



State Contracts

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A contract is an agreement between two parties to create a legal effect; it is the only legal means available for individuals to satisfy their needs.

The State participates with individuals in satisfying all its needs and administering the public utilities through the contracts which the State enters into. However, the State sometimes uses administrative decisions to satisfy its needs and administer the public utilities.

Contracts concluded by the State in respect of the administrative decisions as a means for administering the utilities and meeting its needs are of a consensual nature; the definition of State contracts does not deviate from that of the contract, which is quoted at the beginning of this article. State contracts are crucial since they are the means through which comprehensive development and evolution can take place. Such development and evolution shift the State to an advanced stage through infrastructures that act as organizational structures to give an impetus to economic and social life. This is the case with several contracts whose implementation results in changing the geographical features inside the State through the constructions and developmental projects;

contracts concluded by the State are not limited in nature.

Two Types of Contracts

It is worth mentioning that the State contracts are not only one type of contract; the State enters into two types of contract: State private contracts and State administrative contracts.

As for State private contracts, they are a category of contracts concluded by the State in the same way as individuals conclude them. They are objectively subject to the system of the Civil Code. The ordinary judiciary has the exclusive jurisdiction to settle any disputes between the parties to the contract, without the State having any privilege or advantage over individuals.

On the other hand, State administrative contracts are contracts in the full sense of the word "contracts" and their effects. However, they are, objectively speaking, subject to the provisions of the Administrative Law in their narrower sense as a general rule. The administrative judiciary has exclusive jurisdiction to settle the disputes between the parties to the contract. The State does not stand on equal footing with the other contracting party; instead,

the State has the powers a public authority has.

Differentiation between Two Types of Contract

For these essential differences, objectively and procedurally, between both types of contract, case law sets the criterion based on which State administrative contracts are differentiated from the State private contracts. It is established under case law that an administrative contract is:

"A contract concluded by a public legal person for administering or regulating a public utility. Administration intent evidently appears in abiding by the provisions of the general law, where the contract includes exceptional provision(s) not commonly stipulated in a special law."

This includes, for example and without limitation, the Supreme Constitutional Court ruling passed in Cassation No. (7) of 1st Judicial Year dated 191980/01/ -Part 1, Page 244.

This also includes the Supreme Constitutional Court ruling passed in Cassation No. 7 of 12th Judicial Year, hearing dated 071992/03/, Part 1, Page 450; Supreme Administrative Court

ruling in Cassation No. 27402 of 55th Judicial Year, Third Division, hearing dated 242015/03/, Set of Legal Principles prescribed by Supreme Administrative Court in the Year (Technical Office), Part One, Page 730.

Based on the preceding points, it was established under case law that the criterion differentiating State administrative contracts from State civil contracts is that a State administrative contract meets three conditions.

First Condition: Administration shall be a party to the contract.

This condition is intuitive since the rules of Administrative Law and the Administrative Judiciary System were created to govern the administration's activity. A contract may be administrative, but its parties are private persons when either party enters into the contract in favor and for the account of the administration.

Second Condition: The contract must be connected with the activity of a public utility.

This condition is of overriding importance since the importance of public utilities, and their vital role in meeting the needs of citizens confirms the privileges the administrative authorities have against the other contracting party.

It is enough for a contract to be connected with the public utility, whether for organizing, exploiting or assisting in the administration of the utility by supply and services.

Third Condition: The contract shall include exceptional conditions.

A contract that includes exceptional conditions, or unfamiliar conditions, as termed by jurisprudence scholars and previous rulings, discloses the intent of the parties to the contract to follow the public law. This denotes that the concluded contract is an administrative contract in nature. Though the judiciary in all its rulings and jurisprudence in its entirety necessarily require this condition, there is no consensus on a specific definition of exceptional conditions. It can be said that such conditions are derived with view to the contract provisions in the aggregate. We can give some examples of exceptional conditions for clarification.

* A contract must include giving advantages to the party contracting with the administration, being a private person, against third parties. Such advantages constitute the powers the administrative body has against third parties, such as the authority of compulsory appropriation of movables owned by third parties.

* The contract must include the authority to amend some provisions of the contract at the sole discretion of the administrative body without referring to the other contracting party.

* The contract must include the authority to terminate the contract prior to the date agreed upon for the end of the contract term.

* The contract must include the authority an administrative body has to apply the penalties to the other contracting party directly without referring to the judicial authority.

Most Significant Forms of Contracts concluded by the State:

There are numerous forms of contracts the State concludes, including, most importantly, the following:

Obligation Contract:

The obligation contract of a public utility is prominent among the different types of administrative contracts. Meanwhile, it is one of the methods of managing the public utilities. Under this contract, the administration entrusts the obligee, whether an individual or a company, to manage a public economic utility and exploit it at such obligee's risk against fees received by the obligee from the beneficiaries. The obligee is subject to the main rules regulating the administration of public utilities as well as to the conditions the administration prescribes in the obligation contract.

This type of contract is distinctive because it is of a compound nature since it contains two types of conditions. Regulatory conditions by which the contracting party abides to achieve the public interest and the interest of the beneficiaries receiving the services of the utility managed by a franchise. Under these conditions, the administration assumes control of the utility

subject of the franchise contract.

The second type of condition is the contractual conditions that cause the franchiser to bear contractual obligations that are similar in nature to any contractual bond.

BOT Contract

The Industrial Manual issued the United Nations Industrial Development Organization (UNID) defines a BOT Contract as follows: "A contractual regulation whereby one of the private sector persons constructs one of the key utilities in the State, including the design and finance process, operation and maintenance of such utility. This private-sector person manages and operates the utility and collects the service charges from the beneficiaries who use this utility along with any other fees, provided that such charges and fees must not exceed the amount proposed in the bid. Charges and fees may not exceed what is stated in the content of the project agreement to enable the private sector person to recover the funds invested and operation and maintenance charges as well as yield a proper return on investment. At the end of the specified term, the private sector person is committed to return the utility to the government or to any new private sector person through public tender."

Public Works Contract

Administrative Judiciary Court in Egypt defines public works contract as follows: "A contracting agreement between a public legal person and an individual or company whereby the contractor undertakes to carry out building, demolition,

excavation, restoration, repair or maintenance works in a real estate property for the interest of the public legal person and to achieve a public interest in consideration for a price determined by such contractor in the contract." (Set of Legal Principles approved by Administrative Judiciary Court, 11th Year, Page 104.)

Supply Contract:

Administrative Judiciary Court in Egypt defines the supply contract as follows:

"an agreement between a public legal person and an individual or company whereby such individual

or company undertakes to supply certain articles to the public legal person as necessary for a public utility in consideration for a certain price."

Set of State Council Orders, Seventh Year, First Volume, Page 76.

Public-Private Partnership Contracts:

According to the World Bank, a public-private partnership contract is "a long-term contract between a private person and a government agency to provide public assets or services, whereby the private person is considerably responsible for risks and management. Also, partnership refers to the arrangements, always in the medium to long term, between the public and private sectors whereby some services are provided, which are within the responsibilities of the public sector, by the private sector, with a clear agreement on the common objectives for providing the public services."

Services Contracts

It is a type of contract concluded by the State to receive services from a natural person or a legal person without having any functional relationship.

Such services could be material services such as cleaning, beautification or guarding services.

They could be consulting services, such as financial, legal, engineering or medical services.

Privacy of State Contracts:

Contracts concluded by the State are undoubtedly significant due to their value and importance in terms of the subject matter of the contract or the financial value of the contract. Several contracts concluded by the State exceed billions in their financial value. This high financial value is a binding motive for all the states, including Egypt, to surround the governmental contracts system with governing rules that guarantee transparency, free competition, equality and equal opportunities. It determines methods for concluding such contracts and dedicates such amount of attention during all stages, starting from the pre-contract procedures, followed by the offering and contract conclusion stages, and ending with the implementation.

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Ethics and Skills of Leadership

