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# FRAUDULENT ACTS AND THEIR ROLE IN INVALIDATING GOVERNMENT PROCUREMENT AGREEMENTS IN SAUDI ARABIA: A LEGAL EXAMINATION

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## ABSTRACT

*This scholarly exposition scrutinizes the statutory imperative regarding the mandatory dissolution of administrative contracts arising from acts of fraud (Tahayul) within the jurisdiction of the Saudi Government Tenders and Procurement Law (GTPL). Employing a rigorous analytical methodology, the research is architected into an introduction, two substantive sections, and a concluding synthesis. The initial section elucidates the terminological foundations, whereas the second section investigates the juridical character and prerequisites of mandatory termination triggered by fraudulent conduct. The inquiry yields pivotal findings, foremost among them being the Saudi legislator's uncompromising stance in the GTPL, which dictates the compulsory annulment of the contract merely upon the administrative realization that the contract was secured through deceit or that fraudulent practices were employed during its execution. Crucially, this administrative action is valid even absent a final judicial conviction, establishing a standard of "evidentiary administrative certainty" rather than "judicial proof". Furthermore, the study classifies the administration's prerogative in this context as a bound (restricted) authority, bereft of discretionary latitude. The research culminates with strategic recommendations, advocating for the organization of specialized symposiums on contractual termination and the proliferation of academic inquiries into the nuances of the GTPL following its recent legislative overhaul.*

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**KEYWORDS:** Public Procurement, Contract Dissolution, Fraudulent Misrepresentation, Administrative Law.

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## 1. INTRODUCTION

The Kingdom of Saudi Arabia stands at the vanguard of nations modernizing their legislative infrastructures, particularly in domains inextricably linked to fiscal integrity and economic governance, such as the realm of administrative contracts.

Consequently, the Kingdom has promulgated a robust suite of regulations to govern these contractual relationships, ensuring they evolve in tandem with contemporary administrative exigencies. The zenith of this legislative evolution is the Government Tenders and Procurement Law (GTPL), enacted via Cabinet Decision No. (649) dated 13/11/1440 AH, and ratified by Royal Decree No. (M/128) dated 13/11/1440 AH. This was further fortified by its Implementing Regulations, amended by the Decision of His Excellency the Minister of Finance No. (3479) dated 11/08/1441 AH. This statutory framework represents a paradigm shift, establishing a qualitative leap in the governance of Saudi public contracting.

Contemporaneously, academic literature within specific sectors has documented a maqāsid-oriented regulatory trajectory in the Kingdom. This approach operationalizes preventive and supervisory mechanisms through transparent legal frameworks designed to safeguard essential public interests, including life, property, and environmental sanctity (Alasmari & Zurib, 2025).

Given the paramount significance of the administrative contract, the rigorous oversight it commands, and its governance by an autonomous legal regime, the phase of its termination represents one of the most precarious junctures in its lifecycle. It is during this phase that latent defects frequently surface and disputes proliferate, particularly when the contract is severed *ante diem* (before its natural term). Such premature dissolution typically results from the materialization of specific mandatory or permissive conditions delineated in the governing law. The ramifications of such interruptions are profound, potentially leading to the stalling of vital government projects and the consequential squandering of time, effort, and public funds.

Accordingly, this study is meticulously devoted to exploring the topic: "Mandatory Termination of Administrative Contracts Due to Fraud in Light of the Saudi Government Tenders and Procurement Law: An Analytical Study".

The primary objective is to dissect the scenario of mandatory termination necessitated by fraud, exploring its legal nature and the conditions requisite for its invocation. This analysis aims to foster a precise understanding consistent with the legislative

intent, thereby supporting the optimal implementation of the system and the realization of its objectives. Thus, this research serves as a comprehensive, analytical legal inquiry into this critical subject.

### 1.1. Research Structure

This research consists of an introduction, two 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 Fraud
- Conclusion
- Indices

### 1.2. Research Methodology

The research adopts an analytical method, strictly adhering to

- Limiting the scope to statutory articles regarding mandatory termination for fraud in the GTPL and its Regulations.
- Relying on primary scientific sources and published studies.
- Documenting laws from original sources, citing specific articles and dates.

## 2. SECTION ONE: DEFINITION OF RESEARCH TERMS

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

**First: Linguistic Definition** The term 'Aqd (contract) linguistically serves as the antonym of Hal (dissolution). It encompasses a spectrum of meanings unified by the concepts of tying, fastening, and documenting. For instance, the phrase "He tied ('Aqada) the rope" implies tightening and knotting its ends. Similarly, an oath is termed *Mun'aqida* (binding) - specifically when swearing upon a future matter because the swearer has irrevocably obligated themselves to the act.

The term "Administrative" (*Idari*) is etymologically rooted in *Idarah* (Administration). Linguistically, *Idarah* is the gerund of "he managed the thing" (*Adara*), implying rotation or circulation. This root denotes the comprehensive management, supervision, and execution of affairs (*Mudaawarat Al-Shu'un*) (Al-Isfahani, n.d.; Al-Razi, 1979; Ibn Manzur, n.d.; Al-Fayoumi, n.d.; Al-Firuzabadi, 1995).

**Second: Legal Definition** Doctrinal definitions are manifold yet conceptually aligned. A prominent

definition characterizes 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 hallmark of such an agreement is the inclusion of exceptional clauses (clauses exorbitantes) unfamiliar in private law, or the authorization of the contractor to participate directly in the management of the public utility (Al-Tamawi, 1991).

In the context of Saudi jurisprudence, the statutes currently in force do not proffer a specific definition for the "administrative contract," nor does the specific nomenclature appear in the text of regulations. However, the legislator has established that: "The Administrative Courts shall have jurisdiction to adjudicate... Lawsuits related to contracts to which the administrative authority is a party" (Board of Grievances Law, 2007).

Consequently, the Board of Grievances exercises jurisdiction over all contracts involving the Administration, irrespective of whether they are strictly administrative or private administration contracts (Waheed, 2017).

This jurisdictional breadth implies that not every contract involving an administrative entity is necessarily "administrative" in nature; they may include ordinary contracts. This contrasts with the theoretical view that classifies every contract concluded by the Administration as administrative, a distinction generally upheld by the Saudi judiciary (Al-Ajmi, 2018; Al-Mutawa, 2020).

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

**First: Linguistic Definition** With the terms "Contract" and "Administrative" defined, "Termination" (Inhaa) linguistically signifies the limit or ultimate end (Ghayah) of a matter.

The Nihayah is the point of cessation. Inhaa also connotes reporting or conveying (Al-Iblagh).

The conclusion of a thing is its farthest limit (Al-Jawhari, 1994).

**Second: Legal Definition** Legally, termination is defined as: "Putting an end to the contract, resulting in its dissolution regarding what remained 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 absence of retroactive effect is specific to continuous or time-bound contracts, distinguishing them from instantaneous contracts (e.g., sales) where

parties revert to the status quo ante.

The phrase "putting an end to the contract" implies cessation before the natural term. Another definition posits termination as: "An inherent right that does not require the obligor to commit a fault, yet it entitles them to compensation for damages caused by this termination" (Al-Mutawa, 2011).

While often discussed regarding concession contracts, this applies broadly.

Thus, administrative contract termination is comprehensively defined 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; Khalifa, n.d.).

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

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

The GTPL imposes a statutory obligation upon government entities to terminate the contract if it becomes evident that the contractor secured the agreement through fraud or engaged in fraudulent practices during its execution.

The Saudi legislator explicitly mandates: "The government entity must terminate the contract in the following cases: a- If it becomes evident that the contractor has... obtained the contract through... fraud... or practiced any of that during the execution of the contract" (GTPL, 2019).

The wording of this text is critical; it stipulates mandatory penal termination if the fraud "becomes evident" (tabayyana) - not necessarily "proven" (thubita) in a court of law.

This implies that the entity is empowered to terminate the contract merely upon its realization of the fraud, even prior to a judicial verdict. This is an administrative prerogative designed for swift action.

Conversely, should the contractor later be exonerated, they retain the right to seek compensation. Waiting for judicial proof would pragmatically endanger the public utility and the public interest, as a contractor engaged in malfeasance might complete the project - and the fraud - before a trial concludes (Haikal, 2014; Al-Khouli, 2020).

This form of termination is inextricably linked to the person of the contractor (intuitu personae), specifically concerning personal conduct that erodes the moral suitability required for dealing with the state. It is classified as a mandatory termination

because the Saudi legislator has emphasized that upon the entity's awareness of the practices cited in Article 76(1/a), the contract is dissolved by force of law. Such termination does not require prior notification (warning). The government entity's decision in this context is merely declaratory of the statutory effect (Al-Anzi, 2010).

Consequently, termination here occurs *ex lege* without the Administration possessing discretionary authority to choose between termination or continuation.

The Administration is legally bound to terminate once the fraud is evident, characterizing its authority as a bound (restricted) authority. Furthermore, this termination constitutes a privilege of direct execution (Al-Wahibi, 2011; Othman, 1973).

The administrative entity exercises the power to rescind the contract via a unilateral administrative decision without resorting to the judiciary, although some scholars argue for a judicial requirement in concession contracts due to their critical nature (Al-Mashal, 1424-1425 AH).

**3.2. Subsection Two: Conditions for Mandatory Termination of Administrative Contracts for Fraud** As established, the administration's power to terminate for fraud is a bound authority. The prerequisites for exercising this authority are

**Condition One** Issuance of the Termination Decision by a Statutorily Competent Authority The GTPL Implementing Regulations decree: "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" (Implementing Regulations, 2020).

The "person with authority" is legally defined as the head of the government entity, who may delegate this power (Al-Khouli, 2020).

**Condition Two** Occurrence of the Case (Obtaining the Contract through Fraud or Practicing

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it During Execution) The administration's authority to terminate here is predicated on a fault committed by the contractor.

The fault necessitating mandatory termination is specific: "If it becomes evident that the contractor obtained the contract through fraud, or practiced it during its execution" (GTPL, 2019).

It is legally imperative that there be no error in facts or law. The Administration is precluded from relying on non-existent facts or issuing decisions based on incorrect legal elements or statutory violations (Al-Fouzan, 2008; Al-Ajmi, 2018).

## 4. CONCLUSION

### 4.1. Findings

1. Administrative contract termination is comprehensively defined as the cessation of the contract's validity before its term due to penalties, agreement, public interest, or death.
2. The Saudi legislator has instituted a strict regime in the GTPL requiring mandatory termination if it becomes evident to the government entity that the contractor obtained the contract through fraud or practiced it during execution. Crucially, this applies even if the fraud has not yet been proven before judicial authorities, prioritizing the protection of public funds.
3. The legal nature of the administration's authority regarding mandatory termination for fraud is strictly a bound (restricted) authority.

### 4.2. Recommendations

1. I strongly recommend holding periodic, specialized seminars focused on the general field of administrative contracts and the specific nuances of their termination.
2. I propose the conduct of specialized scientific studies addressing the intricate topics of administrative contracts within the framework of the GTPL, particularly in light of its recent issuance.

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