



MANDATORY TERMINATION OF ADMINISTRATIVE CONTRACTS DUE TO BANKRUPTCY IN LIGHT OF THE SAUDI GOVERNMENT TENDERS AND PROCUREMENT LAW (AN ANALYTICAL STUDY)

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ABSTRACT

This research addresses the subject of the mandatory termination of administrative contracts due to bankruptcy in light of the Saudi Government Tenders and Procurement Law (GTPL).

Adopting an analytical methodology, the study is structured into an introduction, two main sections, and a conclusion.

The first section defines the research terminology, while the second examines the legal nature and conditions of mandatory termination for bankruptcy. The study concludes with several findings, most notably that a contractor's mere request for bankruptcy declaration is sufficient grounds for the mandatory termination of an administrative contract, even prior to the issuance of a judicial ruling.

Furthermore, the legal nature of the administration's authority regarding mandatory termination for bankruptcy is classified as a bound (restricted) authority.

The research offers several recommendations, including the proposal that contractor bankruptcy should not be subject to a single blanket ruling regarding penal termination. Instead, it is more appropriate to differentiate based on the type of bankruptcy. Given that the Saudi legislator identifies three types of bankruptcy, genuine, negligent, and fraudulent, it is preferable to classify the termination of a contract in cases of genuine bankruptcy as termination for the exigencies of the public interest, while restricting penal termination to cases of negligent and fraudulent bankruptcy.

Keywords: Administrative Contract, Contract Termination, Bankruptcy, Saudi Arabia.

INTRODUCTION

The Kingdom of Saudi Arabia is considered one of the advanced nations in establishing its legal framework, particularly where regulations are closely linked to economic and financial spheres, as is the case with administrative contracts. Consequently, the Kingdom has enacted numerous administrative regulations governing these contracts. Like other systems, these regulations have undergone modernization over successive eras. The most recent update is the Government Tenders and Procurement Law, issued by Cabinet Decision No. (649) dated 13/11/1440 AH, culminated by Royal Decree No. (M/128) dated 13/11/1440 AH, and its Implementing Regulations, amended by the Decision of His Excellency the Minister of Finance No. (3479) dated 11/08/1441 AH. This legislation constitutes a qualitative leap for administrative contracts in Saudi Arabia.

In parallel, sector-specific scholarship documents a *maqāṣid*-driven regulatory orientation in the Kingdom, whereby preventive and supervisory mechanisms are operationalized through clear legal frameworks to safeguard life, property, and the environment (Alasmari & Zurib, 2025).

Given that the administrative contract possesses paramount importance, receives significant attention, and is governed by an independent system, the stage of its termination is among the most critical phases it undergoes. Most defects manifest, and the majority of disputes arise, at this stage. These issues are exacerbated when termination occurs before the contract's natural conclusion due to the occurrence of one of the cases leading to mandatory or permissive termination as outlined in the aforementioned law. Such termination may lead to the stalling or delay of government projects, resulting in the waste of time, effort, and funds.

Therefore, this study is 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." It aims to examine the case of mandatory contract termination due to bankruptcy, its legal nature, and its conditions to facilitate a correct understanding consistent with the intent of the Saudi legislator, thereby contributing to the optimal implementation of this law and achieving the objectives behind its enactment. Hence, the idea of this research emerged as a modest attempt to provide a comprehensive, analytical legal study of this subject.

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 Bankruptcy.



RESEARCH METHODOLOGY

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

- Limiting the study to the statutory articles covering mandatory termination of administrative contracts for bankruptcy contained in the law under study and its Implementing Regulations, and analyzing them.
- 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 mentioning the dates and numbers of valid and repealed laws.

DEFINITION OF RESEARCH TERMS

Definition of the Administrative Contract in Language and Legal Terminology

First: Definition of the Administrative Contract in Language The term '*Aqd* (contract) is the antonym of *Hal* (dissolution). The term applies to many meanings, all unified by the concept of tying, tightening, and documenting.

It is said: “He tied (‘*Aqada*) the rope” if he tightened its ends and knotted them. An oath is called *Mun’aqida* (concluded/binding)—swearing on a future matter—because the swearer has bound themselves to the act sworn upon (Al-Isfahani, n.d.; Al-Razi, 1979; Ibn Manzur, n.d.). As for the term “Administrative” (*Idari*), it is attributed to the word “Administration” (*Idarah*). Linguistically, *Idarah* is the source of “he managed the thing” (*Adara*), meaning he made it rotate. This root is used to denote encompassing a thing, supervising it, executing it, and managing affairs (Al-Fayoumi, n.d.; Al-Firuzabadi, 1995; Ibn Manzur, n.d.).

Second: Definition of the Administrative Contract in Legal Terminology There are several definitions, similar in content. One definition states it is: “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 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 in Saudi regulations, the laws in force in the Kingdom of Saudi Arabia do not provide a specific definition for the administrative contract as found in some other legal systems. Furthermore, the term “Administrative Contracts” or “Administrative Contract” does not appear in any Saudi regulations (Al-Khodair, 2011; Al-Khouli, 2020).

However, the Saudi legislator 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 has jurisdiction over all contracts to which the administration is a party, whether they are administrative contracts or private administration contracts (Waheed, 2017).

The law’s determination of the Board of Grievances’ jurisdiction over lawsuits for all contracts involving an administrative entity does not necessarily mean that all such contracts are administrative; they may include ordinary contracts (Al-Ajmi, 2018; Al-Mutawa, 2020).

This is contrary to the 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 adopted by the Saudi system and generally established by its judiciary (Al-Mashal, 2003).

Definition of Administrative Contract Termination in Language and Legal Terminology

First: Definition of Administrative Contract Termination in Language The definitions of “Contract” and “Administrative” have been presented. regarding “Termination” (*Inhaa*), linguistically, it means the limit and end of everything. The *Nihayah* (end) is the goal a thing reaches. It is said: “It reached its end,” “The thing ended,” and “Terminated.” *Sidrat al-Muntaha* implies the point one reaches and does not exceed. *Inhaa* means informing or conveying; “I ended the news to him” means I conveyed it (Al-Fayoumi, n.d.; Al-Firuzabadi, 1995; Ibn Manzur, n.d.).

Second: Definition of Administrative Contract Termination in Legal Terminology It has been defined 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 statement that termination lacks retroactive effect applies to time-bound contracts, unlike 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



The phrase “putting an end to the contract” in the previous definition implies termination before its natural conclusion, 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 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).

THE LEGAL NATURE AND CONDITIONS OF MANDATORY TERMINATION OF ADMINISTRATIVE CONTRACTS FOR BANKRUPTCY

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 case is an administrative termination serving as a penalty for the contractor’s breach of statutorily defined conditions (GTPL, 2019). The Saudi legislator has specified cases of penal termination, including mandatory penal termination. Among these mandatory cases is: 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 system 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 difference 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, a mere request by the contractor to declare bankruptcy is sufficient to mandate the termination of the administrative contract, even before a judicial ruling of bankruptcy is issued, as indicated by the Saudi legislator's phrasing. This is because 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).

It can be argued that it is preferable not to apply a single ruling to contractor bankruptcy. Instead, differentiation should be made based on the type of bankruptcy. The Saudi legislator stipulates that bankruptcy is of three 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 first type involves no fault by the contractor, warranting no penalty. 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 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, 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 (GTP 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).

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 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).

CONCLUSION

Findings

- 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.
- 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.



- The legal nature of the administration's authority regarding mandatory termination for bankruptcy is a bound (restricted) authority.

Recommendations

- I recommend holding periodic specialized seminars in the field of administrative contracts generally, and their termination specifically.
- I propose conducting specialized scientific studies regarding administrative contract topics in the Saudi Government Tenders and Procurement Law, given its recent enactment.
- 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.

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