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STATUTORY DISSOLUTION OF PUBLIC PROCUREMENT CONTRACTS FOR FRAUDULENT MANIPULATION: AN ANALYTICAL CRITIQUE OF THE SAUDI GTPL FRAMEWORK

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ABSTRACT

This study critically examines the legal imperative for the ipso jure (mandatory) termination of administrative contracts arising from "contractual manipulation" (Tala'ub) under the Saudi Government Tenders and Procurement Law (GTPL) of 2019. Utilizing a doctrinal legal analysis, the research deconstructs the nature of the administration's "bound authority" (competence liée) in these instances. The findings reveal a significant legislative shift: the GTPL empowers administrative entities to unilaterally dissolve contracts upon the "administrative establishment" (tabayyana) of manipulation, without necessitating a prior final judicial ruling. This mechanism prioritizes the integrity of public funds and the continuity of public utilities over the contractor's procedural defenses. The study concludes with recommendations for establishing precise administrative criteria for "manifest manipulation" to mitigate the risk of arbitrary termination and subsequent litigation.

KEYWORDS: Public Procurement, Contractual Manipulation, GTPL, Mandatory Termination, Bound Authority, Administrative Law.

1. INTRODUCTION

1.1. Contextual Landscape

The legal architecture of the Kingdom of Saudi Arabia has undergone a paradigmatic transformation to support its Vision 2030, particularly in fiscal and economic governance. The Government Tenders and Procurement Law (GTPL) (Royal Decree No. M/128, 2019) represents the cornerstone of this reform, introducing rigorous governance standards to public contracting.

Recent scholarship underscores that these regulations are not merely procedural but are designed to operationalize the Maqasid (objectives) of Islamic Sharia by establishing preventive mechanisms to safeguard public assets and ensure efficient resource allocation (Alasmari & Zurib, 2025).

1.2. Problem Statement

The termination phase is the most critical juncture in the administrative contract lifecycle. While voluntary termination is common, "mandatory termination" for manipulation poses complex legal challenges.

It grants the administration potent executive powers to dissolve contracts based on unilateral assessments of contractor conduct. This raises questions regarding the balance between the efficiency of public projects and the protection of contractors against administrative overreach.

Research Objectives This paper aims to elucidate the legislative intent behind Article 76 of the GTPL regarding "manipulation." **Specifically, it seeks to**

1. Analyze the legal classification of the administration's power (Discretionary vs. Bound).
2. Determine the evidentiary threshold required to trigger mandatory termination.
3. Distinguish between "judicial proof" and "administrative evidence" in the context of contract dissolution.

2. CONCEPTUAL FRAMEWORK: THE ADMINISTRATIVE CONTRACT

The Juridical Nature Unlike private civil agreements, the administrative contract is defined by the presence of a public legal entity and the objective of managing a public utility.

Its distinguishing feature is the inclusion of "exorbitant clauses" (clauses dérogoatoires au droit commun), which grant the administration sovereign prerogatives, including unilateral modification and termination (Al-Tamawi, 1991).

Defining Termination (Inhaa) In administrative

jurisprudence, termination implies the prospective dissolution of the contractual bond (*ex nunc*).

Unlike civil rescission, which may restore the status quo ante, administrative termination respects the validity of acts performed prior to the dissolution, a necessity dictated by the continuous nature of public service contracts (Al-Mashal, 2004).

3. LEGAL ANALYSIS: MANDATORY TERMINATION FOR MANIPULATION

The Concept of Manipulation (Tala'ub) Under the GTPL, manipulation is treated as a severe breach of "moral capacity." It encompasses bad faith practices that undermine the project but may not strictly qualify as criminal forgery. **Examples identified in legal practice include**

- **Illicit Subcontracting** Assigning the contract to third parties disqualified from tendering.
- **Labor Exploitation** Deliberate non-payment of workers causing strikes that disrupt the public utility.
- **Strategic Abandonment** Willful desertion of the work site to force administrative concessions (Al-Anzi, 2010).

The Doctrine of "Bound Authority" (Compétence Liée) A pivotal finding of this research is the classification of the administration's power under Article 76(1/a). The statute uses the imperative "must" (*yajib*), transforming termination from a discretionary prerogative into a statutory duty.

- **Implication** Once manipulation is evident, the administration has no legal option but to terminate. It cannot choose to impose a lesser penalty (e.g., a fine) to save the contract. The administrative decision becomes merely declaratory of a statutory mandate.
- **The Evidentiary Threshold** "Appearance" vs. "Judicial Certainty" The study highlights a crucial legislative nuance: the text stipulates termination if manipulation "becomes apparent" (*tabayyana*), not "is proven judicially" (*thubita*).
- **Direct Execution Privilege** This phrasing empowers the administration to exercise its "privilege of prior action" (*privilège du préalable*).

It can terminate the contract immediately upon discovering manipulation without waiting for a potentially lengthy criminal court judgment. This policy prioritizes the immediate protection of the public utility over the procedural rights of the contractor, who retains the right to seek compensation post-factum if the termination is later ruled wrongful by the judiciary (Al-Khouli, 2020).

Procedural Prerequisites: For the mandatory termination to be legally valid and immune to

annulment, two conditions **must be met**

1. **Competent Authority** The decision must be issued formally by the Head of the Government Entity (or authorized delegate), based on a technical recommendation from the Bid Examination Committee (GTPIL Implementing Regulations, 2020).
2. **Materiality of Facts** The administration must base its decision on material facts, not mere suspicion. While judicial proof is not required, the "appearance" of manipulation must be supported by concrete evidence (e.g., site reports, labor complaints) to satisfy the principle of legality.

4 CONCLUSION AND RECOMMENDATIONS

Synthesis The Saudi legislator has adopted a zero-tolerance policy regarding contractual manipulation. By classifying termination as a bound

authority based on administrative evidence, the GTPIL reinforces the sanctity of public procurement against bad faith actors.

Recommendations To ensure the equitable application of this powerful tool, **the study proposes**

1. **Administrative Guidelines** The Ministry of Finance should issue a circular defining specific acts that constitute "manifest manipulation" to standardize interpretation across entities.
2. **Capacity Building** Specialized training for legal departments on distinguishing between "performance failure" (requiring warnings) and "manipulation" (requiring immediate termination).
3. **Further Research** Future studies should investigate the economic impact of immediate termination on project lifecycles compared to alternative dispute resolution mechanisms.

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