTPL Implementing Regulations, 2020).

The "person with authority" referenced here is the head of the administrative entity or their delegate, as

the legislator stated: "The authority to terminate contracts resides with the head of the government entity, who may delegate this" (Al-Khouli, 2020).

Condition Two Occurrence of the Case (Bankruptcy or Request for Declaration) The administration's authority to terminate the contract generally requires a fault on the part of the contractor (Al-Ajmi, 2018; Al-Fouzan, 2008; Al-Khouli, 2020; Al-Mutawa, 2020; GTPL, 2019).

The contractor's fault leading to termination under the administration's authority takes multiple forms, including the mandatory case where the government entity must terminate: if the contractor goes bankrupt or requests a bankruptcy declaration.

It is imperative that there be no error in fact or law; the administration cannot rely on non-existent facts, nor issue a decision based on incorrect legal elements or violations of the law (Haikal, 2014).

4. CONCLUSION

4.1. Findings

1. **Administrative contract termination can be defined comprehensively as** The cessation of the administrative contract's validity before its term, whether as a penalty, by agreement, for public interest requirements, or due to the contractor's death.
2. A mere request by the contractor to declare bankruptcy is sufficient grounds for the mandatory termination of the administrative contract, independent of the issuance of a judicial bankruptcy ruling.
3. The legal nature of the administration's authority regarding mandatory termination for bankruptcy is a bound (restricted) authority.

4.2. Recommendations

1. I recommend holding periodic specialized seminars in the field of administrative contracts generally, and their termination specifically.
2. I propose conducting specialized scientific studies regarding administrative contract topics in the Saudi Government Tenders and Procurement Law, given its recent enactment.
3. I propose not assigning a single ruling to contractor bankruptcy by making it solely a case of penal termination. Instead, it is more appropriate to differentiate the ruling based on the type of bankruptcy. Since the Saudi legislator identifies three types (Genuine, Negligent, and Fraudulent), it is preferable to classify termination in cases of Genuine

Bankruptcy as termination for the exigencies of the public interest, and classify termination in

cases of Negligent and Fraudulent Bankruptcy as penal termination.

Acknowledgements: The research team extends its gratitude to the Deanship of Postgraduate Studies and Scientific Research at Najran University for supporting the research project through the Namaa program and the project code: (NU/GP/SEHRC/13/757-2).

REFERENCES

- Al-Ajmi, H. (2018). *Al-Marji' fi Al-Oqood Al-Idariyah* [The reference in administrative contracts]. Institute of Public Administration.
- Al-Anzi, A. (2010). *Al-Nizam Al-Qanooni lil-Jaza'at fi Al-Oqood Al-Idariyah* [The legal system of penalties in administrative contracts]. Dar Al-Jamiah Al-Jadidah.
- Al-Fayoumi, A. (n.d.). *Al-Misbah Al-Munir* [The illuminating lamp]. Al-Maktabah Al-Ilmiyyah.
- Al-Firuzabadi, M. (1995). *Al-Qamus Al-Muhit* [The comprehensive dictionary] (Y. Al-Sheikh, Ed.). Dar Al-Fikr.
- Al-Fouzan, M. (2008). *Sharh Nizam Al-Munafasat wal-Mushtarayat Al-Hukumiyah fi Al-Mamlakah Al-Arabiyah Al-Saudiyah* [Explanation of the Government Tenders and Procurement Law in the Kingdom of Saudi Arabia] (2nd ed.). Maktabat Al-Qanoon wal-Iqtisad.
- Al-Isfahani, R. (n.d.). *Al-Mufradat* [Vocabulary] (Center for Studies and Research, Ed.). Maktabat Nizar Mustafa Al-Baz.
- Al-Khodair, K. (2011). *Al-Tahkim fi Al-Oqood Al-Idariyah* [Arbitration in administrative contracts] (1st ed.).
- Al-Khouli, O. (2020). *Al-Wajiz fi Al-Oqood Al-Idariyah* [The concise guide to administrative contracts] (11th ed.). Saudi Center for Legal Research and Studies.
- Al-Mashal, A. (2003). *Intiha' Al-Aqd Al-Idari fi Al-Fiqh wal-Nizam wa Tatbiqatihi Al-Qada'iyah fi Diwan Al-Mazalim* [Termination of administrative contract in jurisprudence, law, and judicial applications in the Board of Grievances] [Doctoral dissertation, Imam Muhammad bin Saud Islamic University].
- Al-Masri, H. (1987). *Al-Iflas* [Bankruptcy] (1st ed.).
- Al-Mutawa, S. (2011). *Al-As'ilah wal-Ajwibah Al-Qanooniyah hawl Al-Oqood wal-Munafasat wal-Mushtarayat Al-Hukumiyah* [Legal questions and answers regarding contracts, tenders, and government procurement] (1st ed.).
- Al-Mutawa, S. (2020). *Al-Oqood Al-Idariyah fi Daw' Nizam Al-Munafasat wal-Mushtarayat Al-Hukumiyah* [Administrative contracts in light of the Government Tenders and Procurement Law] (3rd ed.). Madar Al-Muslim Center.
- Al-Razi, M. (1979). *Mukhtar Al-Sahah* (1st ed.). Dar Al-Kitab Al-Arabi.
- Al-Tamawi, S. (1991). *Al-Osos Al-Amah lil-Oqood Al-Idariyah* [General foundations of administrative contracts]. Ain Shams University Press.
- Al-Wahibi, A. (2011). *Al-Qawa'id Al-Munazzimah lil-Oqood Al-Idariyah wa Tatbiqatiha fi Al-Mamlakah Al-Arabiyah Al-Saudiyah* [Rules regulating administrative contracts and their applications in Saudi Arabia] (3rd ed.). Al-Humaidhi Press.
- Al-Zunaybat, M. (2012). *Al-Aqd Al-Idari* [The administrative contract] (1st ed.). Maktabat Al-Qanoon wal-Iqtisad.
- Alasmari, M. A. M., & Zurib, M. A. G. (2025). Activating the purposes of Islamic Sharia through the regulations of the National Center for the Prevention and Control of Plant Pests and Animal Diseases in the Kingdom of Saudi Arabia: A review. *Indian Journal of Animal Research*, 59(9), 1450-1457. <https://doi.org/10.18805/IJAR.BF-1856>
- Bankruptcy Law, Royal Decree No. M/50 (2018).
- Board of Grievances Law, Royal Decree No. M/78 (2007).
- Commercial Court Law, Royal Decree No. M/2 (1970).
- Government Tenders and Procurement Law (GTPL), Royal Decree No. M/128 (2019).
- Haikal, S. (2014). *Al-Qanoon Al-Idari Al-Saudi* [Saudi administrative law] (4th ed.). Dar Al-Zahraa.
- Ibn Manzur, M. (n.d.). *Lisan Al-Arab*. Dar Sader.
- Implementing Regulations of the Government Tenders and Procurement Law, Amended by Ministerial Decision No. 3479 (2020).
- Johari, I. (1994). *Al-Sahah* (A. Abdulghafour, Ed.; 3rd ed.). Dar Al-Ilm Lil-Malayin.

- Khalifa, A. (n.d.). *Al-Osos Al-Amah lil-Oqood Al-Idariyah* [General foundations of administrative contracts]. Dar Al-Fikr Al-Jame'i.
- Othman, A. (1973). *Mazahir Al-Sultah Al-Amah fi Al-Oqood Al-Idariyah* [Manifestations of public authority in administrative contracts]. Dar Al-Nahda.
- Qarmaan, A. (2015). *Al-Awraq Al-Tijariyah wal-Iflas wal-Taswiyah Al-Waqiyah minhu Tibqan lil-Anzimah bil-Mamlakah Al-Arabiyah Al-Saudiyah* [Commercial papers, bankruptcy, and protective settlement according to regulations in Saudi Arabia] (4th ed.). Maktabat Al-Alam Al-Arabi.
- Safa, E. (1992). *Ahkam Al-Iflas wal-Sulh Al-Waqi* [Provisions of bankruptcy and protective composition] (1st ed.). Dar Al-Manshourat Al-Huquqiyah.
- Samer, M. (2018a). *Al-Qanoon Al-Tijari 1* [Commercial law 1]. Syrian Virtual University Publications.
- Samer, M. (2018b). *Nazariyat Al-Butlan fi Al-Oqood Al-Idariyah* [The theory of nullity in administrative contracts] (1st ed.). Center for Arab Studies.
- Waheed, M. (2017). *Ahkam Al-Oqood Al-Idariyah fi Al-Mamlakah Al-Arabiyah Al-Saudiyah* [Provisions of administrative contracts in Saudi Arabia] (1st ed.). Al-Shaqri Edition.
- Yahya, S. (2004). *Al-Wajiz fi Al-Nizam Al-Tijari Al-Saudi* [The concise guide to the Saudi commercial law] (7th ed.). Al-Maktab Al-Arabi Al-Hadith.