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Legal Drafting Of Administrative Contracts

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Abstract

We find that many administrative contract disputes occur during the execution of the contract due to drafting defects, which are either poor drafting, inaccuracy or ambiguity, and then arise between the parties to contracts that are defective in drafting complex disputes in their subject matter, which are prolonged, and result in wasting a lot of money. Time, effort, and money for the parties to the contract, as it appears through the analysis of judicial and arbitral rulings that administrative contract disputes are mostly about issues that the parties did not face or did not pay attention to, and thus the accurate and clear wording according to the conditions and legal rules, although it does not end the disputes between the parties to the administrative contract. However, it leads to a significant decrease in the proportion of such disputes. In view of the importance of administrative contracts, care must be taken in drafting them to avoid disputes between the parties to the contract, as it must be taken into account that this contract will serve as the law that governs the relationship between the two parties to the oil contract. , and decipher and analyze them, in order to avoid the emergence of future disputes between the two parties.

Keywords-: Administrative disputes ,Contractual obligations, negotiations , Administrative contract structure , Elements of the administrative contract.

Introduction:

First – the subject of study:

After the completion of the management procedures to choose a specific party (company or individual) and negotiate with it, the vocabulary of the administrative contract must be formulated accurately so that it is free of errors, and a fortiori, from fraud and fraud, and this task is usually performed by specialized lawyers whose role appears clearly and influential in drafting the contract after the technical negotiators set its financial and technical conditions, as these formulate the vocabulary of the contract in the light of the initial agreements during the period of negotiations.

Second: The importance of study:

This study aims to review the drafting of administrative contracts, i.e. the contractual art that makes a legal disposition in a contractual form that reflects the direction accepted by the parties to this process to link with each other. Hence, the importance of the research appears by showing that the accurate and clear wording in accordance with the conditions and legal rules, although it does not end disputes between the parties to the oil contract, but it leads to a significant decrease in the proportion of those disputes.

Third: The problem of study:

The most important problems of the research is that the formulation of some paragraphs of administrative contracts are in vague and inaccurate terms and terms, while this contract is the law that governs the relationship between its parties throughout the duration of the contract. Another problem is that the parties to the administrative contract are sometimes of different

nationalities, and speak two different languages, so the problem arises when the administrative contract is written in the language of both parties, or in multiple languages, and the problem is exacerbated when the contract is written in more than one language, and some of these copies are unsigned, and then arise between the parties to contracts that are marred by a defect in the drafting complex disputes in their subject, prolonged, and result in a waste of a lot of time, effort and money for the parties to the contract.

Fourthly: Methodology:

The researcher adopted in the study of the subject the analytical approach in which he analyzes the texts of administrative contracts related to the subject of the research, analysis and research in their contents, to extract the legal principles on which the formulation of those contracts is based and to know the shortcomings in their formulation, and at the same time adopted the comparative approach by referring to administrative contracts concluded in other countries and comparing them with administrative contracts in Iraq, and studying the aspects related to the drafting of those contracts.

Fifth: Plan of study:

The research section in the legal drafting of administrative contracts on two sections, the researcher dealt with in the first section the principles of legal drafting of administrative contracts in two requirements, the first requirement discussed the importance of legal drafting of administrative contracts, the second requirement was devoted to the stages of legal drafting of administrative contracts, then we moved to the second section to study the organization of the administrative contract and its conditions, by dividing it into two requirements, the first requirement dealt with the organization of the administrative contract, the second requirement was devoted to the recurring conditions in administrative contracts, then we finished the research with a conclusion it contains the most important findings and recommendations that we deem necessary to present.

The first topic

Principles of legal drafting of administrative contracts

The formulation of legal works, especially administrative contracts, is at the heart of the competence of jurists, which requires, on the one hand, the study of its rules, and on the other hand adherence to its ethics, which require the administrative authority competent to draft administrative contracts to help the person wishing to contract (individual or company) to understand the wording of the contract and convince him of the reasons for the formulation that it proposes, and if the person wishing to contract accepts a specific formulation, the competent administrative authority must not make amendments to it except with his success, as these amendments may cost the person wishing to contract (the individual). or the company) at a high price if it turns out that he would not have approved it if it had been offered to him in time (1), Therefore, we must show in this section the rules that must be adhered to by the administrative authority competent to formulate the administrative contract, compliance with these rules gives the agreement a value that makes it enforceable (2), and before that we show the importance of legal drafting of administrative contracts and their most important characteristics, so we will divide this section on two requirements, we allocate the first requirement to the importance of legal drafting of administrative contracts and their characteristics, and the second requirement we will allocate to the stages of legal drafting of administrative contracts.

First Requirement

The importance of legal drafting of administrative contracts and their characteristics

It is necessary to work to avoid disputes that may arise between the parties to the administrative contract by anticipating the issues on which disputes may be based, and to determine the means of preventing them, including the drafting of the administrative contract in a way that leads to avoiding the emergence of disputes between its parties, if the drafting of administrative contracts is completed and accurate in accordance with the legal principles and rules, the emergence of disputes between the parties to the contract diminishes (3). Thus, the transfer and expression of ideas are two main elements for the drafting of administrative contracts, which are expressed through negotiations and consultations between the parties, so in order to clarify all this, this requirement must be divided into two sections, we address in the first section the importance of legal drafting of administrative contracts, and in the second section the relationship of legal drafting to negotiations.

Section I

The importance of legal drafting of administrative contracts and their relationship to negotiation

In this section, we will address the importance of good legal drafting of administrative contracts, and the relationship between that formulation and the negotiations conducted by the competent administrative authority to conclude an integrated administrative contract from a legal and economic point of view, and for this we will divide this section into two paragraphs, in the first paragraph we will address the importance of legal drafting of administrative contracts, and the second paragraph is devoted to the relationship between the negotiations conducted by the parties to the administrative contract and its legal drafting.

First: The importance of legal drafting of administrative contracts:

Drafting is generally the means by which legal ideas are transferred from the internal to the outer space(4), and is thus a means of expressing an underlying idea into a social reality on the basis of which to be dealt with accordingly(5), the drafting of administrative contracts is intended to express what the parties want in a way that conveys the intended meaning(6), which establishes communication between them, and the more the drafting adheres to the rules that ensure the achievement of this goal, the less likely it is that disputes arise between the parties to the administrative contract, and thus there is no need to resort to the means of settlement (7), and since the contractors with the administration (companies or individuals) wish to avoid litigation behavior, the body responsible for drafting administrative contracts can help achieve this desire through Identify the points of disagreement and try to address them when drafting the administrative contract (8).

It is worth noting that the drafting of administrative contracts requires the use of a specific language in writing, which requires the administrative authority in charge of legal drafting to take into account the different meanings of the words, and accurately determine the meaning required to express it, so this body needs sufficient time to ensure the application of the selected words with the concepts to be expressed.(9). The importance of choosing the appropriate words in the legal drafting of administrative contracts is due to the fact that the tool of each profession in its work is determined in light of the nature of this work, it is for the accountant the numbers and for the chemist the symbols, and the lines for the designer and the colors for the painter, as for the lawman in general and the competent authority to draft administrative contracts in particular are the words, sentences and word separation marks, so care should be taken to choose words when drafting the legal and scrutiny in the choice of names to match their real names, so you should check the choice between words that, although possible, appear to have similar meanings, but they differ in meaning in the precise legal term, such as nullity, non-existence and annulment, they indicate the demise of the legal act, but their elements and effects make

each word a different meaning, which obliges the administrative authority drafting the contract to scrutinize the choice of the term that expresses the truth of the intended meaning.(10).

Based on the foregoing, it is not a legal language that does not establish the legal drafting of administrative contracts, as most legal systems and ideas do not have special names in the current language, so the good choice of drafting tools is a condition of their validity , and it is assumed that the legal man competent to draft the administrative contract is familiar with the rules of the language in which the contract is written, as well as he must have the ability to choose words that guarantee the drafting of the administrative contract performance Its function is to transfer ideas to others, so that the idea reaches the one to whom it is directed in the intended sense to achieve common understanding in this sense, and from here accuracy must be taken into account in the presentation of ideas so that the meaning of the word does not change when it relates to the knowledge of others. The administrative authority concerned with drafting administrative contracts must know that any word in the contract, whatever its location, means something specific and was not received in implementation of the requirements of eloquence or beauty of speech, and in application of this if it is stipulated in the administrative contract that it was concluded with the contractor (individual or company) in view of his experience in the field of contracting, this contractor may not maintain with the administration that what is stated in the contract regarding his experience was a compliment, it is established in the rules of interpretation contained in Article (1157) of the French Civil Code that if a paragraph in the contract bears two meanings, the meaning that makes the contract have an effect must be taken, and then put forward the other meaning that does not make the contract have effect.

Second: The relationship between the negotiations of the administrative contract and the legal drafting of it:

Negotiations are an important step in the formulation of administrative contracts and the basis on which the competent administrative authority relies to formulate those contracts, as the preparation of administrative contracts, especially with a foreign party, is often the subject of long negotiations between the competent administrative authority on the one hand, and the individual or company on the other hand, in some administrative contracts that may last for several years, as it usually comes to financial, human and technical means to complete the project.

The negotiations are a preliminary stage to discuss the content of the contract before approving it, and it is an attempt to bring the views of the parties to the contract closer and is of great importance in all means of concluding the contract, whether public tenders, direct invitation or direct agreement. Here, the importance of negotiations to prevent the causes of the dispute is evident, by conducting negotiations, the parties to the contract have been fortified by measures and precautions that prevent the causes of the dispute in the future, and some argue that negotiations before contracting play a preventive role, whether they resulted in the conclusion of the contract or not, Good negotiations are the best guarantee for a contract whose implementation is not disputed, and the failure of negotiations after each party has realized the reality of the situation prevents the conclusion of a contract that opens the door to dispute.(11), Therefore, the parties to the administrative contract must work to identify the points that are being identified and clearly defined and try to remove ambiguity and ambiguity as much as possible with regard to obligations and related to the principles that govern their contractual relations throughout the implementation period, especially since some administrative contracts are being implemented during a long period of time, such as the public facility commitment contract, for example, so you must anticipate the emergency circumstances and change circumstances that may affect the continuity of the implementation of the contractual conditions, and the financial balance of the contract in order to reach their contractual goals (12). According to the above, the first task of the negotiator in the conclusion of administrative

contracts is how to avoid all causes of disputes by developing balanced and integrated texts through which the will of the parties is translated in a clear and accurate manner, although the parties to the contract, whatever their experience and anticipation of future events, and whatever their care in drafting the contract, cannot take note of all the issues that may raise disagreement between them, so administrative contracts must be drafted in a way that includes an accurate expression of the will of its parties, through practice, we note that many conflicts occur at the time of implementation because of drafting flaws represented by either inaccuracy or ambiguity.(13).

Negotiations in the field of administrative contracts are defined as anything issued by one party to an administrative contract connected with the knowledge of the other party and related to the formation of a common conception of an administrative contract that they seek to conclude(14). Negotiations in the field of administrative contracts are also defined as mutual communication between the parties to the administrative contract - the individual or company wishing to contract and the administrative authority competent to contract in the State - to reach an agreement between them, in which the two parties have common and conflicting interests, as each of the parties to the negotiation seeks to reach an agreement that achieves its objectives for which it negotiates (15). It can also be defined as a preliminary stage in which the terms of the administrative contract are studied and discussed by both parties before its conclusion, as they are counterproposals with the aim of preparing and preparing for the final conclusion of the administrative contract.(16).

The negotiation process in administrative contracts takes place in several stages, after the technical aspect of the contract is negotiated, the parties to the contract move to discuss the financial aspect, and then move on to discuss the implementation dates, the duration of the contract, sources of financing, financial guarantees, determining the applicable law and the competent judiciary in the event of a dispute during the implementation of the contract.(17).

Since negotiations between the parties to the administrative contract play an important role in avoiding disputes that may occur between them over its interpretation or implementation, the State, represented by the competent administrative authority to negotiate, should protect its national interests through the elaborate drafting of administrative contracts by qualified legal cadres rather than vague formulations.

The body representing the administration in negotiations with individuals or companies wishing to contract must have qualities that help the success of negotiations and the conclusion of contracts that achieve the public interest of the Contracting State, the most important of which is the negotiating experience necessary to engage in negotiations. For this purpose (18), the competent administrative authorities prepare technical cadres who have the skill and competence in the field of negotiation in administrative contracts.

As for the relationship of negotiations with the legal drafting of administrative contracts, the legal formulation is a material expression of the will of the parties to the administrative contract according to the outcome of the negotiations between them, the wording is a ratification by the parties to what they agreed upon in the negotiations, so part of the jurisprudence believes that negotiations in administrative contracts come before they are formulated in the order in the contracting process (19), however, it must be taken into account that the first formulation of the administrative contract, although it takes place in most cases at a time contemporary to the negotiation, that is, after reaching agreement on the subject of negotiation or part thereof (20), However, there are cases where negotiations are based on a document containing a draft contract drafted by one of the parties and then sent to the other party for review before the meeting in order to negotiate the proposed paragraphs of the contract.(21).Negotiations may take place on the basis of the exchange of two draft contracts drawn up by each party and sent to the other

party in preparation for identifying the aspects of agreement and disagreement between them so that the negotiations focus on the points of disagreement(22). Since negotiation is a preliminary step for contracting and the wording falls on the outcome of the negotiation, and therefore is a material embodiment of the will of its parties, so this formulation must be correct, i.e. accurately reflect what was agreed upon during the negotiations, as the formulation of the administrative contract in a correct and tight manner gives a brief idea of the outcome of the negotiations and then the reasons for the contract.

In view of the close relationship between negotiations in administrative contracts and their formulation, the origin is that the most worthy people to assign him the task of drafting is the one who participated in the negotiation on the subject of the contract, despite the existence of a jurisprudential trend that goes to the need to separate between the administrative authority competent to negotiate and the administrative authority concerned with drafting, and this view is based on that if the competent administrative authority negotiates the drafting of the contract, it is possible that it will not discover when reviewing the contract that it has missed what it should have addressed in the negotiations, unlike If the drafting is done by another administrative authority, the administrative authority competent to draft in this case can stand at the shortcomings in the negotiations and then complete them, provided that this point of view must not prejudice the general principle, which is that the competent authority in drafting must be fully aware of all parts of the subject of the contract and what has been negotiated on, and this is a basic rule in the good drafting of administrative contracts that must be taken into account, whether the administrative authority competent to draft the contract participates in the negotiation or you did not subscribe.

Section II

Characteristics of good legal drafting of administrative contracts

Good legal drafting of administrative contracts has certain characteristics, both in terms of drafting style or presentation, so we will address in this section the method of good legal drafting of administrative contracts, and the way those contracts are presented, by dividing it into two paragraphs according to the following:

First: The method of good legal drafting of administrative contracts:

The quality of the method that ensures the good drafting of administrative contracts and its basic qualities are determined in light of the purpose of drafting as a tool or means of communication between two or more people, and on this basis several rules must be adhered to when choosing the method of drafting the administrative contract, represented by the following.

1- The origins of sentence design:

Good drafting of administrative contracts requires knowledge of the basic writing rules (23), and then know the origins of sentence design such as the definition of verbs and compatibility between them, and speech breaks and breakers, such as commas and endpoints of the sentence, and the use of all of this in a way that leads to clarity of the intended meaning (24). The importance of commas, for example, appears when using objectionable sentences, and their importance appears in some languages, such as French, which use commas when speaking indirectly, i.e. to express the words of someone other than the speaker (25).

2- Understandable method: The method of writing the administrative contract must be understandable in its words(24), terms and paragraphs, so that its concept is without any doubt in its meanings, and this is clearly meant by the wording (25), and for this purpose should work on the use of words that have one meaning, i.e. specific meaning, or if they give more than one

meaning to be than understand the intended meaning of the context of speech, and general terms must be avoided without specifying their intended meaning , if it is used, for example, in determining the item of the subject of the contract for the supply of materials a reserve for a word manufacturer(26), such as being excellent, good or first-class, should develop a method of verifying the availability of these qualities, such as identifying a sample to be measured or determining a body to be judged in the event of a dispute(27), and the passive voice should be avoided in particular with regard to the identification of the contractor charged with the performance of the obligation in question.

3- Technical Terms:

The competent authority for drafting the administrative contract must investigate the accuracy in the use of technical terms that do not accept doubt and interpretation, i.e. whose meaning is clear, and if the drafting of the administrative contract requires the use of such terms, it is better to adhere to what has been worked on as a standard term, i.e. it has a specific meaning (27). The aim of formulating these technical terms is to determine the rights and obligations of the parties to the administrative contract, but the interpretation of these terms may differ from one court to another and from one medium to another, and a dispute may occur between the parties to the contract if the wording of the term is incomplete, such as if a public utility commitment contract is concluded with a company specialized in the production and distribution of electricity without specifying the amount of fees charged by the company committed to the contract from the individual beneficiaries (28).

4- Summary or detailed style:

The abbreviated method in drafting the administrative contract, if it is hermetic, makes the content of the contract clearer (29), and the use of the direct method of expression is better to ensure the correctness of the wording, and therefore the use of short sentences that avoid fillers, synonyms and objection sentences makes the contract short, which reduces the effort that goes into interpreting it.

5- Simplified method:

The drafting of the administrative contract is the use of a specific language in the construction of the structure and content of the contract, and this language is a mixture of current language and legal terms, and if the administrative authority competent to draft the administrative contract consists of legal specialists, it tends by virtue of its composition to give precedence to the legal language, and we do not mean terms with legal meaning only, but also the style of writing that distinguishes legal documents. If it is permissible and even necessary to use legal language where it is needed, the drafting authority calls for taking into account simplification in the style of writing, and the administrative authority competent to draft the administrative contract must take into account that the intention of drafting the contract is to establish communication between its parties regarding its subject matter, which requires an understanding between them, and then understand the meaning of the drafting, so the administrative authority competent to draft the administrative contract may use the current language in transactions if it performs the intended meaning in a more way Ease of dry legal language (30), whether the administrative authority concerned with drafting the administrative contract is committed to drafting in its legal language or tends to use the current language, which makes it easier for those wishing to contract with it, whether an individual or a company, achieving the wording for its purpose requires avoiding complexity in sentence construction.

6- Specific method:

A good formulation of the administrative contract requires the use of words that give the meaning that establishes communication between its parties, so in order to avoid misunderstanding, if the administrative authority in charge of drafting uses a word that can give a meaning other than the intended meaning, it should seek to determine the scope of the meaning performed by this word by mentioning what is excluded from it and the exceptions and limitations (31). It is also related to this that if a word has a certain connotation, but its intended meaning in the wording needs to be narrowed or expanded, then the appropriate description should be added to this word, thus achieving the desired. Also, if the determination of an amount or quantity in the contract requires an equation (mathematical or chemical), it should be referred to the annex to the contract to be formulated in a clear way that includes all the elements of the calculation, and perhaps it is better to mention examples showing the method of extracting the result of the equation (32).

Second: Presentation method of administrative contracts:

The function of drafting in the transfer of ideas to others requires that several rules be taken into account in their presentation to ensure that the idea is connected to the person to whom it is addressed in the intended sense, and we will address here the most important rules for presenting ideas in the good legal drafting of administrative contracts:

1- Careful organization:

The design of the administrative contract must be logical so that it is arranged and organized, and the texts of the contract must be arranged in a logical way in preparation for reading and then understanding, so that when searching for the provision of a particular issue, it can be found in its expected place, and this requires following a system of sequencing ideas by grouping issues branching from a main topic and formulating them in an order that indicates their affiliation to this topic (33).

In the contract of supply of goods, for example, after the preamble and the identification of its parties, it is stated, first, the goods subject to the contract and the date of its delivery, second, the price and the dates of the price, third, the seller's other obligations, fourth, guarantees, fifth, sanctions, and so on. It should be recognized that if the presentation plan is disturbed, this will necessarily affect the coherence of ideas and thus weaken the possibility of their transfer in the intended sense.

2- Internal Harmony:

The parts of the administrative contract must combine to perform the desired meanings without contradiction, which requires on the one hand taking into account the accuracy in the referral between these parts so that the referral falls on its proper place, and on the other hand care to determine the scope of work of the paragraphs of the contract, if the subject of the paragraph bears a rule and an exception, they must be stipulated together in one place or scrutinize the referral between them when they are located in two different places, and if a paragraph is to be drafted in the contract on the basis of what is stated in another paragraph, it must be indicated in the other paragraph that without prejudice to what is stated in the other paragraph on the third hand, internal harmony requires the unification of the meanings of words and terms used in different parts of the administrative contract, if an abbreviated term is used to express a specific name, such as the Middle East Food Industries Company, the same term must be used in all sections of the contract, and therefore it is not correct to use the word company in a section, the Middle East in a second section and food industries in a third section. If the subject of the contract assumes the existence of more than one company, care must be taken to avoid confusion between them, so that the name of each company is placed in its proper place as required by the subject of the paragraph, and for this purpose the full name of the company may

be mentioned or abbreviated in the definitions section so that it is not mixed with others, and these are all the requirements of care in referring to the parts of the contract and its parties without ambiguity or contradiction (34).

3- Sub-headings: Subheadings can be used in the compilation of several provisions linked to a bond that justifies their collection under this heading, and it is taken into account that giving a title to each paragraph in the administrative contract would make it easier to identify the subject and refer or refer to its provision when needed(35), and since the purpose of such headings is to facilitate reading the contract and finding its provisions easily, it should be stipulated that they do not add anything new to the contract, and therefore do not affect the rights and obligations of its parties (36),

4- Paragraph numbering:

The numbering of paragraphs of the administrative contract is a procedure required by the need for the logical sequence of its provisions, and the simplest way to number is to use serial numbers or alphabets sequentially or alternately (37), but there is another method is decimal numbering, which ensures easy knowledge of the location of the paragraph, and enables the development of many subdivisions without changing the numbers, and then the main sections of the contract (38).

Second Requirement

Stages of legal drafting of the administrative contract

After the end of negotiations between the parties to the administrative contract - the competent administrative authority on the one hand, and the individual or company wishing to contract on the other hand - and the agreement of the two parties on the final contract formula, the stage of preparing the draft contract begins, and this task is entrusted to experienced and competent jurists on the subject of the contract, as the wording of the paragraphs of the contract must be in clear and accurate terms, and not to resort to ambiguous terms, it must be borne in mind that this contract will serve as the law that governs the relationship between its parties throughout the duration of the contract, so it must include all matters that may be controversial in order for the contract to be the reference for their settlement (39).

A good legal formulation of the administrative contract requires thinking about its subject in preparation for determining its vocabulary on the one hand, and ensuring that the wording is correct, clear and complete on the other hand, which requires adherence to some principles in the preparation stage and the final writing stage, so we will divide this requirement into two sections, we deal in the first section with the preparation stage, while the second branch we will allocate it to the writing stage as follows:

Section I

Preparation phase

Preparation for the drafting of an administrative contract requires passing through two stages, the first stage is the interaction between the party wishing to contract (individual or company) and the administrative authority competent to draft, and the second stage is the preparation of the draft administrative contract, and this is what we will address in this section by dividing it into two paragraphs according to the following:

First: Interaction between the individual or the company wishing to contract and the administrative authority concerned with drafting

The first work carried out by the competent administrative authority to draft the administrative contract is to identify the desire of the entity wishing to contract with the administration, whether it is an individual or a company, in preparation for thinking about the most appropriate solutions that achieve this desire, and this requires the entity wishing to contract with the administration to disclose all useful facts.

Since the party wishing to contract (individual or company) does not know all the elements that must be included in the administrative contract to be drafted, the administrative authority competent to draft the contract must request the necessary information to determine the subject of the contract, and in all cases the administrative authority competent to draft the contract must not start its work without Have a minimum level of information and specialization (40). It is better for the competent authority to draft the administrative contract to present to the person wishing to contract with the administration a pre-prepared list that includes the heads of the topics of the contract to be drafted in order for the person wishing to contract to submit his information and suggestions on them, if we take the supply contract as a model, it is likely that its formulation includes exposure to many topics, including the date and place of conclusion of the contract, the names of the parties to the contract and their addresses, the offer and acceptance, definitions, the subject of the contract, the price, payment terms, delivery conditions, guarantees, taxes and fees, violations of the contract and its termination and compensation, notifications, termination and termination of the contract, Applicable Law, Contract Language, Dispute Resolution, Force Majeure, Contract Amendment, Appendices, and Signature. The administrative authority drafting the administrative contract must simplify its discussion of legal ideas with the person wishing to contract, whether an individual or a company, to stand on its meaning and effects so that he can determine whether its use is consistent with his desire, and the party wishing to contract (individual or company) must be alerted to what may exist from a conflict between his desires and the provisions of the law and to the legal problems that hinder the formulation of his desires and the alternatives available to overcome them.

It must be noted that the law may include mandatory rules regarding the form of the administrative contract and what it must contain, which requires consideration when drafting, the law may require it to include specific rules such as rules related to preserving the environment, safety standards, and making payments in foreign currency in the public facility commitment contract, for example, as well as the tax laws applicable to the subject of the contract play an important role in choosing the form of the contract and determining the party responsible for paying taxes, so the competent administrative authority must In drafting the administrative contract, it should study the results of choosing a specific law and applying it to the administrative contract in question, and take into account the relationship of the administrative contract in question with other contracts related to its subject matter.

From the foregoing, it is clear that at this stage, there must be an interaction between the administrative authority drafting and the individual or company wishing to contract in order to clarify the vision for both, and then the limits within which the drafting takes place (41), Therefore, the administrative authority concerned with drafting, after identifying the wishes of the party wishing to contract (individual or company), must notify it of what it deems useful to it, even if this requires bypassing these instructions or amending them.

Second: Preparation of a draft of the drafting:

It is useful for the administrative authority competent to draft the administrative contract to include the elements of the contract to be drafted, and the structure of the draft must be of such capacity that it is included in the subjects of the required contract in a logical order (42), and if it is common for specialists in drafting administrative contracts to refer to the models of

contracts in circulation (43), care must be taken not to adhere to these forms when preparing the draft administrative contract to be drafted, which may require deletion or addition to these forms.

The importance of starting the preparation of the draft administrative contract appears to indicate the way for the person charged with drafting the final contract in the best order of its elements and to establish consistency between them, and it also guides him to other elements that he may have missed, which ultimately ensures that the editor can be logically constructed and produced in the required form.(44), the draft allows establishing consistency between the editor's sections and removing the contradiction between them or repeating them, so it happens that the administrative contract was drafted directly without making a draft of it, which leads to addressing the multiple aspects of one topic in more than one place, which can be avoided through a draft through which everything related to a particular topic is collected in one place.

Section II

Writing Stage

The administrative contract is one of the formal contracts in which writing is required, and good writing of the administrative contract goes through several stages that must be explained in this section.

First: Initial drafting of the administrative contract:

Attention at this stage is directed to the form of the administrative contract and the method of drafting it, the contract must be characterized by clarity, continuity of ideas, simplicity, accurate organization and internal harmony through the administrative authority competent to draft the administrative contract by revising the draft contract and formulating its vocabulary on a separate paper so that it can be modified and then compiled in its sequence in the second writing (45).

Second: Reviewing and refining the wording of the administrative contract:

There is no doubt that the revision of the initial wording of the administrative contract will allow the drafter to supplement what he may discover of the lack of its subject matter and to remove the defects related to the internal organization on the one hand, and enable him to refine the text and enter what he deems sufficient to produce it in an acceptable aesthetic form on the other hand. It should be noted that the review of the drafting of the administrative contract by more than one person or the confrontation between them is often fruitful, and there is no unified rule by which the number of times to reformulate is determined, but the importance and size of the subject of the administrative contract requires scrutiny in its review(46). When reviewing, it is taken into account not to dispose of the first writings, as the administrative authority competent to draft the administrative contract may need them later when comparing them with the final drafting of the contract, and to ensure knowledge of the chronology of the various formulations, care must be taken to put the date of each of them on them.

Third: Reviewing the parts of the administrative contract sequentially:

The good wording of the administrative contract requires that the requirements and specificities of each part of the contract be taken into account, and therefore all the problems it raises, such as the royalty clause in the oil service contract, must be examined, as it must be addressed how it is calculated, the relationship of this calculation to the taxes due thereon, its relationship to the minimum guaranteed under the contract, and other issues raised by royalties in the administrative contract in question.(47)

Also, at the stage of reviewing the drafting of the administrative contract, solutions must be sought to problems or difficulties that may arise in this regard, and no move to the next part of the contract must be moved to before addressing all the problems that may arise from the part under review.(48).

Fourth: Comprehensive internal review of the administrative contract:

The review goes in another step towards the administrative contract in its entirety, as the administrative authority competent to draft the contract begins to examine the contract and its documents in a comprehensive examination that requires ensuring consistency between its parts and linking them. Therefore, the reference between the parts and paragraphs of the contract must be reviewed, as well as the definitions paragraph, as the extent to which the words defined in the front of the contract match their use in its parts must be reviewed, and then the necessary work must be done to remove the difference that may appear between the definition and its use in the body of the contract, and in this step of the review it must be ensured that there is consistency in the use of speech breaks and in the sequence of parts and paragraph numbering.

Fifth: Checking the flow of ideas:

The administrative authority competent to draft the administrative contract must take into account when drafting the contract the extent to which it responds to the desire of the individual or the company applying for the contract, and this body can to this end put in front of it several questions that it tries to search for answers in the existing drafting to prepare for it in accordance with the mentioned purpose. In this step, the flow of legal ideas and their logical sequence must be taken into account, and in application of this, the administrative authority concerned with the drafting itself is asked while it is in the process of reviewing it, whether its entirety reflects the purpose of the contract and expresses the desire of the individual or the company applying for the contract, and is there an abnormal interruption in the flow of ideas? Is the contract crowded with too many definitions that impede the flow of ideas? Is the contract lost for a complementary or complementary part or linked to its other parts, such as does the wording include an indication of the determination of the time of termination of the contract? The administrative authority drafting the administrative contract shall review the considerations that may have an impact on the extent to which the person wishing to contract accepts the contract, for example with regard to its shape, size and method of writing. The administrative body based on the drafting must be honest with itself, if you notice any deficiency or defect in the wording, do not refrain from returning to the previous steps and searching for the deficiency and defect in an attempt to fix it, and for this reason it seems important to call the opinion of others in the drafting, because presenting it to another person gives the opportunity to discover its defects, so it is recommended to present the wording to experts in this field for the purpose of commenting on it, which benefits the administrative authority in the drafting in the review (49).

Sixth: The language of drafting the administrative contract:

The wording is the tool by which the subject of the contract is expressed, which assumes the use of a specific language suitable for this purpose, and the importance of choosing the language in which the administrative contract is drafted appears when the language of each of the parties to the contract differs.(50).

The administrative body in charge of drafting administrative contracts with a foreign element is aware of the extent of the risks that surround the negotiations and drafting of those contracts due to cultural and linguistic reasons, cultural and linguistic differences cause problems in interpretation, as a certain word in one language leads a meaning different from the meaning it

performs in another language(51). There are words in the French and English languages that have different meanings despite their common linguistic origin and even in the dialect as well, for example, the word Transaction means in English a transaction or process, while the word that performs this meaning in the French language is the word operation, and the word Transaction in the French language means reconciliation. Another example is the word execution, which in French means execution, while in English it means signing a signature, and in English it is expressed as reformance.(52). If this difference occurs under similar systems and languages that may be due to the same origin, let alone if the two parties to the administrative contract differ in culture, language and legal systems.

As for the method of choosing the language in which the administrative contract is drafted, the contract always specifies an official language for dealing and interpretation if the contractor with the administration, whether an individual or a foreign company, in this case they are of two different nationalities, and speak two different languages, and they may agree to edit the contract in one language, whether it is the language of one of them, or a foreign language from them, and in this case no difficulty arises, as the agreed language is the adopted, but the problem arises when the administrative contract is drafted In the language of both parties, or in multiple languages, and in order to avoid problems in interpretation in this case, it is preferable not to lose sight of the designation of the approved language, and if they agree to count the two languages as supported, it is preferable to check the choice of words and corresponding terms,(53), there are administrative contracts that provide for giving the two texts the same legal force in the event of a dispute between them over the interpretation of the contract(54), other contracts provide for the English text to be given legal force (55), the researcher believes that the Arabic text of the administrative contract must have the same legal value as the text written to it in English or the language of the individual or the foreign contracting company in all administrative contracts concluded by the Iraqi government, especially since under Article (4/3) of the Law on Preserving the Integrity of the Arabic Language No. (64) of 1977 in force (56), contracts concluded by the Iraqi government should be written in Arabic (57), because of its ability to absorb all the meanings contained in foreign contracts, and that it is the official language for the country, this is a manifestation of state sovereignty.

It must be noted that the party drafting the administrative contract should be proficient in the rules of the language in which the contract is drafted, and if linguistic errors and those related to spelling do not affect the validity of the contract, but they do not reflect the intended meaning of the word, and therefore be a cause of conflict between its parties, on the other hand, it is taken into account that if the uses of language are ambiguous in some points, which justifies the search for the common intention of the parties to the contract in the dispute, it becomes important to use words from the contract that give a clear meaning on the one hand and avoid formulations that inherit ambiguity on the other hand.

Seventh: Discipline of words and their meanings:

There is a basic principle that must be adhered to by the good wording of the administrative contract based on the need to choose the appropriate words disciplined to express the intended meaning so as not to leave doubts about it, and the most important of this principle appears when the word has more than one meaning according to its source and the medium, environment or profession in which it is used, the lexical meaning of the word may vary according to whether the dictionary is English, Canadian or American(58). The meanings of the words also vary according to the context in which they are used, and in this case the meaning performed by the word is chosen when it is placed in a specific context, and this rule is useful in the case of words or sentences that give a meaning different from the meaning that comes to mind at first sight, for example, the provision in the administrative contract that the equipment must be prepared in place of the supply contract ten days before a certain date, the meaning that comes from the

word today makes it include night and day, but the context may Reliance on the meaning that makes what is meant is justified by day only, as it assumes that the matter must be done during the time of communication with administrative bodies that work only during the day (59).

The administrative authority concerned with drafting the administrative contract must scrutinize the choice of wording words so as to ensure that the meaning that will reach the party wishing to contract, whether an individual or a company, is the same meaning that he wanted when the drafting took place, and this is dictated by one of the rules of good drafting, which is clarity and avoiding causes of ambiguity and confusion, so if the term differs in meaning from one place to another in the same contractual medium, it is recommended to avoid its use, but words may be used to perform their normal meaning what is meant by the administrative contract in question even if it has another meaning in certain circumstances that are not available in the contract to be drafted (60).

It should be noted that the modern drafting of administrative contracts tends for the sake of simplicity to use the vocabulary of the current language without being bound by the technical legal words (61), but in this case it is taken into account not to overlook the terms and basic words in the syntax, and therefore it is not suitable to use any word that has only a superficial role, and in application so there is no reason to use synonymous words in one sentence to perform the same meaning, for example, the provision in the equipment supply contract that the contractor dropped and waiver and sale with all legal guarantees, these verbs are synonymous and need not be used all of them as long as the intended meaning can be understood using the word sold only. Another example, when the scope of work of a particular paragraph is to be determined, a sentence (with the exception of this provision) or a sentence (without prejudice to that) may be used for this purpose, it is noted that the words (however) in the two sentences are superficial, which can be dispensed with as long as what is meant to be performed by the word excluded or the word non-prejudice.

The second topic

Organization of the administrative contract and its conditions

Since the purpose of the good drafting of the administrative contract assumes its connection with the subject or topics to be expressed in the form of an administrative contract, and the structure of the contract to be built has content determined in its paragraphs, the need requires knowledge of the subject of these paragraphs and how they can be formulated and the conditions that must be met in that formulation, and on this basis, after we dealt in the first section with the principles of legal drafting of administrative contracts, we present in this section the organization of the administrative contract and its conditions, by dividing it into two requirements, we address in the first requirement is to organize the administrative contract, and the second requirement will be devoted to the recurring conditions in administrative contracts.

First Requirement

Organization of the administrative contract

The effectiveness of the administrative contract is related to the design of its general structure so that the imbalance in this design leads to inaccuracy in drafting, and then the study of the organization of the administrative contract requires research into the elements of the organization of the contract, and the parts that make up the contract, and this is what we will address in this requirement by dividing it into two branches, we allocate the first branch to the elements of organizing the administrative contract, while we allocate the second branch to the parts of the contract.

Section I

Elements of organizing the administrative contract

The organization of the administrative contract requires three main steps: division, classification and sequencing, and this process is known as the theory of (supermarket) (62), so we will study each step separately below:

First: Division:

Division means the process of grouping all topics related to each other into groups that appear in the form of sections, and the administrative contract can be divided into six main sections as follows:

- Contract title

- Date of writing the contract

- Parties to the contract

- Preamble to the contract

- Body (Articles of Contract)

- Signatures and ratification of the parties to the contract

The body of the contract is divided according to its size and nature into chapters, chapters or mere articles, each bearing a number and an address, or even numbered paragraphs only. We will discuss these parts in detail in the second section, and the chapters, chapters, articles or paragraphs of the administrative contract are grouped in two ways:

The first method, which is the most common and effective, is to move from public to private.

The second way is to move from private to public.

In the second method, the competent administrative authority begins drafting by writing each paragraph separately, and then collects all the paragraphs related to each other in its own sections, and then puts headings for each section. To ensure that the division is technically sound, it must meet the following criteria:

1- Each main section and sub-section shall be limited to itself so that it does not apply to any other section.

2- The title of the section should be the sum of the titles of its sections (or subparagraphs).

3- To apply one criterion for division to all parts of the department, so that this criterion is the common feature that links the elements of the department.

II. Classification:

Classification refers to the process of identifying the material that falls under a particular title, and that identification must depend mainly on where the user expects to find a particular provision. The main principle of classification is that related provisions should be developed, and in practice this means:

1- Each main section and sub-section shall be limited to itself so that it does not apply to any other section.

2- The title of the section should be the sum of the titles of its sections (or subparagraphs).

3- To apply one criterion for division to all parts of the department, so that this criterion is the common feature that links the elements of the department.

II. Classification:

Classification refers to the process of identifying the material that falls under a particular title, and that identification must depend mainly on where the user expects to find a particular provision. The main principle of classification is that related provisions should be developed, and in practice this means:

1- Setting a specific title and then collecting the paragraphs that fall under that title, for example, putting the title (delivery) in a supply contract and then including all the paragraphs related to delivery under this heading, and this title can be divided into subheadings, for example, the place of delivery, the date of delivery, the conditions of delivery, excess or missing quantities, delay in delivery, etc.

2- Setting all the exceptions that restrict a particular general rule so that they appear immediately after the rule that restricts it instead of collecting all the exceptions and listing them after all the general rules.
3- Placing all definitions in the context in which they are used instead of grouping them all at the beginning of the contract unless the words defined appear in the whole contract.
The administrative authority concerned with drafting the administrative contract should write down its ideas about the contract in the form of a list of main points containing a set of brief phrases, usually incomplete sentences, to attract attention and facilitate access to them. Each phrase must contain the origin of the idea that the drafting administrative authority believes can be included in the contract, and these abbreviated phrases will become the basis for the articles of the contract, or more precisely the basic building blocks for it, and it would give the drafting administrative authority the opportunity to generate more ideas, and then the administrative authority concerned with drafting must start thinking about the best logical way to collect the materials it has collected, then it will be able to start writing a general framework for the contract, and through that framework it will get ideas not only about the design of the structure of the contract but also about its content, and the articles that are included in the contract can be divided into three main groups:
1. A set of substantive provisions for the validity of the contract.
2. A set of contractual obligations of the parties to the contract.
3- A set of organizational paragraphs of the contract (basic paragraphs).
In order to simplify the design of the general structure of the contract, the administrative authority concerned with drafting sometimes attaches appendices at the end of the contract, and these appendices generally consist of lists or details that form an essential part of the contract, and the inclusion of these details in the form of appendices depends on two basic elements: the size of those details, and their importance. For example, if the price clause is simple, it is included in the contract, but if it is complex and contains many details, it can be included in the price table and attached to the contract. Also, if there is an important detailed statement of one of the contracting parties, it can be included in the contract, provided that it does not take up too much space, for example, the inclusion of details of the boundaries of the contract site and its data in a public works contract
. If it is important not to include too many details or large lists in the contract and instead put them in the form of appendices, it is no less important not to waste the annexes attached to the contract unjustifiably.
III. Sequencing:

Sequencing means organizing judgments in a sequential manner so that they are easy to find, and the most important principles governing the sequence of contract materials are:
1- Arranging the paragraphs of the contract according to the expected chronological order of their occurrence (for example, not to put the provisions of termination of the contract at the beginning of the contract or before the paragraph of the contract period).
2- Laying down the articles on ordinary and anticipated events before extraordinary events that it is contemplated not to occur, for example the obligations of the parties to the contract before the force majeure clause, which exempts from the performance of obligations.
3- Putting the most important provisions first, then the important and then the least important provisions.
4 - Placing the provisions in which the interest of the contracting company appears before the provisions in which the interest of the administrative authority for which the administrative contract is formulated is expressed, because this would reduce the company's opposition in the event of its hesitation.
5. Make promises that require action before the terms and policies.
6- Setting general rules before exceptions.

Section II

Parts of the administrative contract

The administrative contract consists of several parts, neglecting any of them leads to a defect in that contract, so these parts must be explained by examining them in some detail in this section according to the following.

First: Title of the Contract:

Every administrative contract must have a title, and this title must reveal the subject of the contract, it is important that the title of the contract accurately reflects its content without increase or decrease, if the contract is a public facility concession contract, there is no need to include details in the title showing the subject of the concession, its duration, the law applicable to it, etc. For example, the description of the contract as an employment contract does not need to be mentioned in detail in the details of the employer, place of work and job in the title of the contract, but it is sufficient to say an employment contract, and all the details are included in the contract (63).

Also, the name of the contract should not be reduced from its title, for example, it is sufficient to describe the contract with the word contract or agreement or the expression of an agreement contract, but the type of contract should be clarified, such as mentioning a public utility commitment contract, a supply contract, or a public works contract, as it should be described by the name named by it in the applicable law, but if the contract includes more than one transaction, this must be clarified in its title, for example, if the contract includes manufacturing, supply, installation, operation and maintenance, its title should not be limited to the name of a supply contract, but the contract should be described with all these descriptions, for example a contract for the manufacture, supply, installation, operation and maintenance of machinery.(64).

Second: Parties to the contract:

After determining the title of the administrative contract, its parties are appointed, and everyone who has a role in it, such as the agent or legal representative, in an adequate and accurate manner that does not tolerate interpretation, and after the parties are appointed in the introduction to the contract, they are referred to in the paragraphs of the contract through the term first party and the second party. It should be noted that the administrative contract is concluded between two legal persons or between a natural person and a legal person, and the natural person may be local or international, and certain considerations must be taken into account when writing the statements of the parties, and the data of the natural person are mainly as follows:

A. Name

B- Place of residence

C- Identity card data (card number, place and date of issuance)

D- The capacity of the person under which he entered into the contract may also be written, as one of the parties to the contract may be a representative or agent of another original party.

The name that will be referred to each party to the contract, i.e. the capacity of the person in the contract, if the contract is a public works contract, for example, (contractor) is written.

(f) Arrange each party according to the appearance of its name in the contract, if the order of its first appearance is written by the first party, and if its second order is written by the second party, it is taken into account that the first party is the offer or the second party is the acceptor.

The administrative authority competent to draft the administrative contract must avoid writing additional unnecessary data such as nationality, profession, age, religion, etc. Nationality can only be determined in the case of the foreign party.

As for the data of the legal person, they are as follows:

- Name of the legal person

- Legal form of the legal person

- Commercial registration number

- The location of the legal person

- Representative of the legal person

- The capacity of the representative of the legal person

Third: Place and date of conclusion of the contract:

After the inclusion of the paragraphs contained in the administrative contract, it is necessary to specify the place of the contract and the date of its conclusion at the end of the pages, and this designation is of great importance to determine the territorial jurisdiction of the competent courts and the applicable law in the event that the contract does not indicate this when a dispute arises between the contracting parties about the content, validity or performance of the contract.

The date of writing the contract is intended to determine the date of its proof in writing, but this date does not have any legal effect on the emergence of the contract, which may have arisen legally and positively on a date prior to the date of writing the contract. It is decided in the judgment of the Egyptian Court of Cassation that the contract is not considered complete binding once its texts are recorded in writing, even if they are signed, but that evidence must be based on the convergence of the will of the contracting parties on the establishment and enforceability of the obligation. But what is the legal effect if the contract is drawn up at a date later than its creation? is it taken in terms of the legal effect of the contract on the date of its writing? or the date of its inception? for example, in the case of a public tender, if the contract is drawn up at a later time to notify the tenderer of the acceptance of his bid and to award the tender to him with a letter of acceptance free of any reservations or conditions? the notification of acceptance is considered a source of the contract and binding on the contracting party, so in this case it will be taken on the date of notification or the date of writing the contract?

The Egyptian Court of Cassation answered this question, in a case on a dispute raised over a supply contract, the Qalyubia Municipality was notified on 26/1/1974 of one of the companies applying for a tender in a tender for the supply of cars for services awarded to the bid, and the notification was made, and on 6/3/1974 the contract was written with the said company and a dispute was raised about whether the date on which the contract was concluded was the date of the tender award letter or the date of editing the contract, so the Egyptian Court of Cassation ruled that the text in Article (99) of the Civil Code However, ((the contract is not completed except by awarding the auction)), indicates that the submission of the bid, whether in auctions or tenders, which take its judgment is only positive from the bidder, and the contract must be convened by an acceptance of the award of the auction or tender on it from those who own it, and it does not change that editing the contract proving the contract at a date subsequent to its convening because the editor is a tool of proof that does not need to be edited in accordance with the date of the contract.

However, the date of writing the contract can acquire legal importance if the implementation of the contract or a specific obligation contained therein starts from the date of its release, and the administrative authority competent to draft the administrative contract in this case must take into account that the signature of the party enforcers with the obligation coincides with the date of writing the contract because it is not conceivable that a party is obligated to implement an obligation retroactively, and a distinction should be made between the date of editing the contract and the date of its entry into force, while the date of editing The contract is one of its formalities, and the effective date is one of its paragraphs and is placed within its body, and the effective date of the contract can be linked to the date of its release or signature.

Fourth: Preamble to the contract:

After the appointment of the parties to the administrative contract, the preamble comes directly, which is a summary according to which the motives and reasons that prompted the parties to the contract to conclude this contract, and some of the principles that were agreed upon in previous negotiations, and the role of the preamble appears in knowing the intention of the contractors when it is difficult to disclose it in the paragraphs of the contract, as nothing in the administrative contract is irrelevant, but with regard to the binding of this preamble to the parties to the contract, and the extent to which it is considered part of the contract, this is left to the will of the parties.(65). Therefore, it can be said that the preamble is the preamble that precedes the articles of the contract and indicates the purpose of its conclusion and some of the principles that were agreed upon in previous negotiations.(66). In other words, this part gives a background to the contract and the purpose of entering into it, is not an essential element of the contract, and can therefore be dispensed with if there is no necessity for its existence.

The preamble usually contains information or data, and is generally seen as outside the body of the contract, so the placement of contractual clauses in the preamble should be avoided, and when information relating to a clause in the contract needs to be incorporated, it can be referred to. The preamble part is written in two ways, the first is classical in the form of rationale, and the second is the modern method in the form of independent paragraphs. In the first method, the preamble takes the form of one sentence extending through several paragraphs, each of which begins with a word where, while in the second method, the part of the preamble takes the form of separate regular paragraphs, taking into account the balance between paragraphs, and it is better to use the method of separate paragraphs instead of the rationale method in building the preamble of the contract.

V. Contract Body:

It includes clarifying the subject of the administrative contract and stating the obligations and rights of its parties because in return for each obligation there is a right of the other party, determining the spatial and temporal scope of the contract, methods of settling disputes that arise between the parties to the contract and using wording that prevents obscene ignorance in order to avoid any dispute, and may appear in particular through the technical conditions of the contract (67). Referring to some oil contracts as administrative contracts, we find that the Iraqi contract with Russian and Chinese companies in 1997 consists of (41) articles, while the contract (SAMCO) to participate in Syrian production in 1977 consists of (30) articles (68), while the contract for participation in production between the State of Qatar and the company (Wintershall) and other companies in 1976 contained 42 articles (69).

The administrative contract is divided into articles according to the subject of each article, and each article is allocated a main title that reflects its subject, and the articles are numbered with serial numbers and each article can be divided into paragraphs.

Signatures of the parties and ratifications:

The last part of the administrative contract is the signature of the parties to the contract, as the individual or contracting company signs the contract as well as the representative of the contracting administrative authority must sign the contract.

The contract must also be certified, and ratification means the testimony of witnesses or the authority authorized to certify the validity of the signatures and data of the parties. In the event that the contractor with the Department is a foreign company, the attestation shall be made by the Chamber of Commerce in his country(70), and then the ratification by the Ministry of Foreign Affairs in the country where the contract is executed with the validity of the Consulate's ratification.(71)

Annexes to the contract

1. Annex A contains the areas covered by the contract and is marked as southern and northern coordinates and determines their location in relation to the area of the country.

2. Annex B includes the accounting system for calculating costs, profits, the value of recovery of materials, goods and equipment, the provisions for the application of taxes, and generally all financial aspects.

3- Annex (C) includes the memorandum of association of the joint company that is formed after commercial production and cost recovery by the contractor.

4. Annex (d) contains the letter of guarantee, which is the bank guarantee deposited by the contractor with a local bank.

Second Requirement

Frequent conditions in administrative contracts

There are conditions repeated in administrative contracts aimed at protecting the effectiveness of the administrative contract and its organization, contrary to the paragraphs that concern the obligations of the parties, and for the importance of these conditions, we will allocate this requirement to the repeated conditions in administrative contracts by dividing it into two branches, we deal in the first section with the general conditions in administrative contracts,

while we devote the second section to the conditions for settling administrative disputes and the conditions for some administrative contracts.

Section I

General Conditions in Administrative Contracts

There are general conditions that must be met in all administrative contracts, these conditions we will discuss in some detail in this section by dividing it into several paragraphs, dealing in each paragraph with one of these conditions.

First: Definitions:

The first article of administrative contracts usually contains a set of definitions, terms and linguistic meanings of some of the terms contained therein in order to avoid a conflict between the parties to the contract(72), especially since the wording of the contract is affected by the legal systems to which the negotiators belong(73). The definition is one of the most important paragraphs of the administrative contract because these contracts contain many legal terms that vary in meaning, and is due to the definitions in the interpretation of the agreement, its causes and purpose when a dispute arises between the parties(74). This article on definitions includes explanations of the meanings of the words and phrases contained in the contract, which may raise a dispute about their meaning or are repeated a lot in it, and these definitions are usually topped by the following phrase: ,, The following words and expressions mean the meanings located next to each of them, unless the context requires or an intention appears otherwise,,. The method of definitions is one of the most important tools that help the competent administrative authority in drafting the administrative contract in its task, as it helps it to achieve the following (75).

1- Avoid repetition and then reduce the number of words used in the contract.

2- Avoid the possibility of interpreting the word with conflicting meanings by defining it once.

3- Be accurate by not leaving the responsibility for defining the word to the user of the contract.

4- Allow the competent authority to draft control what the word means and not leave this task to the dictionary.

The administrative authority competent to draft the administrative contract must not rush to write the tariffs article from the first moment of writing the contract, but it must wait until it finishes drafting its first draft, and then proceed to write the definitions, in other words, writing the definitions should be the last stage in writing the administrative contract because only then can it also determine the appropriate place to put the definition.

The article on definitions is often placed at the beginning of the substantive provisions of the contract on the basis that logic requires the definition of the term before it is used(76), but if the list of these definitions is long, it is rarely read by all parties to the contract, and therefore it will not be useful in practice(77), and even if it is read it will not be easy to remember(78), so there is no reason why the definitions article should not be included at the end of the contract or at the beginning of the section in which the defined term appears.

Idiomatic definitions can be classified into three main types:

1- Full terminological definitions using the formula (means).

2- Partial terminological definitions using the formula (includes in its meaning).

3- Compound terminological definitions using the phrase (means and includes in its meaning or means and does not include in its meaning).

II. Interpretations:

The Interpretations Article sets guidelines to guide the interpretation of the provisions of the contract, and this article aims to achieve certainty between the parties regarding the terms it contains so that no dispute arises between them when applying the contract on the one hand, and to avoid the need to repeat what is meant by those terms on the other hand. For example, interpreting the masculine as including the feminine, would first remove any potential disagreement as to whether the term engineer meant engineer, on the other hand, this paragraph makes it unnecessary to repeat that interpretation whenever it is needed in the contract, and an example of interpretation may be contained in the contract a paragraph that states (the word including and the word includes or includes means to include but is not limited to). Under Article 1.12 of the Unidroit Principles, in calculating periods fixed by Parties, the following rules shall apply:

1. Official holidays or holidays that fall during a period specified by the Parties for the execution of an act shall be included in the calculation of this period.

2. If the last day of this period is a day off or an official holiday or at the place of work where one of the parties is to engage in a business, the period shall extend until the first subsequent working day, unless circumstances indicate otherwise.

3. In the event of a different local time, the time applied at the place of establishment of the Party specifying the period shall prevail, unless circumstances indicate otherwise.

Third: Weighting between contract documents:

This article takes different names, including weighting between contract documents, priority of contract documents, or weighting between documents according to their precedence in the order, and this article clarifies the order in which one document or annex is preferred over other documents or annexes of the contract. This article usually stipulates that the paragraphs of the contract interpret each other, and its annexes are an integral part of it, complementary to it and complementary to what may be overlooked from its paragraphs, and in the event of any conflict between the texts of the annexes, the lesson shall be preceded by their receipt in the following order:

1- Change Orders

2- Sample contract document.

3. Special Conditions

4. General Conditions

5- Specifications

6- Graphics

7- Any other document that is considered complementary to the contract

The following is an example of the wording of the document priorities article in the FIDIC contract (the paragraphs of the contract interpret each other, and the following documents are an integral part of it, complementary to it and complementary to what may be overlooked from

its paragraphs, and in the event of a conflict between the texts of these documents, the precedence of their receipt shall be as follows: .....).

Fourth: The administrative contract includes all the agreement:

This condition aims to clarify that the administrative contract drawn up and signed by the parties means that this contract includes all the agreement they reached with regard to its subject matter and replaces any previous agreements or negotiations related to that subject, so it should be ensured when using this paragraph that the contract includes everything agreed upon by the parties in all correspondence, arrangements and understandings that took place between them before entering into the contract, whether written or oral. As a general rule, it is not permissible to violate or supplement the written contract containing a paragraph indicating that the conditions agreed upon by the parties in the contract may not be violated or completed.

Fifth: Reduction of the Administrative Contract:

This paragraph is included to ensure that one of the paragraphs of the contract does not lead to the invalidity of the whole, and through this paragraph the parties try to avoid the invalidity of the entire contract due to the serious damage caused to each of them as a result. Under this paragraph, each provision of the contract is separate from the other provisions, so that its invalidity does not affect the rest of the provisions of the contract, however, if the paragraph ruled invalid concerns a fundamental obligation in the contract concluded between the parties, its separation from the contract may have consequences that were not intended by the parties or either of them, and therefore that paragraph may not be appropriate for all contracts. An example of the condition of reducing the contract is a paragraph in which it states (if for any reason it is ruled that any provision or part of a provision stipulated in this contract is invalid or not enforced, or that such provision or any part of it is contrary to applicable law, the rest of the provisions remain in full force and arranged for their legal effect and the parties agree to reformulate any provisions ruled invalid, non-enforced or contrary to the applicable law so that they reflect the original intention. to the parties as far as possible and consistent with the provisions of the applicable law).

Sixth: Prohibition of transferring rights to third parties:

A paragraph prohibiting the assignment of the right to third parties is included in the contract when the parties wish to oblige themselves not to assign to third parties their contractual rights and duties, and one party may wish to oblige the other party not to assign to third parties its rights and duties in the contract to ensure that it performs its contractual obligations by itself, and that party may make the other party's waiver of its duties to third parties subject to its prior written consent(79). The following is an example of the prohibition clause prohibiting the assignment of the right to others (the second party may not assign any of the rights or assign any of its duties under this agreement to third parties without the written consent of the first party).

VII. Non-waiver of the exercise of the right:

This paragraph is also called the exercise of rights, and aims to ensure that one of the parties to the contract is not considered to have waived the exercise of his rights or claimed them unless the contract expressly provides for it, and this paragraph usually states that the failure of any party to enforce any provision of the contract, or the failure of the other party to perform it is not interpreted in any way as a waiver of that provision, and does not affect the validity of the contract or any part thereof or the right of Rights of any party. This paragraph is important in the absence of a party, it may be inferred from the conduct of any party that it has

agreed to waive its right, and this paragraph does not apply to the rights expressly provided for in the contract. The following is an example of a non-waiver clause (the waiver by either party of a breach of any provision of this contract shall not constitute a waiver of any subsequent breach thereof or render ineffective of that provision).

Applicable Law:

The parties to the administrative contract must determine the law to which the parties to the contract are invoked, and the court competent to hear the dispute when a dispute occurs, so the text related to the law applicable to the dispute and the competent judiciary must be clear in the contract (79). It is necessary for the parties to the contract to agree on the law applicable to it because legal concepts differ from one legal system to another, but from one law to another, and therefore the method of drafting the contractual clause will differ, and sometimes even the words used in it according to the law applicable to the contract (80). The applicable law may affect the contract in several ways, for example, the applicable law may contain rules on the interpretation of the contract, assumptions concerning the meaning of certain words or phrases, and may contain mandatory rules governing the form or validity of contracts that should be taken into account when drafting the contract.(81).

There are two trends with regard to the stage of determining the applicable law, the first considers that it is advisable to determine the applicable law in the first stage of the contractual relationship between the parties, if the contract is made by tender, the applicable law should be specified in the invitation to it, and if the contract is made by direct negotiation between the parties, the applicable law should be agreed upon at the beginning of the negotiations. The second approach is that the applicable law should be determined after the conclusion of negotiations on commercial, technical and main issues and after the parties have reached an agreement on those topics. The researcher believes that the first direction is the most correct, because the applicable law often includes rules that may affect the offer and acceptance, which are the main elements of the emergence of the contract, for example, the principle of good faith and the subjective criterion or the objective criterion.

In administrative contracts with a foreign element, each party usually wishes to contract in accordance with the substantive law applicable in its State, and if one of the parties is in a stronger negotiating position than its counterpart, its desire may prevail, and often a compromise solution is put forward by choosing the law of a neutral State subject to the implementation of the obligations of the contracting parties.

In contracts where one of the parties is not a foreigner, it is not necessary to determine the legal system governing the contract or the courts that are competent to settle disputes between them, however, the administrative authority competent to draft the administrative contract should consider well the paragraph of the applicable law and the paragraph of the competent court in the following cases:

1- If both parties do not reside in the same country.

2. If one of the parties has assets in one country in excess of its assets in another country.

3. If the transaction is governed by the law of another State, for example on the basis that the contract originated in that State.

4. If all or part of the transaction will be carried out in another country.

Among the typical versions of the paragraph of applicable law are the following (unless otherwise provided governing the substantive law of a State ..... The validity, interpretation

and performance of this contract and compensation for its breach or for any claims related to it).

Ninth: Duration of the Contract:

In fixed-term contracts, including administrative contracts, the duration of the contract must be appropriate to its nature, and it is necessary to determine its beginning and end, and in some contracts the duration of the contract can be calculated from the date of its release, while in other contracts the implementation of the contract may begin at a date later than its release, and the date of starting the implementation of the contract may be linked to an event stipulated in the contract, for example, the date of acquisition of the site in the construction contract, or the date of obtaining approval from a specific party.

The duration of the contract can be renewable in certain contracts, for example a supply contract and a general facility concession contract, but other contracts are non-renewable in nature, including a construction contract. The following is a typical picture of the contract duration clause in the contract for the provision of consulting services.

There are four cases in which the administrative contract is terminated, and then the contracting party degrades its contractual obligations(83):

1- Full implementation of the contract by its parties, and the expiry of the contract period.

2 - Agreement of the contracting parties to abandon the contract or to depart from it.

3 - Release of the contract by virtue of the law.

4 - Termination of the contract by court ruling.

When the administrative contract is terminated as soon as it is executed or its term expires, no legal problems arise, but the problem arises when the contract is terminated by the judiciary due to the failure of one of the parties to perform its contractual obligations or commit a breach of the contract (84), The first condition is that the contract is binding on the parties, and the second condition is that one of the contracting parties refrains from performing its obligations for a reason due to his fault, but if the non-performance is due to the impossibility of implementation, we are going to rescind the contract by force of law, and the third condition is that the contractor requesting the rescission must be ready to perform his contractual obligations.(85)

The avoidance of the administrative contract is governed by a rule of law according to which the creditor who is answered to avoid the contract may recover compensation for the damage suffered by the debtor if the debtor's failure to perform his obligation is due to his negligence or deliberate fault and the result of such error is damage.(86).

The following is a typical version of the condition of termination of a public utility concession contract (1- Any party has the right to terminate the contract in the event of a fundamental breach by the other party by notifying the party in breach of the contract in writing and in detail first of the facts of the breach and giving him a period of (30) days to repair that breach, and if the breach is not repaired within the said thirty days, the injured party may terminate the contract immediately without resorting to the judiciary and without prejudice to the rights of the injured party stipulated by law for by sending a written notice to the violating party. 2- Any party has the right to terminate the contract in the event of bankruptcy of the other party or making arrangements with creditors or insolvency or inability for any other reason to manage its business in a normal manner as a result of financial difficulties and the party who terminates the contract to do so by sending a written notice to the other party, and the

termination takes effect immediately without resorting to the judiciary and without prejudice to the legal rights of the party who terminates the contract.

Eleven- Continuation of Validity after the Expiry or Termination of the Contract:

This article specifies the provisions of the contract that will continue to be in force after the expiry or termination of the contract and these provisions usually include the following articles:

1- Confidentiality of Information

2. Article of the prohibition of competition

3- Article of the effects of the contract

This article is necessary if the party who disclosed information about him to the other party during the validity of the contract wishes the other party to maintain the confidentiality of this information or that the rights and obligations arising under the contract continue to exist even after the termination or termination of the contract. Under this Article, the acquired rights and obligations arising from the contract shall continue to have effect during its validity period and shall be effective after its termination or termination. Unless the law provides otherwise, the administrative authority competent in drafting can specify a specific period for the continuation of the validity of the provisions of the contract or a different period for each provision, or specify the continuation of validity for an indefinite period, and instead of using this article, the administrative authority competent in drafting can include an explicit provision in each of the relevant articles stipulating that the provisions contained in that article will continue to apply. The following is an example of the formulation of this clause in administrative contracts (the rights and obligations of the parties under this contract shall remain effective after its termination or termination).

Twelve. Notifications:

It was important to include a clause in the administrative contract on notifications for two reasons: first, to determine the correct manner of giving notifications, and second, to specify when such notices had been delivered. In some contracts such as construction contracts, notifications acquire great importance due to the large number of notifications from the employer or consulting engineer to the contractor and the obligations resulting from those notifications. The following is a model paragraph for drafting the paragraph of notices in administrative contracts (each of the parties expressly acknowledges that it has a chosen place with the address mentioned before it in the beginning of the contract and any notices sent to that address are valid, binding and productive of their legal effect). Thirteen. Copies of the contract:

This paragraph may be intended to provide the opportunity for the parties to sign the contract at different places and times, and therefore unless there is a ceremony attended by the parties to sign the contract at the same time, this paragraph must be included (87).

Each party must sign at least as many copies as the number of parties to the contract, keep a copy and distribute the rest of the copies to the rest of the parties, and given the time it may take to distribute the hard copies of the contract to all its parties, it is customary to distribute the paragraphs of the contract drafting and not the entire contract by fax immediately after the contract is drafted. However, in order to reduce the possibility of a dispute arising over the drafting and enforcement of the contract, the contracting parties must ensure that each of them has received the original copy of the entire contract, since the entire contract and not the drafting clauses are the original copy, and if any party has concerns about this subject it can make the delivery of the original a precondition for the contract to be effective, although this is unusual for this to happen. The following is a typical example of the requirement to copy a contract in an administrative contract

Fourteen - Avoid the use of rubber phrases:

It is preferable to avoid the use of phrases that can be interpreted in more than one sense, as if the administrative contract stipulates the phrase (that the contract is implemented within a reasonable period or without any reasonable delay) such a phrase opens the door to disputes because of the difficulty of determining the reasonable period.

Fifteen- Signing and marking on each page of the contract:

This element confirms that the parties to the administrative contract have been informed of all the terms and conditions of the contract contained in each of its pages, and this denies ignorance and forgery, which cuts off the dispute and avoids disputes.
Sixteenth - Drafting in the present tense:

When drafting the administrative contract, all its articles must be edited in the present tense and not the past, because the terms and conditions of the contract are implemented after signing it by both parties, and therefore the wording of those provisions may not be in the past, as this indicates their implementation in advance, and the reference to the masculine and feminine sometimes creates some problems in the formulation, and therefore to avoid this, we find that many contracts stipulate that the reference to the masculine also includes the feminine (88).

Section II

Conditions for the settlement of administrative disputes and conditions for some administrative contracts

Administrative contracts include special conditions for settling administrative disputes arising from those contracts and indicate the means of settling those disputes, and there are special conditions included in some administrative contracts without others, due to the specificity of these conditions and their association with certain contracts, so we will address in this section the conditions related to the settlement of administrative disputes, and the conditions for some administrative contracts, each in a separate paragraph.

First: Conditions for the settlement of administrative disputes:

In this paragraph, we deal with the conditions for settling administrative disputes, in other words, judicial and amicable means for settling such disputes, which are as follows:

1- Competent Court:

If the parties to the contract are from different countries, each party will want to resolve the dispute in its own country, and then it will include a paragraph in the contract stipulating that. If both parties are from the same State, they may wish to settle their contract dispute before the competent court in the city in which they reside(89). In most cases, the parties agree that jurisdiction to settle the dispute is convened for a particular court but not limited to it, which means that there is at least one competent court before which the parties have agreed to hear the dispute, and therefore both are certain about which court will hear the dispute, because unless the court itself decides that it is not competent to hear the dispute, it can be heard before it(90). The following is a typical formulation of the paragraph of the competent court or jurisdiction (the courts of .... It alone shall consider any dispute arising between the parties due to the interpretation, application or execution of this contract and the parties shall be subject to any courts that may hear appeals against the decisions of those courts in relation to any proceedings regarding).

2- Arbitration:

It is important to formulate the arbitration clause so that it is comprehensive and includes all its requirements, and to achieve this, the arbitration clause must include the following elements:

A-Specifying a specific period of time for submitting a written request for arbitration.

B- Determining whether the arbitration is private or institutional, and in the case of private arbitration, the parties themselves shall manage the arbitration process, but in the case of institutional arbitration, the arbitration shall be managed by the arbitration institution, in which case that institution must be determined.

C. Applicable Arbitration Rules.

D-The number of arbitrators and the method of their appointment.

E-Determine the body that will appoint the arbitrators that the parties have not agreed to appoint.

F- Determine whether arbitration will cover all disputes or be limited to specific disputes.

The law applicable to the procedural and substantive aspects of arbitration.

Place of arbitration.

i. Language of arbitration.

Arbitration costs and arbitrators' fees.

(k) Stipulate that the arbitral award is final, binding and enforceable, and may be submitted to any competent court to issue an enforcement order.

(l) Stipulating that nothing in the arbitration clause shall prevent any party from resorting to the court to obtain an injunction to prevent the other party from taking an act that would cause him loss or damage.

3- Amicable settlement of the dispute:

Amicable settlement means those means that are used outside the courtrooms, such as mediation, conciliation, negotiations, expertise or any other method that helps the parties to the administrative contract to settle the dispute between them amicably.(90). The main difference between them and arbitration is that arbitration leads to a legally binding decision(91), while amicable means lead to a non-legally binding decision unless otherwise agreed by the parties.(92). Similarly, the parties submitting their dispute to arbitration may switch to amicable settlement if they find that their dispute requires them to pursue another method based on mutual consent.

Second: Conditions for some administrative contracts:

There are special conditions related to some administrative contracts that we will address in this paragraph, and these conditions are as follows:

1- Time Commitment:

The obligation to perform on time specified in the administrative contract is very important and mandatory, and therefore any delay, whether reasonable or unreasonable, minor or significant, justifies the other party to terminate the contract. This paragraph is used in particular in construction contracts, commodity manufacturing contracts, etc., and failure to comply with this obligation constitutes a breach of contract.(93).

Where the contract is devoid of a duration clause, courts generally permit the parties to perform their obligations within a reasonable time, and most courts adopt the general principle that failure by a contracting party to comply with the time obligation clause constitutes a fundamental breach of the contract. (94),

2- Commitment to confidentiality

The conclusion of administrative contracts requires a degree of confidentiality, either because of the specificity of the subject matter of the contracts or for other considerations such as competition. In order to achieve the principle of confidentiality and non-disclosure, it is necessary to explicitly stipulate this in the contract, since the absence of an express provision for the principle of confidentiality and non-disclosure makes the door open for the leakage of secrets of the parties to the contract, including technical issues related to the contract, and thus leads to the opening of disputes between the parties.(94), The information disclosed by one of the parties to the other party or that one of them becomes aware of during the implementation of his work under the contract is not confidential in nature, and as a general rule, the parties to the contract do not have the obligation to maintain the confidentiality of that information, in other words, the party who obtained that information has the right to disclose it to others or benefit from it, whether the contract is concluded or not, unless the contract expressly provides otherwise.(95). One of the parties to the administrative contract may have an interest in not disclosing to others certain information obtained from him, or obtained in the course of his work under the contract, and then he may wish that the other party does not use that information for purposes other than the contract, if the party to whom that information belongs declares that it is confidential, there becomes an obligation on the party who received it that he accepted to maintain its confidentiality, but if the party with the information does not declare its confidential nature. The receiving party has no obligation to maintain its confidentiality as long as it does not violate the principle of good faith and honesty of dealing.(96), The value of compensation varies according to whether the parties have concluded a special agreement between them or not, and even if we assume that the injured party did not suffer a loss, he may have the right to recover the value of the benefit from the debtor obtained by the latter as a result of disclosing the information to third parties or using it for his own purposes. The injured party may, where necessary, for example, if the information has not been disclosed or partially disclosed, also obtain a judicial order preventing the receiving party from disclosing it in accordance with applicable law. The following is an example of the wording of the confidentiality obligation clause contained in Article 1/16 of the Unidroit Rules (1. Subject to paragraph (2), each Party shall maintain the confidentiality of the information obtained from the other Party and neither Party shall disclose such information to third parties without the prior written consent of the other Party.
2-Notwithstanding the provisions of paragraph (1), the obligation of confidentiality shall not apply to information available to all people or which was already in the possession of any party prior to entering into this Agreement.

3- Protection of intellectual property rights:
Intellectual property refers to the creations of the mind, such as inventions, literary or artistic works, designs, logos, names and images used in trade. Intellectual property is legally protected by rights, including patents, copyrights and trademarks, which enable people to gain financial benefit from their creation. Many administrative contracts include the condition of protecting intellectual property rights, and the typical formulations of this condition are the following: 1- The first party retains all intellectual property rights in the training materials that it itself prepares and designs, and the second party may not use it for any purpose other than joint training activities without obtaining the prior written consent of the first party) (2- Any information, materials, products or documents created in connection with the works subject to this contract remain the property of the party who invented them. alone and may not be exploited by the other party without the prior written consent of the party who invented it).
Advertising to the public:

Some administrative contracts include a condition by which the two parties to the contract are prevented from using the name or logo of the other party in its correspondence or advertisements, or to include in its publications any information provided by the other party to it, and the following is the following model form (no party may without the prior written consent of The other party may announce or exploit in any way the name or logo of the other party in its correspondence, advertisements, or on its website, nor to include in its publications any information provided by the other party to it that was not announced to the public).

Conclusion

After we have finished studying the subject of the legal drafting of administrative contracts, it becomes necessary for us to stand on the results that emerged from this study, and what solutions can be proposed to its problems, by presenting a set of the following results and recommendations:

First - the results

In the context of researching the legal formulation of administrative contracts, we have reached the following results:

1- It is necessary to work to avoid disputes that may arise between the two parties to the administrative contract by anticipating the issues that disputes may arise regarding, and to identify the means to prevent them, including the formulation of the administrative contract in a way that leads to avoiding the emergence of disputes between its two parties. Complete and accurate in accordance with legal principles and rules. Disputes between the parties to the contract are minimized.

2- Negotiations are an important step in drafting administrative contracts and the basis on which the competent administrative authority in the country relies on drafting those contracts. Often the preparation of administrative contracts, especially with the foreign party, is the subject of long negotiations between the competent administrative authority on the one hand, and the individual or company on the other hand, In some administrative contracts, including oil contracts, it may last for several years, as it is usually related to the financial, human and technical means to complete the project. After the negotiations on the final contract form are completed, the stage of preparing the draft contract begins. This task is entrusted to jurists with experience and competence in the subject matter of the contract. One of the issues related to the form of the contract is the structure of the contract, as it is the general framework by which its content and effects are inferred. Usually the structure includes the title, the two parties The contract, the preamble, definitions, subject, appendices, place and date of the contract.

3- The good legal drafting of administrative contracts has certain characteristics, whether in terms of the drafting style or the way it is presented, as the quality of the method that guarantees the good drafting of administrative contracts is determined by its basic characteristics in light of the purpose of the drafting, which is specifically that it is a tool or a means of communication between two or more persons, as The function of drafting in conveying ideas to others requires that several rules be taken into account in presenting them to ensure that the idea communicates to whom it is addressed in the intended meaning.

4- It is useful for the administrative authority concerned with drafting the administrative contract to draw up a draft that includes the elements of the contract to be drafted, and the structure of the draft must be of a capacity to include the subjects of the required contract in a logical order, and if it is common for those specialized in drafting administrative contracts to refer to the current contract models, then it must be careful not to adhere to these forms when preparing the draft administrative contract to be drafted, which may require deletion or addition to those forms.

5- There are conditions that are repeated in administrative contracts aimed at protecting the effectiveness of the administrative contract and regulating it in contrast to the paragraphs that concern the obligations of the two parties, and because these paragraphs are used

frequently and usually come at the end of the contract, the parties do not feel their importance, and in some cases they do not even read them, and as a result it is possible that omission of certain details in the formulation of these paragraphs may place one of the parties to the contract in a bad position that he did not expect.

Second - Recommendations

The most important recommendations we reached are as follows:

1- Making the negotiations for the conclusion and drafting of administrative contracts the prerogative of specialized administrative bodies that are well versed in the principles and methods of negotiation and know the principles of drafting and implementing administrative contracts by forming a department or body specialized in negotiating administrative contracts formed on a scientific and objective basis of legal experts, economists, technicians, linguists and others. One of the specialized competencies in this field, while continuing to receive advanced education and continuous training in the areas of negotiating contracts, drafting them, and settling their disputes.

2- The Arabic text of the administrative contract with a foreign component must have the same legal value as the text written for it in English or the language of the foreign contracting company in all administrative contracts that the Iraqi government concludes, especially as pursuant to Article (4) of the Law of Preserving the Integrity of the Arabic Language No. (64) For the effective year 1977, contracts concluded by the Iraqi government should be written in Arabic.

3- It is necessary to work to avoid conflicts of administrative contracts that may arise between the two parties to the contract through the precise formulation of the administrative contract and its implementation in good faith.

Margins:

1- An example of this is that the competent authority drafts the administrative contract to modify the dispute settlement method from the method of ordinary litigation to arbitration, which may result in charging the person wishing to contract, whether an individual or a company, costs that he would not expect.
2- John Wolmsley - handbook of international joint ventures - London - 1982 - p.94.
3- Dr. Ibrahim Al-Shahawi - The Culture of Negotiation and Dialogue - 1st edition - The National Company for Printing and Distribution - Cairo - 2010 - p. 168.
4- R.Dick- Legal drafting- Toronto- 1985-p.4.
5- Ali Hadi Attia - Interpretation of Direct Tax Laws in Iraq - PhD thesis - College of Law - University of Baghdad - 2004 - p. 49.
6- Dr. Hassan Kaira - Introduction to Law - 5th edition - Mansha'at al-Ma'arif - Alexandria - 1974 - p. 410.
7- William Fox- international commercial agreement-Khuwer law public-1988-p.113.
8- Dr. Ibrahim Al-Shahawi - previous source - p. 168.
9- R.Dick-op-cit. p.2.
10- Dr. Abdul Qadir Al-Sheikhly - The Art of Legal Drafting in Legislation, Jurisprudence and Jurisprudence - Dar Al-Thaqafa Library for Publishing and Distribution - Amman - 1995 - p. 90.
11- J.M. Mousseron-Technique contractuelle edition juridiques Le febvre-paris-1988-p.588.
12- Dr. Talib Hasan Musa - International Trade Law - 1st Edition - Dar Al Thaqafa for Publishing and Distribution - Amman - 2005 - pp. 116 - 117, D - Muhammad Ali Jawad - International Contracts (Negotiations, Conclusion, Implementation) - Dar Al Thaqafa for Publishing and Distribution - Amman - 1997 - pp. 9 - 10.
13- Dr. Ahmed Abdul Karim Salameh - The Legal System for International Contract Negotiations - A research published in the Bahraini Law Journal - College of Law - University of Bahrain - Issue 2 - Volume One - 2004 - pg. 375.

14- Dr. Muhammad Ali Jawad - previous source - pp. 24-25.
15- Dr. Issa Khalil Khairallah - The Spirit of Laws - Publications of the Comparative Law Research Center - Erbil - 2010 - p. 18.
16- Dr. Muhammad Hussein Abdel-Al - The Consensual Organization of Contractual Negotiations - Dar Al-Nahda Al-Arabiya - Cairo - 1998 - p. 10.
17- Fouad Al-Alwani and Dr. Abd Jumaa Musa Al-Rubaie - Negotiation and Contracting - Al-Zaman Press - Baghdad - 2000 - p. 10.
18- Saman Khurshid Hussein - Procedural Aspects in Oil Contracts - 1st Edition - Zain Law Library - Beirut - 2018 - p. 109.
19- Dr. Hamada Abd al-Razzaq Hamada - The legal system of the public utility concession contract - New University House - Alexandria - 2012 - p. 481.
20- Dr. Rabih Shannoub - Nodal Technique - The Modern Book Foundation - Beirut - 2014 - pp. 56-58.
21- Dr. Ahmed Abdel Karim Salama - International Contract Law (a study between private international law and international trade law, a fundamental and critical study) - Dar Al-Nahda Al-Arabia - Cairo - 1989 - p. 145.
22- Although a preliminary agreement was reached during the negotiation on the parts of the subject, the final agreement on it and then its formulation may depend on the agreement on the ruling on other subjects.
23- The term letter of intent is applied to many documents that are edited in the stage before the final signing, and this term goes to express the proposals of one of the parties to the potential contract regarding the elements of the contract, and thus the letter of intent includes the desire of one or both of its parties to contract, and it may include as well On this, one of the parties to the potential final contract pledged to perform a specific action, but the legal value of such an undertaking is controversial and ultimately depends on the method of drafting the letter. For more details, see Dr. Ahmed Sharaf El-Din - Principles of Legal Drafting of Contracts (Contract Design) - Wahba Hassan Sons Press - Cairo - 1993 - p. 67.
24- G.Schmoll-vendre a letrtnger-guid 2 de l exportation-paris-1989-p.5.
25- Dr. Abdul-Qader Al-Sheikhly, previous source - pp. 94-99.
26- William fox-0p-cit-p.94
27- It is noted that the Latin school in drafting is keen on using commas between sentences, while it is possible to draft half a page or even a full page without commas if the drafting is done by a jurist working under the umbrella of the public law school.
28- Abdul Halim Ibrahim - Spelling and Punctuation in Arabic Writing - Gharib Library - Cairo - 1975 - p.9.
29- Dr. Abdul-Qader Al-Sheikhly - previous source - pg. 99.
30- B-Becker-Guidelines for drafting agreement-The practicalt Lawyer-vol.22-No8-p.72.
31- It is common in the formulation in the Arabic language to use the phrase (such and such is done) such as issuing licenses without indicating the party in charge of that.
32- Dr. Abdul-Qader Al-Sheikhly - previous source - pg. 99.
33- Such as CIF Landed or CIF Local port.
34- R.Dick-op-cit-p.5, 20.
35- To protect the contractor from drafting problems and surprises, the law stipulates in some United States of America, such as New York, that the consumer in the contract of sale of goods is not bound to him unless it is written in plain language. For more details, see: William Dunn - Lectures delivered during the training course on negotiating international petroleum agreements (drafting contracts) at the Institute of International Law - Washington - 1989.
36- D- Abdul Qader Al-Sheikhly - previous source - p. 100.
37- B-Becker-op-cit -p.72
38- R.Dick-op-cit-p.5, 24.
39- B-Becker-op-cit -p.24.

40- A brief footnote may be placed in the margins of the contract indicating the content of the corresponding provisions.
41- The legal guide for drafting international contracts for the construction of industrial facilities - p. 58.
42- As 1, a-, (1).....
43- Such as 1/1, 1/2, 1/ 3, ..., 1/2, 2/2, 2/3.....
44- Dr. Hamada Abd al-Razzaq Hamada - previous source - pg. 489.
45- William Fox-op-cit-p.91.
46- R.Dick-op-cit-p.29.
47- R.Dick-op-cit-p.36.
48- William Fox-op-cit-p.92
49- Dr. Abdul-Qader Al-Sheikhly - previous source - pg. 99.
50- R.Dick-op-cit-p.37
51- D- Abdul Qader Al-Sheikhly - previous source - p. 105.
52- D- Abdul Qader Al-Sheikhly - previous source - p. 107.
53- R.Dick-op-cit-p.39
54- R.Dick-op-cit-p.40.
55- Dr. Abdul-Qader Al-Sheikhly - previous source - pp. 105-109.
56- D- Abdul Qader Al-Sheikhly - previous source - p. 109.
57- William fox-op-cit-p.98.
58- On the contrary, we find that the oil service contract between the Iraqi National Oil Company and IRAP in 1968 was drawn up in three languages: Arabic, French and English, as Article (36/1) stipulates that ((The texts of this contract were written in Arabic, French and English, and in case of disagreement, the text is reverted English)), for more details see d. Mohamed Labib Choucair and d. The owner of gold - Part 1 - previous source - p. 1532.
59- Including the contract of participation in the Syrian production with (SAMCO) in 1977, as it stipulated that ((the Arabic text of this contract is the reference in its interpretation and interpretation before the courts of Syria... and in the case of arbitration, it gives the two texts the same legal force)).
60- In the production-sharing contract between the Ministry of Oil and Russian and Chinese companies, the English text is the official text in the event of a dispute between the two parties over interpretation.
61- The law was published in the Iraqi Gazette, No. (2587), dated May 16, 1977.
62- Article (3/4) of the Law of Preserving the Integrity of the Arabic Language No. (64) of 1977 stipulates that ((The following must be written in Arabic: 3- Contracts, receipts, and correspondence exchanged between institutions, associations, or public companies, or between them and individuals. It may be accompanied by a translation in a foreign language when needed.
63- R.Dick-op-cit-p.11.
64- R.Dick-op-cit-p.12.
65- R.Dick-op-cit-p.16.
66- William fox-op-cit-p.94
67- Mahmoud Muhammad Ali Sabra - Fundamentals of Legal Drafting in Arabic and English - Cairo - 2001 - p. 52.
68- Frederick parker Walton – Egyptian law of obligations – London- stevens and sons- Ltd- 1920- p.98.
69- Abdel Moneim Desouki - Court of Cassation in Civil Matters - 1931-1992 - Part 2 - without a place of publication - without a year of publication, p. 187.
70- Dr. Talib Hasan Musa - Summary of International Trade Contracts - Dar Al Thaqafa for Publishing and Distribution - Amman - 1997 - p. 33.
71- Dr. Muhammad Ali Jawad - previous source - p. 35.
72- Dr. Muhammad Ali Jawad - previous source - p. 36.

73- Dr. Sabah Abdul-Kazim Shabib Al-Saadi - The Legal System for the Oil Development and Production Contract in Iraq - 1st Edition - The Arab House for Science Publishers - Beirut - 49-2015.
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