



PROTECTING THE DEBTOR BY INFORMING THEM OF LITIGATION RULES AND PROCEDURES UNDER THE SAUDI BANKRUPTCY LAW: AN ANALYTICAL STUDY

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ABSTRACT

This study examines the mandatory termination of administrative contracts for insolvency in light of the Saudi Government Tenders and Procurement Law (GTPL). Adopting an analytical method, the paper is structured into an introduction, two chapters, and a conclusion. Chapter One defines the core terms; Chapter Two analyzes the legal nature of mandatory termination for insolvency and its conditions.

The study concludes, *inter alia*, that the insolvency of the contractor - triggering contract termination - must be established by a final court judgment, as evidenced by the Saudi legislator's phrase (insolvency is established), and that the administration's power to terminate in this case is a constrained (bound) power.

Recommendations include distinguishing between termination that is penal (where the contractor's fault, fraud, or deceit is present) and termination justified by public interest (where insolvency arises without the contractor's fault). (GTPL, Royal Decree No. M/128, 13/11/1440; Implementing Regulations, Ministerial Decision No. 3479, 11/08/1441).

Keywords: Administrative Contract; Termination of Administrative Contract; Insolvency.



Saudi Arabia has made notable advances in building its legal framework, particularly in areas closely tied to economic and financial activity, such as administrative contracts.

The most recent comprehensive reform is the Government Tenders and Procurement Law issued by Council of Ministers Decision No. 649 dated 13/11/1440 and endorsed by Royal Decree No. (M/128) of the same date, with Implementing Regulations amended by Minister of Finance Decision No. 3479 dated 11/08/1441 - reforms that constitute a qualitative leap in Saudi administrative contracting.

In parallel, sector-specific scholarship documents a maqāṣid-oriented regulatory approach in the Kingdom, operationalizing preventive and control mechanisms through clear legal frameworks to safeguard life, property, and the environment (Alasmari & Zurib, 2025).

Because the termination stage is one of the most critical phases in the life of an administrative contract - often exposing defects and sparking disputes, especially in premature termination - this paper focuses on mandatory termination for insolvency, its legal nature, and conditions, to clarify the legislator's intent and support optimal application of the GTPL.

RESEARCH METHODOLOGY

This study employs the analytical method, restricted to GTPL provisions and its Implementing Regulations governing mandatory termination for insolvency, relying on primary sources and published scholarship (print and online), and documenting statutes and regulations from their official sources (name, article/ paragraph, and the dates/numbers of applicable and superseded instruments), with scholarly referencing in the footnotes.

DEFINITIONS OF THE STUDY'S TERMS

“Administrative Contract” - Language and Legal Usage

Linguistic Meaning: “‘Aqd” (contract) is the opposite of “ḥall” (untying). Its core sense is binding/tying (e.g., tying both ends of a rope); “al-yamīn al-mun‘aqida” (a binding oath) is a commitment binding the swearer to a future act. “Idārī” (administrative) is derived from “idāra” (administration), connoting encompassing, supervising, executing, and managing affairs. (Ibn



Legal Meaning: A widely cited doctrinal definition describes the administrative contract as one concluded by a public legal person for the operation or regulation of a public service, in which the administration manifests its will to apply public law - evidenced by exceptional clauses or the contractor’s direct participation in operating the service (Al-Ṭamāwī, 1991, p. 52).

Saudi statutes do not define “administrative contracts,” nor do they explicitly use the term; instead, the Board of Grievances Law vests administrative courts with jurisdiction over contracts to which the administration is a party (Royal Decree No. M/78, 19/09/1428 AH, art. 13). Thus, the Board hears all contracts involving administrative entities (whether “administrative” in nature or not), even if some are ordinary civil contracts (Al-Khuḍayr, 2011, pp. 68–69; Al-Khūlī, 2020, pp. 219–220; Muḥammad Waḥīd, 2017, pp. 18–19; Al-‘Ajmi, 2018, p. 69; Al-Muṭawwi‘, 2020, p. 50).

“Termination of the Administrative Contract” - Language and Legal Usage

Linguistic Meaning: “Termination” (*inhā*) signifies the end or limit of something; “nihāya” is the ultimate point reached.

Expressions such as “*balagha nihāyatahu*” (“he reached its end”) and “*tanaḥā*” indicate completion; “*al-inhā*” also means notification/conveyance (Ibn Manzūr, *Lisān al-‘Arab*; Al-Fayūmī, *al-Miṣbāḥ al-Munīr*; Al-Fīrūzābādī, *al-Qāmūs al-Muḥīṭ*)

Legal Meaning: Termination is “putting an end to the contract so that it dissolves for the future only; what has already been performed remains unaffected (i.e., no retroactive effect)” — a characterization suitable for continuous (time) contracts (e.g., lease, employment), unlike instantaneous contracts (e.g., sale), which revert parties to the status quo ante upon rescission (Al-Mash‘al, 1424 AH, p. 109; Al-Sāmir, 2018, p. 118; ‘Abd al-‘Azīz Khalīfa, n.d., p. 90; Al-Muṭawwi‘, 1432 AH, p. 252; Al-‘Ajmi, 2018, pp. 391–392).

In an inclusive formulation applicable to all administrative contracts, termination is: *the cessation of an administrative contract before its natural expiry, by way of penalty, agreement, public-interest grounds, or the contractor’s death.*



THE LEGAL NATURE OF MANDATORY TERMINATION FOR INSOLVENCY AND ITS CONDITIONS

Legal Nature

An administrative contract ends by force of law when the contractor becomes insolvent—this is a form of administrative (penal) termination for specified 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 GTPL expressly enumerates mandatory penal termination cases, including established insolvency of the contractor: “*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 stipulate termination by decision of the competent authority, following the recommendation of the relevant committee (Regulations, art. 131(1); Ministerial Decision No. 3479, 11/08/1441 AH). These texts confirm that termination for insolvency is an abnormal end of the contract, occurring before term and by force of law, and, given the legislator’s use of “must”, that the administrative authority’s power here is bound (no discretion once insolvency is judicially established). (GTPL, art. 76(1)(b); Regulations, art. 131(1)).

On characterization (penal vs. public-interest). Where fault, fraud, or deceit by the contractor contributed to insolvency, termination is aptly classified as penal; where insolvency results from no contractor fault (e.g., fire, flood, manifest loss without profligacy), termination is better viewed as serving the public interest rather than as a penalty - since an insolvent contractor lacks the financial capacity to honor contractual obligations. (Al-‘Anazī, 2010, pp. 153, 155–157; Al-Khūlī, 2020, p. 155; Al-Muṭawwi‘, 2020, pp. 423–426; Al-Fawzān, 2008, p. 197).

Doctrinal background on insolvency. Insolvency (*i‘ṣār*) may be factual (total debts - mature and unmatured - exceed assets) or legal (mature debts exceed assets and require judicial declaration). Civil insolvency differs from commercial bankruptcy: both preclude a single creditor’s preferential execution and stay the debtor’s hand from disposing of assets upon declaration, but civil insolvency lacks the collective liquidation that characterizes bankruptcy.



The Board of Grievances has jurisdiction over contracts involving the administration (Royal Decree No. M/78, 19/09/1428 AH), while commercial bankruptcy follows commercial rules for traders.

Conditions for Mandatory Termination

- *Condition (1): Competent Authority Issues the Termination Decision*

Per the Implementing Regulations: “Subject to GTPL arts. 76 and 77, a contract shall be terminated by a decision of the competent authority based on a recommendation from the bid-examination committee or the purchasing committee, as applicable; the contractor shall be notified pursuant to art. 90 of the Regulations.” (Regulations, art. 131(1)). The competent authority is the head of the administrative entity or his delegate, GTPL provides: “The head of the government entity shall have the authority to terminate contracts and may delegate this authority.” (GTPL, art. 54(3)). (GTPL, arts. 54(3), 76; Regulations, art. 131(1)).

- *Condition (2): The Case established Insolvency has Occurred*

Administrative termination presupposes an event attributable to the contractor (breach-based or status-based). In mandatory termination for insolvency, the trigger is: “established insolvency” (GTPL, art. 76(1)(b)). The administration may not rely on non-existent facts or legally incorrect premises (principles of legality). (Al-Khūlī, 2020, p. 162; Al-‘Ajmī, 2018, pp. 475–476; Al-‘Anazī, 2010, p. 138; Al-Wuhaibī, 2011, p. 560; Al-Dhunaybāt, 2012, p. 195). Crucially, “established insolvency” requires a court judgment that has acquired finality—mere administrative inference (“it appears he is insolvent”) is insufficient. (GTPL, art. 76(1)(b)).

Analytical note. Termination in such cases is also an instance of the administration’s direct-execution privilege: it may, in defined circumstances, terminate by administrative decision without first resorting to the courts (with some authors requiring a judgment for concession-type contracts due to their public-service centrality). (Aḥmad ‘Uthmān, 1973, p. 362; Al-Khūlī, 2020, p. 155).

Informing the Debtor of Litigation Rules and Procedures in the 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 devotes an entire chapter to setting out the rules governing this procedure (*Saudi Bankruptcy Law, 1439 AH/2018, ch. 4, arts. 42–91; Bankruptcy Commission, 1440/2019, art. 4*).

A close reading of that chapter - together with the related rules -shows extensive, detailed guidance that informs the debtor of the rules and steps of litigation, thereby reflecting the legislator’s commitment to protecting the debtor by expressly apprising them of pleading requirements within the financial restructuring process and by assigning oversight to the trustee (*Saudi Bankruptcy Law, 1439 AH/2018, ch. 4, arts. 42–91; Bankruptcy Commission, 1440 /2019, art. 4*).

It bears emphasis that the trustee is a legally trained specialist who is tasked with safeguarding the debtor from prejudice and executing the procedure fairly for all parties, including the debtor (*Saudi Bankruptcy Law, 1439 AH/2018, ch. 4, arts. 42–91*).

It is also noteworthy that small debtors in financial restructuring are subject—albeit in a streamlined fashion—to the same procedural obligations prescribed for this procedure (*Saudi Bankruptcy Law, 1439 AH/2018, ch. 7, arts. 142–159*).

Consequently, the observations made here regarding this protective mechanism apply to small debtors as well.

CONCLUSION

Findings

- A functional, general definition of termination of administrative contracts: *ending an administrative contract before its term by way of penalty, agreement, public-interest grounds, or the contractor’s death.*



- Mandatory termination for insolvency requires a final court judgment establishing insolvency.
- The administration's power to terminate in this case is a bound power (compulsory, not discretionary). (GTPL, art. 76(1)(b); Regulations, art. 131(1)).

Recommendations

- Hold periodic specialized seminars on administrative contracts in general and on their termination in particular.
- Conduct specialized research on administrative-contract topics under the GTPL, given the law's recent enactment.
- Do not treat termination for established insolvency as penal in all cases; rather, distinguish cases involving contractor fault, fraud, or deceit (penal termination) from cases devoid of such fault (termination for public interest).

ACKNOWLEDGMENT

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/13/757-1).

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