

**FINANCIAL GUARANTEES TO PROTECT THE ADMINISTRATION  
FROM CONTRACT IMPLEMENTATION DEFECTS  
IN ARAB LEGISLATION**

**PÉNZÜGYI GARANCIÁK AZ ADMINISZTRÁCIÓ VÉDELME  
A SZERZŐDÉS VÉGREHAJTÁSÁNAK HIBÁIVAL SZEMBEN  
AZ ARAB TÖRVÉNYHOZÁSBAN**

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Public works contracts occupy a prominent place in the scope of administrative contracts, as they play an effective role in advancing the national economy of Arab countries and completing projects with high quality and at the lowest possible cost. The public needs huge funds that enter the state's general budget. There had to be guarantees to ensure its proper implementation, and financial guarantees constituted the most important mechanisms introduced by Arab legislation, which protect the administration from the risks that it may incur as a result of poor implementation of the works, and provide a wide degree of protection, for public money.

**Keywords:** *guarantees, good execution, public works contract*

Az építési beruházási szerződések kiemelt helyet foglalnak el az adminisztratív szerződések között, mivel hatékony szerepük van az arab országok nemzetgazdaságának erősítésében, valamint a projektek minőségi és minél alacsonyabb költségű megvalósításában. A társadalomnak hatalmas pénzügyi forrásokra van szüksége, amelyek az állam általános költségvetésében szerepelnek. A befektetések megfelelő végrehajtásához garanciákat kell nyújtani, a pénzügyi garanciák pedig az arab törvények által kidolgozott legfontosabb mechanizmusok közé tartoznak, amelyek megvédik az adminisztratív műveleteket a munka nem megfelelő végrehajtásából eredő kockázatoktól, és széles körű védelmet nyújtanak a közpénzeknek.

**Kulcsszavak:** *garancia, jó kivitelezés, építési beruházás*

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## **Introduction**

The administration's use of the efforts and capabilities of private companies to achieve the public interest led to the necessity of selecting its contractor according to a set of principles and standards that ensure the selection of the most appropriate contractor, due to the importance of public works and the possibility of them being exposed to multiple financial or technical risks resulting from the contractor's pursuit of achieving more profit in the work carried out and neglect of construction work, which results in many technical problems related to the collapse of the building or the appearance of defects that threaten its safety, which causes damage to the public facility and leads to wasting public funds, which prompted the legislator in Arab countries to impose some obligations on contractors with the administration, in order to guarantee its rights and protect its interests, and thus the importance of the role of financial guarantees appears in protecting the interests of the administration, preserving public funds from waste and loss, enhancing the contractor's responsibility for the works he undertakes, and encouraging him to exercise the necessary care to ensure that the implementation conforms to the terms and specifications of the contract. As a result of public works contracts being linked to the public treasury of the state, it is necessary to protect the interests of the administration, put pressure on the contracting party, and force him to implement his obligations within the agreed-upon periods, and by the conditions and specifications specified in the contract, and here the problem of research appears related to determining the financial guarantees that guarantee the proper implementation of the public works. and examined the effectiveness and adequacy of the guarantees imposed by Arab legislation on public works contractors, in protecting the interests of the contracting administration and preserving public funds from wastage.

The research aims to shed light on the most important financial guarantees imposed by Syrian and Egyptian legislators to guarantee the proper implementation of public works, define their role in protecting and preserving the administration's interests, and demonstrate the extent of their effectiveness and adequacy in achieving their purpose.

The various Arab legislations imposed on the public works contractor an obligation to pay the mandatory insurance, according to the specified percentages, in the stage preceding the contract, as these insurances are among the basic documents and the essential conditions that the administration works to include in the tender documents, and the failure to deposit a security deposit has important legal implications. The legislator also made it a means of putting pressure on the contractor to push him to implement his obligations by the agreed-upon specifications, in a way that guarantees administration rights. Insurance has been defined as: "a sum of money deposited with the contracting administrative authority, to protect against the effects of errors committed by the contractor during the implementation of the administrative con-

tract, and to guarantee its ability to face the responsibilities resulting from his negligence.”<sup>1</sup> Insurance at this stage is of two types: initial (temporary) and final.

### 1. Primary insurance and their legal implications

Initial insurance is considered one of the basic requirements required by various legislations, which express the seriousness of the bidder to participate in the tender, in addition to ensuring its financial solvency and ability to implement it. It has been defined with several definitions, as some have defined it as: “a value included by the bidder in his offer and he allocates it for the benefit of the administration to guarantee the seriousness of the bidder, and to support his proper implementation of the obligations resulting from his submission of this offer, which is based on his unilateral will.”<sup>2</sup> Others have defined it as: “a guarantee to maintain the bid throughout the specified period, and to pay part of the final deposit when the bid is awarded, which shall be confiscated as soon as the applicant withdraws before the end of the bidding period, or if he fails to deposit the final security deposit and the administration chooses to cancel the tender due to the last defect or refer it to the second applicant.”<sup>3</sup> It has also been defined as: “an amount of money deposited with the administrative body to protect against the effects of errors committed by the bidder when he withdraws or abandons the tender or bid, and to ensure the seriousness of his contribution and the soundness of his intention.”<sup>4</sup>

Under Syrian legislation, temporary insurances are determined in Syrian pounds for each tender, request for offers, or mutually agreed contract in the book of special conditions and the announcement at a rate of 5% of the estimated value of the contract, or a specific amount in the absence of an estimated statement<sup>5</sup>. While the Egyptian legislator has determined the amount of insurance in the process of concluding business contracts and receiving services at any value commensurate with the nature and size of the transaction, provided that its maximum limit does not exceed 1.5% of the estimated value<sup>6</sup>. It is noted that there is an exaggeration in the amount of insurance imposed on the contractor in Syrian legislation compared to the insurance imposed by the Egyptian legislator, and perhaps the purpose that the

<sup>1</sup> Mahmoud Khalaf AL-JUBOURI: *Administrative Contracts*. 1st edition. Dar Al-Thaqafa for Publishing and Distribution, Amman-Jordan, 2010, 144.

<sup>2</sup> Muhannad NOAH: *Offer and Acceptance in the Administrative Contract*. PhD thesis, Faculty of Law, Ain Shams University, Egypt, 2001, 425. Look also: Muhammad AL-AMOURI: *Administrative Contracts*. Syrian Virtual University Publications, Syria, 2018, 58.

<sup>3</sup> Muhammad Fouad ABDEL BASSET: *Acts of Administrative Authority*. 1st edition. Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 1989, 428.

<sup>4</sup> Sadiq AL-HUSSEINI – Imad SHATI: Financial penalties resulting from negligence in government tenders and auctions, *Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences* Volume 13, Issue 4, Iraq, 2021, 1703–1734.

<sup>5</sup> Art 46 of the Syrian Contract Law 51 of 2004.

<sup>6</sup> Art 30 of the Executive Regulations of the Egyptian Contracting Regulatory Law 182 of 2018.

Egyptian legislator wanted from this is to provide the opportunity for the largest number of people working in the type of activity to participate in the process under contract, and from our point of view we support that the insurances be to a sufficient extent and without exaggeration in its imposition ensure that the administration collects its rights from the contractor if he violates any of the terms of the contract, and to constitute an incentive for the contractor to be more serious and keen to implement the contract for fear of confiscating these insurances.

As for how to pay temporary insurance, the Syrian legislator has specified several means through which the insurance amount can be paid. This is either in cash, in her bank account, a guarantee, a bank transfer, or a certified check from resident banks accredited by the competent public authorities in the Syrian Arab Republic<sup>7</sup>. While we find that the Egyptian legislator permitted the payment of the insurance amount via electronic payment, or under a letter of guarantee, it also permitted the bidder to request payment of the temporary insurance, or part of it, as a deduction from his dues for other operations in the same administrative body, or other administrative bodies that The provisions of the law apply to it, and it is required that it be valid for disbursement on the date of the technical envelope opening session<sup>8</sup>.

Based on the importance of the initial deposits in achieving the public interest, as they constitute a guarantee for the administration to ensure that the bidder is serious about participating in the tender, failure to deposit them, or the contractor's withdrawal from the contract after the tender has been awarded to him, will have important legal consequences, which are as follows:

1. Failure to deposit the initial deposits results in the invalidation of the contracting procedures, as it is considered one of the essential conditions required by the legislator to participate in the tender. The Syrian legislator obligated those who wish to participate in the tender to submit the required temporary deposits within the period specified for submitting offers, at the risk of rejection of the offer that was made, organizing and submitting it is in violation of the provisions of the law<sup>9</sup>. The Egyptian legislator has stipulated the exclusion of the bid submitted without payment of the temporary insurance value.<sup>10</sup>

Thus, the Supreme Administrative Court in Egypt ruled (and since what is established in the incident before it is that the bid to which the tender was awarded by the decision committee was submitted by a private institution and was not accompanied by a temporary insurance, and this violation was not remedied by paying the final insurance in full, which is a condition for consideration of the matter. This bid, and despite that, the decision committee considered this bid and did not ex-

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<sup>7</sup> Art 46 of the Syrian Contract Law 51 of 2004.

<sup>8</sup> Art 31 of the Executive Regulations of the Amended Egyptian Enterprise Regulatory Law of 2020.

<sup>9</sup> Art 13 and 18 of the Syrian Contract Law 51 of 2004.

<sup>10</sup> Art 56 and 81 of the executive regulations of the Egyptian Contracting Regulatory Law issued by Resolution 296 of 2019.

clude it, but rather awarded the bidding to it. In this regard, it is considered a violation of the explicit ruling mentioned by the legislator.).<sup>11</sup>

From the above, we conclude that it is necessary to pay the temporary insurance value in full when submitting the bid, with the possibility of completing it before starting to open the envelopes, under penalty of exclusion of the bid submitted in violation of what the law requires, in order to ensure the seriousness of the candidate to participate in the bid and to achieve the principle of equality between competitors.

2. Confiscation of the initial deposits is defined as a penalty imposed on a bidder who violates his obligations in terms of his commitment to his bid until the end of the tender procedures and the issuance of the award decision. It is a penalty that includes a prior agreement on compensation. Therefore, if the administration has the right to compensation for damages that occur as a result of the tenderer's or bidder's violation, it has the right to directly confiscate the initial insurance, whether or not stipulated in the terms of the tender or auction. The insurance represents the minimum. Of compensation, which is the purpose for which it was stipulated to be deposited. Considering that failure to complete contracting procedures would obstruct the functioning of the public facility, by a decision issued by the unilateral will of the administration without the need to resort to the judiciary, and the administration's authority in this regard is restricted, so it does not have the right to exempt the objecting contractor from this penalty.<sup>12</sup>

Therefore, the initial insurance is considered among the financial guarantees in administrative contracts that the legislator stipulated as a guarantee that the administration will be able to confiscate them in its favor if the bidder breaches his obligations, especially about remaining on his bid until the expiration of its term, or the issuance of the award decision and then providing the final insurance.

## 2. Final insurances and their legal implications

The final insurance represents a guarantee for the administration party that insures it against the risks that may come from the contractor party when starting to implement the contract<sup>13</sup>. The administration may not ignore insurance out of concern for the interest of the public facility and its regular functioning. If the contractor fails to fulfill its obligations to the administration, it may confiscate the insurance. Regardless of the damages that may be incurred as a result of non-implementation<sup>14</sup>.

<sup>11</sup> Decision of the Egyptian Supreme Administrative Court, No. 3174, session 3/31/1990, *Administrative Encyclopedia* Vol. 5, 309.

<sup>12</sup> Sadiq AL-HUSSEINI – Imad SHATI: Financial penalties resulting from negligence in government tenders and auctions. *Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences* Volume 13, Issue 4, Iraq, 2021, 1703–1734.

<sup>13</sup> Azhar HASSAN: *Financial procedures ensuring proper implementation of public tender contracts*. Master's thesis. Faculty of Law, Al-Nahrain University, Iraq, 2016, 86.

<sup>14</sup> Muhammad Sabar AL-MASHHADANI: *The administration's authority to impose non-financial penalties in the administrative contract*. Master's thesis. Faculty of Law, Al-Isra University, Jordan, 2014, 19.

It has been defined as: “an amount of money paid by the bidder after being referred to him and before concluding the contract with the administration to ensure the proper implementation of his obligations.”<sup>15</sup> Another opinion defined it as: “A guarantee from the administration that protects it from errors that may occur from the contractor during the implementation of the contract. This guarantee will not be real unless the administration has the right to confiscate the insurance, that is, to claim its value through direct implementation without the need to resort to the judiciary.”<sup>16</sup>

Under Syrian legislation, the final insurance for each bid, request for proposals, or contract is determined by agreement in the book of special conditions, and the announcement is 10% of the contract value. Insurance is paid in cash, under guarantee, or in any other way determined by law, and is presented in Syrian currency. The consideration is calculated according to the percentage determined by the administration, and all final insurance will be returned after the temporary receipt if the contractor does not fulfill any obligations that require reserving this insurance. The nominated contractor must submit the value of the final insurance within thirty days from the date of his written notification of the undertaking of referral to him<sup>17</sup>. As for the Egyptian legislator, it has set the final insurance rate at 5% of the contract value<sup>18</sup> and obligated the winning bidder to pay the final insurance value within the specified period. If he does not comply with this, the contracting department will prepare a memorandum to present to the competent authority proposing to grant him an additional period not to exceed 10 working days, so that the final insurance constitutes a guarantee for the implementation of the contract, and is kept until the contract is finally implemented, including the guarantee period by the conditions.<sup>19</sup>

As is the case with primary insurances, we note that the Syrian legislator has set the value of final insurances at a higher rate compared to Egyptian legislation, in order to guarantee the contracting administration from any damage that may befall it as a result of the contractor's poor implementation of its obligations. The point is not the existence of insurance as much as the extent of its ability to cover the losses that it may be exposed to administration during contract implementation. It is worth mentioning that if the administration's interest assumes the provision of high insurance, the contractor's interest contradicts this administrative interest, because providing high-value insurance will lead to the freezing of an important portion of the money approved for the operation, which prompts the contractor to reverse the economic consequences of this freeze on implementation, as Exaggeration in the

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<sup>15</sup> Ahmed Mahmoud JUMAA: *Administrative Contracts*. 2nd edition. Mansha'at Al Maaref, Alexandria, 2013, 409.

<sup>16</sup> Majed Ragheb AL-HELOU: *Administrative Contracts*. 1st edition. Aldar Aljameaa, Alexandria, 2007, 83.

<sup>17</sup> Art 46 and 48 of the Syrian Contract Law 51 of 2004.

<sup>18</sup> Art 40 Egyptian Contracts Regulatory Law 182 of 2018.

<sup>19</sup> Art 80,81 and 82 of the Executive Regulations of the Egyptian Contracting Regulatory Law 296 of 2019.

amount of insurance sometimes leads to the reluctance of projects and small companies to enter into the contractual process, which reflects negatively on the required level of competition on the one hand, and leads to granting large projects indirect preferences that constitute a violation of the principle of free competition on the other hand.

*In this context, the question arises as to whether the administration can reduce the insurance rate or exempt from it?*

Legislation differs as to whether or not to be exempt from paying final insurance. We find that the Egyptian legislator did not stipulate in the law regulating contracts nor in its executive regulations the cases in which it is permissible to be exempted from paying final insurance. Rather, it was limited to mentioning a case in which it was permissible to exempt from paying final insurance, which is the accepted bidder must supply all the items that he was awarded and which were finally accepted by the administrative authority within the period specified for depositing the final security deposit, if these items do not have a warranty period.<sup>20</sup>

As for Syrian law, we can determine the cases of exemption from paying final insurance as follows:

1. Public institutions, public companies, and public establishments affiliated with them are exempted from providing guarantees and guarantees to public administrations, institutions, municipalities, and all public bodies, companies, and public establishments affiliated with the public sector, with regard to the tenders in which they participate, the contracts they conduct, or the amendments they implement.<sup>21</sup>

2. Companies are exempted from providing financial guarantees and guarantees required by departments, bodies, institutions, public companies, municipalities, and all public sector entities, with regard to tenders conducted by the aforementioned entities, or pledges implemented by companies.<sup>22</sup>

3. The disbursement commander may exempt from paying temporary and final deposits in special cases whose nature requires this, and this is also permissible subject to prior approval from the competent minister.<sup>23</sup>

4. The disbursement officer may reduce the temporary and final deposits provided that he mentions this in the book of conditions and the announcement.<sup>24</sup>

We believe that it would have been better for the Syrian legislator to limit the cases in which it is permissible to be exempt from paying final insurance, in order

<sup>20</sup> Art 40 Egyptian Contracting Regulatory Law 182 of 2018.

<sup>21</sup> Art 45 of Syrian Law No. 2 of 2005 regarding companies, institutions and public establishments.

<sup>22</sup> Art (21) of the Law of the Supreme Council of Public Construction Companies in Syria No. (1) of 1976.

<sup>23</sup> Art (46) of Syrian Law No. (51) of 2004.

<sup>24</sup> Art 46 of the Syrian Contract Law. 51 of 2004.

to confirm the principle of equality between competitors and to guarantee the rights of the contracting administration.

Final insurance is kept with the administration to ensure that the contracting party implements the contract by the agreed-upon terms and specifications. Violating the terms of the contract will lead to the administration confiscating these insurances. The completion of the work by the contractor does not make the administration obligated to return the final insurance, as it has the right to retain it until the final delivery is completed and the warranty period expires.<sup>25</sup> The guarantee here means the period during which the work carried out by the contractor is examined, and is usually specified as one year starting from the date of temporary receipt. Upon completion of the final delivery, the administration becomes obligated to return the final insurance, and if it refrains from doing so without a legitimate reason, this imposes its contractual responsibility towards the contractor because this conflicts with the principle of good faith that must be available in the field of contract implementation<sup>26</sup>. In the event of a delay by the administration in returning the final insurance, the contractor has the right to claim the legal benefits resulting from this delay.<sup>27</sup>

Thus, we see that the final insurance has a set of distinctive characteristics, as it is considered a guarantee and guarantee at the same time for the administration to carry out the works with the required accuracy, and considering that the goal of the administration contract is to achieve the public interest, various legislations have required the performance of final insurances, to avoid wasting time, effort and the money spent to complete the works.

The contractor's failure to implement his contractual obligations will result in the forfeiture of the final insurance. This confiscation constitutes a natural and legal consequence of the contractor's failure to implement its obligations<sup>28</sup>. Confiscation of insurance means the administration's seizure of the insurance amount deposited by the contractor in favor of the administration upon concluding the contract with it, to ensure its financial solvency to face liability in the event of a breach of the terms of the contract. Confiscation of insurance is considered one of the terms of administrative contracts that is agreed upon with the contractor as a penalty for breaching his contractual obligations<sup>29</sup>. However, it differs from the penal clause in private law contracts in that the administration imposes it of its own free will with-

<sup>25</sup> Hanin GHANEM: *Administration Authority in Oversight of the Implementation of a Public Works Contract*. Master's Thesis. University of Damascus, Faculty of Law, Department of Public Law, Syria, 2021, 143.

<sup>26</sup> Abdel Aziz KHALIFA: *Administration's responsibility for its legal actions – administrative decisions and contracts*. National Center for Legal Publications, Cairo, 2008, 105.

<sup>27</sup> Maryam AAHMED: *The authority of the administration to impose penalties on its contracting party*. Master's thesis. Faculty of Law, Mansoura University, Egypt, 2008, 130.

<sup>28</sup> Nasri Mansour NABULS: *Administrative Contracts*. 1st edition. Al-Zein Law Publications, Beirut, 2010, 213.

<sup>29</sup> Fatiha MOUSSAO – Badra KHADAWI: *Judicial oversight of financial penalties in administrative contracts*. Master's thesis. Saida University, Faculty of Law, Algeria, 2021, 40.



out the need for a judicial ruling and without causing harm. Confiscation of insurance differs from a late fine, as the former may be combined with compensation to compensate for all damages sustained by the administration unless the contract expressly stipulates otherwise. This is because the insurance amount does not represent the maximum, but rather the minimum amount of compensation due to the administration in the event of a breach of the terms of the contract.<sup>30</sup>

The administration also has the right to confiscate the insurance if the contractor does not implement his contractual obligations, whether the contract stipulates this right or not. The administration has discretionary authority to impose a penalty of confiscation of the final insurance upon the contractor's breach of his contractual obligations<sup>31</sup>. However, this authority is not absolute and is subject to the supervision of the contract judge, who can rule to refund, exempt, or reduce the insurance.<sup>32</sup>

From the above, we find that the initial and final insurances constitute a type of protection for the benefit of the contracting administration, and this guarantee is characterized by flexibility and ease of collection, so it does not require resorting to the judiciary and its complex procedures. However, it is not sufficient on its own to achieve the purpose of imposing it, as various legislations have created other guarantees that continue even after the Delivery of the works, and this is what we will discuss in the following.

### 3. Maintenance guarantee

Completing the work and handing it over to administration does not relieve the contractor from responsibility for errors that may appear during their normal use. Rather, various legislations have emphasized limiting his responsibility for these errors, for a specific period starting from the date of temporary delivery of the works, and it is called the maintenance guarantee. Although the maintenance guarantee is not decided until after the delivery process, this guarantee should be considered as an extension of the contractual responsibility to ensure that the work is completed to the specifications agreed in the contract.<sup>33</sup> The maintenance guarantee can be defined as a legal obligation that falls on the contractor contracting with the administration, under which he undertakes to maintain and repair any defects and errors that appear after the completion and delivery of the works, at his expense and within the period specified for him.

<sup>30</sup> Abdullah TOLBA: *Principles of Administrative Law*. 5th edition. Damascus University Publications, Damascus, 2004, 335.

<sup>31</sup> Suleiman AL-TAMAWI: *General Foundations of Administrative Contracts*. 5th edition. Dar Al-Fikr Al-Arabi, Cairo, 1991, 508.

<sup>32</sup> Manar MERHEJ: Confiscation of final deposits within the scope of contract implementation. *Al-Baath University Journal* Volume 43, Issue 27, Syria, 2021, 39–77.

<sup>33</sup> Aida MUSTAFAOUI: The ten-year guarantee and special guarantees for building builders in Algerian and comparative legislation. *Journal of Policy and Law Notebooks* Volume 4, Issue 6, Algeria, 2012, 259–280.

The warranty period is set in Syrian legislation at one year, starting from the date of temporary receipt, as the contractor remains responsible to the administration throughout this period for every new defect or deficiency that may appear in the completed work, and accordingly, it must also spend on everything necessary for repair. These new defects and deficiencies, and the maintenance of the project at its expense, regardless of its value, but this maintenance responsibility does not include repairing the damages that may arise as a result of the public entity's misuse of the work completed during that period.<sup>34</sup> As for the Egyptian legislator, it has included a maintenance guarantee under the name of proper and perfect execution of the works, whereby the contractor guarantees the works that are the subject of the contract and their perfect execution for one year from the date of temporary delivery, without prejudice to the warranty period stipulated in the Civil Code or any other law. The contractor is responsible for keeping all works intact during the warranty period by the terms of the contract. If any defect or defect appears in them, he will repair it at his expense. If he fails to do so, the administrative authority may carry it out at his expense and under his responsibility<sup>35</sup>.

By extrapolating the previous legal texts, we notice that both Syrian and Egyptian legislation make the contractor responsible for every defect that appears to the administration during the warranty period, which was set at one year starting from the date of temporary receipt. If the contractor refuses or neglects to repair any defects that appear, the administration has no control over it. It has the right to do so at his expense and responsibility.

*The question that arises here is whether the administration can increase the warranty period to more than one year?*

We can say in this regard: If the contract includes a text specifying the warranty period for more than one year, the contracting parties must implement it without exaggeration in specifying this period. However, if the contract neglects to mention this period, the legal text that specifies this period to one year must be implemented to avoid defects that may occur. It appears after temporary receipt and the administration did not notice it.<sup>36</sup>

From our point of view, we see the need for the legislator to intervene to increase the minimum guarantee period, especially for works of a special technical nature and complex works, to protect public money from wastage and loss as a result of the defective implementation of the works, so that the guarantee period becomes proportional to the quality of the executed works and their technical nature. On the other hand, this procedure ensures that the administration will not be negligent when determining the warranty period by a special provision in the con-

<sup>34</sup> Art 30 of Syrian Legislative Decree 450 of 2004 containing the book of general conditions.

<sup>35</sup> Art 119 of the Executive Regulations of the Egyptian Contracting Regulatory Law 182 of 2018.

<sup>36</sup> Adnan Al-DULAIMI: *The legal system to ensure good performance in public works contracts*. Master's thesis. Al-Bayt University, College of Law, Jordan, 2017, 44.

tract. After the end of the warranty period, the final delivery of the project takes place. If it appears as a result that the works have been completed by the agreed-upon terms and specifications, and are free of defects, the contractor is considered to have fulfilled his contractual obligations. However, if defects appear after the final delivery of the works that were not apparent during the previous warranty period, in this regard, we must distinguish between two cases:<sup>37</sup> The first case: If the defects that appeared in the executed works are due to the contractor's negligence, then he is obligated to repair them within the period specified by the contracting administrative authority, under penalty of repairing them at his expense and responsibility. In this case, he must be notified of the necessity of repair before commencing implementation at his expense. The second case: If the defects were due to a reason beyond the contractor's control, such as when he delivered the works in a final and correct manner, and then the administration neglected to maintain them, or misused them, then the contractor has no scope of responsibility in this case, but rather the administration is obligated to repair them at its expense and responsibility.

Thus, we see that the final delivery of the project takes place after the end of the warranty period, and after ensuring that the contractor has fulfilled all his obligations and that the work has been implemented by the conditions and specifications required in the contract. However, if it becomes clear from the inspection that the contractor has not fulfilled some of his obligations, the final delivery shall be postponed until the contractor completes the work required of him.

According to Syrian legislation, materials, and works are received by special committees formed by the public authority, provided that the book of special conditions specifies the necessary guarantees to match the needs submitted to the conditions of temporary and final receipt, as well as the corresponding rights and obligations in these two stages. The Syrian legislator also stipulated that the final delivery committee be formed by an administrative order issued by the competent disbursement commander, provided that at least one technical member is among its members. The receiving committee reviews the project documents, the temporary delivery report, and the notes contained therein. The committee also inspects all the executed work and notes the defects that appeared during the warranty period that do not result from misuse. The committee then prepares the final delivery report and all members of the committee sign it. The contractor is given a copy of it<sup>38</sup>.

In Egypt, for the purpose of completing the final handover, it is necessary for the contractor to notify the administrative authority in writing that he is ready to hand over the project finally, in order to set a date for inspection, and that is at an appropriate time before the end of the warranty period. When it becomes clear that the works have been carried out in conformity with the specifications, they will be finally received according to a signed report from representatives of the administration, the contractor, or his authorized representative. If it appears from the inspec-

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<sup>37</sup> Art 39 of Syrian Legislative Decree 450 of 2004 containing the book of general conditions.

<sup>38</sup> Art 39 of Syrian Legislative Decree 450 of 2004 containing the book of general conditions.

tion that the contractor has not fulfilled some of his obligations, the final receipt shall be postponed until they are completed without prejudice to his responsibility in accordance with the provisions of the law. Upon completion of the final receipt, the contractor shall be paid his full entitlements.<sup>39</sup> The Egyptian legislator also required the administration party to receive the contracted property within the dates specified in the contract if it conforms to the specifications and conditions agreed upon in the contract. In the event that the contracting party fails to receive it, the contractor may submit a request to the competent authority to form a neutral committee to study the reasons for the failure. The competent authority is committed within 7 days from the date of its receipt. To request the formation of a specialized tripartite committee, the committee shall submit its report within a maximum period of time of thirty days from the date of its formation, unless the nature and size of the operation requires a period exceeding that. In order to perform its work, it may request any data or information and clarify what it deems appropriate from both parties to the contract, and its report shall be binding on both parties.<sup>40</sup>

By extrapolating the previous legal texts, we notice that the Syrian legislator did not set a date for conducting the necessary examination by the receiving committee after the contractor notified the employer of the completion of his completion of the work. It would have been better for him to follow the path of the Egyptian legislator in setting a date for conducting the examination after receiving the contractor's notification and not leaving the period open to administration in conducting the inspection because this may be a reason for the administration's laxity in receiving the work and thus delaying the completion of the work on the scheduled date.

#### 4. Ten-Year Guarantee

If the general rule in civil and administrative contracts stipulates that the contract ends with the completion of delivery without reservations, the legislator departed from this rule and ruled that the contractor's responsibility extends even after the end of the contractual relationship between the two parties for ten years<sup>41</sup>. Although the legal extension departs from the general principle, it constitutes an effective monitoring tool for defects that cannot be discovered during the implementation and delivery of works. What is meant by the delivery from which the ten-year guarantee stipulated by law begins is the final delivery of the works, that is, after the completion of the maintenance guarantee period. The temporary delivery does not mean the contracting party has final acceptance of the works, and accordingly, the ten-year guarantee period begins from the date of the final delivery of the project.

<sup>39</sup> Art 120 of the Executive Regulations of the Egyptian Contracting Regulatory Law 182 of 2018.

<sup>40</sup> Art 99 of the Executive Regulations of the Egyptian Contracting Regulatory Law 182 of 2018.

<sup>41</sup> Majahir Sayed Ahmed AL-HADI: *Legal Guarantees in Public Transactions*. Master's Thesis. Djilali Al-Yabis University, Algeria, 2021, 119

Whereas the expiration of the warranty period according to Syrian legislation does not affect the contractor's responsibility for every basic defect that appears in the facilities that affects their safety and is the result of the contractor's fraud or poor implementation, as he remains responsible for them within ten years from the completion of the works<sup>42</sup>. It is noted that the Egyptian legislator, in the executive regulations of the law regulating contracts, neglected to stipulate a ten-year guarantee, and contented himself with deciding to guarantee the proper performance of work to the fullest extent, without prejudice to the guarantee period stipulated in the Civil Code or any other law. By referring to the Egyptian Civil Code, we find that it guarantees The architect and the contractor are jointly liable for any total or partial demolition that occurs within ten years of the buildings they have built or other fixed facilities, even if the demolition results from a defect in the land itself, or the employer has permitted the construction of the defective facilities unless the contracting parties are in In this case, they wanted these facilities to remain for a period of fewer than ten years, and the warranty includes any defects found in the buildings and facilities that threaten the durability and safety of the building. The ten-year period begins from the time the work is received, and these provisions do not apply to any right of recourse that the contractor may have on subcontractors<sup>43</sup>. We find that the Syrian Civil Law has obligated the architect and contractor to guarantee together the damage or defects that appear in the buildings and fixed facilities that they have erected for the employer, due to the danger of demolition or cracking, whether to the employer or others<sup>44</sup>. We believe that the legislator's strictness in this guarantee is due to the necessity of pushing the engineer and contractor to exert all possible care in their work. The guarantee here is a special guarantee for ten years and the benefit of the employer and third parties. If a total or partial demolition occurs or a defect appears during that period, the employer has the right. The work shall be returned to the architect and contractor jointly.

However, the start date of the warranty varies depending on the thing guaranteed. In the design, the warranty remains valid from the beginning, while the warranty on buildings and constructions remains for a period of ten years starting from the time of delivery.<sup>45</sup> Also, this period is not subject to a statute of limitations, so interruption is not acceptable even if there is an impediment that prevents it from being fulfilled. The employer must demand his right, and for this reason, it is permissible to agree on a longer period, because what is prohibited is exemption or limitation of responsibility. Both the Syrian and Egyptian legislators also stipulated that the warranty claim be filed within three years starting from the time the demolition occurred or the defect was discovered, under penalty of being lapsed by the statute of limitations. The fulfillment of the warranty results in the administration being able to demand repair of the destroyed facilities or the matter may be limited

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<sup>42</sup> Art 39 of Syrian Legislative Decree 450 of 2004 containing the book of general conditions.

<sup>43</sup> Art 651 of the Egyptian Civil Code 131 of 1948.

<sup>44</sup> Art 617 of the Syrian Civil Code 84 of 1949.

<sup>45</sup> Art 651 of the Egyptian Civil Code also Art 617 of the Syrian Civil Code.

to claiming compensation for the damage caused. This is because the obligation of the engineer and contractor to guarantee defects in fixed installations is an obligation to achieve a goal and not an obligation to exercise care. It is not required that the administration body prove error on the part of the contractor, but rather the occurrence of damage is sufficient for his responsibility to be fulfilled. In this case, the contractor's responsibility is not negated except by Proving the absence of a causal relationship between the error and the damage.<sup>46</sup>

The idea of the guarantee is represented by the joint liability of the contractor and the engineer for damages that occur within ten years from the date of final delivery of the works, and the period applies whether the contractor carried out the work himself, or through the mediation of secondary contractors, as the original contractor is considered obligated to guarantee their work before the administration and they are only responsible before him. According to Syrian legislation, the contractor does not have the right to assign any work or part of it from the work for which the contract was concluded to achieve it, nor to entrust or obligate all or some of it to other persons as secondary contractors except with written approval from the public authority, and if the contractor obtains Such approval does not mean in any way obligating the public entity to enter into any relationship of any kind with the subcontractors, nor does the contractor be exempted from his technical, administrative, legal and penal obligations and responsibilities imposed on him towards the public entity under the provisions of the contract<sup>47</sup>.

Considering that the purpose of imposing this guarantee is to protect the public interest and preserve public money from loss, it is considered part of the public order and it is not permissible to agree to waive it or limit it, and any agreement to exclude it is considered invalid. This is considered an estimate by the legislator of the adequacy of the duration of testing the durability of construction and the suitability of proper implementation of all works.

Therefore, the ten-year guarantee is a control imposed by the law on the administration to verify and ensure the correctness of the implementation of the works after delivery, as this type of control aims to identify defects that the administration cannot discover during implementation or the receipt of the work, in addition to being a method of control over the materials and methods used in implementation, it represents a test of the adequacy of the works and the absence of any defects that threaten the durability and safety of the works and make them unfit for the purpose for which they were created<sup>48</sup>. However, in the end, it must be noted that several conditions must be met for the ten-year warranty to be effective, as two conditions

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<sup>46</sup> Safir AL-KAHLA: The subcontractor is subject to the ten-year warranty obligation or not in the public works transaction. *Journal of Research in Law and Political Science* Volume 8, Issue 2, Algeria, 2023, 470–486.

<sup>47</sup> Art 30 of Syrian Legislative Decree 450 of 2004 containing the book of general conditions.

<sup>48</sup> Hanin GHANEM: *Administration Authority in Oversight of the Implementation of a Public Works Contract*. Master's Thesis. University of Damascus, Faculty of Law, Department of Public Law, Syria, 2021, 118.

must be met for a defect that triggers the responsibility of the engineer and contractor: The first condition: The defect must be of a degree of seriousness that leads to the building's complete collapse or threatens its durability and safety. Destruction is a deficiency in the building and the dissolution of the bond between its parts for some reason. It may be due to the building and construction process itself or a defect in the materials used or in the construction. The land on which the building is built. In this regard, it is necessary to differentiate between construction and building defects and the defect in conformity with specifications. The works may be free of defects but do not conform to the agreed-upon specifications. The importance of the distinction appears in the difference in the penalty resulting from each of them, as conformity defects necessitate their repair, while a construction defect necessitates a Decimal guarantee<sup>49</sup>. The second condition: The defect must be hidden. If the defect is apparent, the contractor will not be held responsible for it as long as the employer did not express any reservations about it upon receipt. In this regard, the ruling of the Egyptian Court of Cassation stressed the necessity of fulfilling the condition of concealment in the defect, as it stated that: "The defect must be hidden." For a ten-year warranty claim to be accepted, the alleged defect in the building must be hidden, such that the owner of the building was not able to discover it at the time of receipt. However, if it was apparent and known, the contractor is not responsible for it as long as the employer received the building without reservation.<sup>50</sup>

From the above, we find that the ten-year guarantee in turn reveals the importance of control during the implementation of the contract through actual supervision of implementation and obligating the contractor to implement the terms and specifications of the contract, which prompts him to exert all his knowledge, experience, and technical know-how, to deliver the works free of defects. And achieves the purposes for which it was established, given the serious defects that pose a threat to the safety of the works and damage to public money.

## Conclusion

Administrative contracts constitute an important means that help the state manage its economic facilities and advance the development process by stimulating the movement to complete projects with the highest possible quality, the lowest costs, and the shortest deadlines. It appears that the effectiveness of the state's performance in promoting economic development depends on the effectiveness of organizing public transactions, especially concerning the issue of imposing financial guarantees on contractors. Thus, the contractor's commitment to providing financial guarantees to the contracting authority is one of the most important mechanisms brought by Arab legislation (Syria and Egypt as an example) to establish the

<sup>49</sup> Ismail KARIM: The ten-year guarantee for construction defects between jurisprudence and law. *Al-Sharai' Journal for Legal Studies* Volume 3, Issue 3, Iraq, 2023, 49–60.

<sup>50</sup> Aida MUSTAFAOUI: The ten-year guarantee and special guarantees for building builders in Algerian and comparative legislation. *Journal of Policy and Law Notebooks* Volume 4, Issue 6, Algeria, 2012, 259–280.

principle of transparency in contracting between bidders and to provide a wide degree of protection for public funds, through reliance on standards stipulated within the regulations of administrative contracts to choose the contractor who is more capable financially and technically.

Financial guarantees are among the basic documents and basic conditions that the administration works to include in the tender documents. The legislator has created multiple legal consequences for its omission and has also made it a means of putting pressure on the contractor to push him to implement his obligations according to the agreed upon specifications, in a way that guarantees the administration's rights. It also provides a wide degree of protection for public money from waste and loss.

The legislator did not stipulate that completing the works and handing them over to the administrative authority excludes the contractor's responsibility for errors or defects that may appear during their normal use, but rather made his responsibility extend until the end of the warranty period. The ten-year guarantee represents an important legal guarantee imposed by the legislator to protect the administration's interest, in addition to being an incentive urging the contractor to exercise the necessary care and precision during the implementation of public works. Despite the importance of financial guarantees, we believe that it is necessary to rely on technical qualifications and experience when referring the implementation of works and giving them priority over financial offers.

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- [5] Syrian Civil Law 84 of 1949.
- [6] Syrian Law No. 2 of 2005 regarding companies, institutions and public establishments
- [7] Syrian Unified Contracts System 51 of 2004.