

MANDATORY TERMINATION OF ADMINISTRATIVE CONTRACTS DUE TO CHEATING 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 cheating (Ghash) in light of the Saudi Government Tenders and Procurement Law (GTPL). The study adopted an analytical methodology and is structured into an introduction, two main sections, and a conclusion. The first section defines the research terminology, and the second examines the legal nature and conditions of mandatory termination for cheating. The study concludes with several findings, the most important of which is that the Saudi legislator stipulated in the GTPL the mandatory termination of the administrative contract if it becomes evident to the government entity that the contractor obtained the contract through cheating or practiced it during its execution. This applies even if cheating has not been proven before the judicial authorities, a measure deemed preferable. Furthermore, the legal nature of the administration's authority regarding the mandatory termination of the administrative contract for cheating is considered a bound (restricted) authority. The research offered recommendations, including holding periodic specialized seminars in the field of administrative contracts generally, and their termination specifically, and proposing specialized scientific studies on administrative contract topics within the GTPL due to its recent issuance.

Keywords: Administrative Contract, Administrative Contract Termination, Cheating.

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 many administrative regulations governing these contracts, which, like other systems, have undergone modernization over successive eras. The most recent update is the **Government Tenders and Procurement Law (GTPL)**, issued by Cabinet Decision No. (649) dated 13/11/1440 AH, culminated by Royal Decree No. (M/128) dated 13/11/1440 AH. Its Implementing Regulations were amended by the Decision of His Excellency the Minister of Finance No. (3479) dated 11/08/1441 AH, which constitutes a **qualitative leap** for administrative contracts in Saudi Arabia.

This trajectory aligns with sectoral evidence indicating a maqāṣid-oriented regulatory approach in the Kingdom that operationalizes preventive and control mechanisms through clear legal frameworks to safeguard life, property, and the environment (Alasmari & Zurib, 2025).

Given the paramount importance of the administrative contract, the significant attention it receives, and its governance by an independent system, the stage of its **termination** is among the most critical phases it undergoes. Most defects and the majority of disputes manifest at this stage, particularly when termination occurs **before its term**. This results from the occurrence of one of the mandatory or permissive conditions outlined in the aforementioned law. This 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 subject titled "**Mandatory Termination of Administrative Contracts Due to Cheating 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 cheating**, its **legal nature**, and its **conditions**. This analysis contributes to a correct understanding consistent with the intent of the Saudi legislator, supporting the optimal implementation of this system and achieving its intended objective. Hence, the idea of this research emerged as a modest attempt to provide a comprehensive, analytical legal study of this subject, aiming for a profound impact.

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 Bribery
- **Conclusion**
- **Indices**

RESEARCH METHODOLOGY

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

1. Limiting the study to the statutory articles covering the mandatory termination of the administrative contract for bribery contained in the law under study and its Implementing Regulations, and analyzing them.
2. Relying on original scientific sources for data collection and utilizing printed research and scientific studies published on the World Wide Web.
3. 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 both valid and repealed laws.

Section One: Definition of Research Terms

Subsection One: 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. For instance, "He tied ('Aqada) the rope" means he tightened its ends and knotted them.

An oath is called Mun'aqida (binding) - swearing on a future matter - because the swearer has obligated themselves to the act sworn upon and bound themselves to it. The term "Administrative" (Idari) 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, supervising, executing, and handling affairs (Mudaawarat Al-Shu'un), which means processing them.

Second: Definition of the Administrative Contract in Legal Terminology There are several definitions, which are 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.

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 of the Saudi regulations. 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". Consequently, the Board of Grievances (Diwan Al-Mazalim) has jurisdiction over all contracts to which the Administration is a party, whether they are administrative contracts or private administration contracts.

This is because 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 those contracts are administrative; they may include ordinary contracts.

This is contrary to the view that defines the 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 - a view adopted by the Saudi system and generally established by its judiciary.

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

First: Definition of Administrative Contract Termination in Language The definitions of "Contract" and "Administrative" in language have been presented. As for "Termination" (Inhaa), linguistically, it means the limit and end (Ghayah) of everything.

The Nihayah (end) is the limit a thing reaches. Inhaa also means reporting or conveying (Al-Iblagh). The conclusion of a thing is its farthest point and end.

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 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". The lack of retroactive effect applies to time-bound contracts, unlike immediate contracts (e.g., a sale), where the contracting parties return to the pre-contractual state upon termination.

In termination, the contracting parties return to their status prior to contracting from the date of contract creation in immediate contracts (e.g., sale), unlike time-bound contracts (e.g., rent and labor) which resist retroactivity. The phrase "putting an end to the contract" implies termination before its term, not its natural conclusion. This is evidenced by the definition's distinction between the effect of termination on the remainder of the contract versus what was completed prior. Another definition states termination is: "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". This is mentioned in the context of concession contracts, although termination applies to all 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".

Section Two: The Legal Nature and Conditions of Mandatory Termination of Administrative Contracts for Cheating

Subsection One: The Legal Nature of Mandatory Termination for Cheating

The GTPL mandated government entities to terminate the contract obligatorily if it becomes evident that the contractor obtained the contract through cheating (Ghash) or practiced it during its execution. The Saudi legislator explicitly stipulated in the GTPL that: "The government entity must terminate the contract in the following cases: a- If it becomes evident that the contractor has... obtained the contract through... cheating or practiced any of that during the execution of the contract".

This text is explicit regarding the mandatory penal termination if it becomes evident (tabayyana) - and not necessarily if it is proven (thubita). This means the entity terminates the contract merely upon its realization, even if it has not been proven before the judicial authorities. This is a right for the entity, and conversely, if the contractor is later proven not guilty, they have the right to claim compensation from the government entity. Waiting for administrative proof would practically harm the public utility and its interest, as the accused contractor might complete the project before their trial concludes.

This is a case of termination related to the person of the contractor, specifically concerning the contractor's personal actions that mandate contract termination, particularly regarding the loss of moral suitability for dealing. Examples of cheating include:

- The contractor's manipulation of the supplied goods or the use of substandard materials in executing the agreed-upon project.
- Bribery of an Administration employee (by themselves or through others) to facilitate acceptance of non-compliant specifications, thereby harming the public interest.
- The contractor abandoning the contract after its conclusion and assigning it to another person who is prohibited from entering the tender that was awarded to the contractor (considered cheating and manipulation).
- The contractor refusing to pay their workers' wages, leading to repeated strikes, which reveals bad intent and deliberate delay in fulfilling rights.
- The contractor's failure to comply with administrative orders concerning the work contracted upon, and deliberately leaving the work site, which indicates a desire to circumvent execution and engage in manipulation.

This is considered a case of mandatory termination. The Saudi legislator emphasized that as soon as the entity becomes aware of the contractor's practices mentioned in Article 76 (1/a), the contract must be terminated by force of law. Termination does not require prior notification to the contractor. The government entity's decision to terminate is merely declaratory of a statutory text.

Consequently, termination occurs in this case by force of law without the Administration having any discretionary authority in choosing whether to terminate or complete the contract. Instead, the Administration is obligated to terminate the administrative contract once it becomes evident that the contractor engaged in cheating, which signifies that its termination authority here is a bound (restricted)

authority. Furthermore, termination is considered a privilege of direct execution.

The administrative entity has the power 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. This is notwithstanding that some require obtaining a judicial ruling for the revocation of concession contracts due to their importance in operating a vital public utility.

Subsection Two: Conditions for Mandatory Termination of Administrative Contracts for Cheating

As previously stated, the legal nature of the administration's authority to terminate the administrative contract for cheating is a bound authority. The conditions for the Administration's exercise of this authority are:

Condition One: Issuance of the Termination Decision by a Statutorily Competent Authority The GTPL Implementing Regulations 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". The person with authority is the head of the government entity, who may delegate this.

Condition Two: Occurrence of the Case (Obtaining the Contract through Cheating or Practicing it During Execution) The administration's authority to terminate the contract requires the occurrence of a fault on the part of the contractor. The contractor's fault leading to administrative contract termination under the administrative entity's authority includes this case where the government entity must terminate the contract: If it becomes evident that the contractor obtained the contract through cheating, or practiced it during its execution. It is imperative that there be no error in facts or law. The Administration cannot rely on facts that did not truly exist, nor can it issue a decision based on incorrect legal elements or violations of the law.

CONCLUSION:

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. The Saudi legislator stipulated in the GTPL the mandatory termination of the administrative contract if it becomes evident to the government entity that the contractor obtained the contract through cheating or practiced it during its execution, even if not proven before the judicial authorities, a measure deemed preferable.
3. The legal nature of the administration's authority regarding the mandatory termination of the administrative contract for cheating is considered a bound (restricted) authority

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 issuance.

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