

The Legal Framework of Public-Private Partnership (PPP) Contracts for Building Infrastructure Projects, Services and Public Utilities in Light of Algerian and Comparative Law

Phd. Student/ Sebti Chahrazad ¹, and Pr. Merouk Ahmed ²

¹ Faculty of Law, Said Hamdine University of Algiers 1, Algeria, Algeria, Email: Chahrazad.sebti8@gmail.com

² Faculty of Law, Said Hamdine University of Algiers 1, Algeria, Algeria, Email: a.merouk@univ-alger.dz

Abstract---Public-private partnership contracts are one of the most widely discussed topics in terms of implementation issues, as they represent a new mechanism adopted to address management challenges and to finance the public sector amid declining economic activity and scarce financial resources. This has led to a search for an effective approach involving the private sector, leveraging its scientific expertise, experience and capital. This approach is one of the solutions that should be adopted to foster economic development and build infrastructure projects that utilise advanced global technologies. Notably, Algerian legislation has not addressed partnership contracts in terms of either definition or regulation. This necessitates studying this new type of contract within the context of legal doctrine and comparative law. These partnerships are particularly significant in light of the shift towards the good governance of resources and the effective use of public spending. They also contribute to creating a more attractive investment environment by balancing the distribution of risks and returns between the parties.

Keywords---Partnership, Infrastructure, Financing, PPP.

How to Cite:

Chahrazad, S., & Merouk, A. (2025). The legal framework of Public-Private Partnership (PPP) contracts for building infrastructure projects, services and public utilities in light of Algerian and comparative law. *The International Tax Journal*, 52(6), 3111–3125. Retrieved from <https://internationaltaxjournal.online/index.php/itj/article/view/308>

The International tax journal ISSN: 0097-7314 E-ISSN: 3066-2370 © 2025

ITJ is open access and licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

Submitted: 16 May 2025 | Revised: 25 August 2025 | Accepted: 26 October 2025

Introduction

Today, most countries are moving towards adopting an economic liberalisation policy in an effort to keep pace with progress in various economic and social fields, following the failure of privatisation. This involved selling public projects to the private sector and transferring ownership, as well as subjecting management to private law regulations. An alternative approach has been to resort to private management of government and public activities while retaining ownership for the state, which is a milder form of privatisation. Additionally, rising costs of economic and service activities have put significant pressure on state budgets, negatively affecting social and economic programmes and contributing to the technological backwardness of economic activities¹. This has forced governments to seek alternative ways to modernise these activities while transferring exploitation risks to private contractors.

In this context, we observe that public-private partnerships have been the only means by which many countries have been able to free themselves from government management of economic activities, particularly given the technical issues associated with both management and the objectives of these activities. To gain a clearer picture, it is important to examine the legal status of partnerships compared to other types of administrative contracts, whether the contractor receives financial compensation from the administration in the form of payments, as in the contracts under review, or whether they derive their rights from users of the provided service, as in concession or public service delegation contracts².

In this framework, partnership contracts are one of the newest methods that administrations use to manage public facilities, finance and equip them, and provide public services, avoiding some other contractual systems such as BOT/BOOT contracts. They also enable the financing of activities through the private sector, leading to long-term technical and financial relationships between administrations and their contractors for the purpose of establishing infrastructure-related facilities or organising and providing public services, from construction and operation to maintenance and beyond³.

In order to grasp the fundamental principles of this recently established contractual system, it is crucial to examine the experiences of other countries that have made significant progress in this area. This enables us to recognise the pros and cons of this type of contract, helping us to avoid the issues observed in these countries' implementations and to learn from their experiences. This is particularly important given that Algerian legislation has not adequately regulated these contracts. Consequently, legal scholars must strive to link these contracts to the legal principles governing them in public or private law.

Experience from various countries indicates that infrastructure projects are typically suitable for public-private partnership contracts, in order to meet growing demand for such projects and facilities. Most developing countries have sought to organise legislation concerning public-private partnership contracts. For example, Egypt enacted Law No. 76 of 2002 to regulate private sector participation in infrastructure projects and public utility services⁴. In Tunisia, Law No. 44 of 2002 was issued concerning public-private partnership contracts⁵. Morocco also enacted relevant legislation in 2000⁶.

Based on the above, public-private partnership contracts are considered the latest contracting method. This has led to many similarities and differences between these contracts and others, necessitating a distinction between them⁷.

Based on this, we pose the following question: What is the legal framework for public-private partnership (PPP) contracts for executing infrastructure projects, services and public utilities, in light of Algerian legislation and comparative law? To answer this question, the article is divided into two sections:

Section One: General Provisions of Public-Private Partnership Contracts.

Section Two: Legal Qualification of Public-Private Partnership Contracts.

Section One: General Provisions of Public-Private Partnership Contracts.

Based on these fundamental ideas, it is necessary to address two topics:

1.1. Topic One: Definition of Public-Private Partnership Contracts

Subtopic 1: Linguistic and jurisprudential definition of partnership contracts.

Some people confuse the terms ‘public-private partnership (PPP) contracts’ and ‘participation contracts’, with many scholars believing that they represent two sides of the same coin. However, we disagree with this view, believing that they have distinct meanings. A partnership refers to all forms of cooperation between the public and private sectors in the creation of infrastructure projects and public utilities. Thus, the concept encompasses various aspects of this cooperation, taking the form of concession and BOT contracts, among others. PPP contracts are one such form of partnership, involving collaboration between the public and private sectors in financing, constructing and operating infrastructure projects and public utilities. Financial compensation takes the form of payments made to the private partner in instalments, either monthly or semi-annually⁸.

Supporting this viewpoint, comparative legislation indicates that, in the law on private sector participation in infrastructure projects and public utilities, the legislator refers to contracts involving the public and private sectors as partnership contracts. This law applies to BOT contracts in their various forms⁹, and also to PPP contracts as a form of private-sector participation in infrastructure projects and public utilities. Having clarified the significant difference between PPP and participation contracts and established that they do not have the same meaning, even though the former is a type of the latter, we will now address the linguistic and jurisprudential meaning of partnership.

First: Linguistic Definition of Public-Private Partnership Contracts:

Public-Private Partnership (PPP) contracts are an abbreviation for the terms “Public - Private Partnership.” The term “partnership” is linguistically derived from the root words “شرك”, meaning to associate or share. For instance, it is said, “أشركه في أمره” (I involved him in his matter), meaning to include him. The term can also refer to associating someone with God in ownership, as in “أشرك بالله” (he made a partner with God in His dominion). “شارك” means to share in something, indicating that someone has a share in a particular knowledge or matter.

Partnership refers to contracts between two or more parties to undertake a joint venture. A partner is someone who shares with another in trade or similar activities¹⁰.

Partnerships between the public and private sectors represent a modern concept that has gained attention in recent years. It is a new type of relationship between state institutions and public administration on one hand, and the private sector on the other. This approach aims to provide public services that the state traditionally managed, with the goal of alleviating the burden on the public budget and transferring it to the private sector¹¹. It seeks to redirect public sector efforts towards other areas of expenditure that the private sector might avoid.

In this context, partnership differs from socialism, which is a political and economic doctrine advocating for state control over the means of production, equitable distribution, and comprehensive planning.

Second: jurisprudential definition of public-private partnership contracts:

Some define public-private partnership contracts as administrative contracts through which a public sector entity entrusts a private sector entity with financing, managing, operating and maintaining public facilities and their necessary works and equipment throughout the specified duration of the contracts¹². In return, the contracting administration commits to paying the private partner in instalments throughout the contractual period. Public and private sector institutions work together to deliver projects or provide services to citizens, particularly in infrastructure-related projects¹³.

Others define them as a type of contract between a public entity and a private partner for the design, construction, furnishing, operation or maintenance of a public facility. Under this contract, the partner receives compensation from public funds, specifically from the state budget, in the form of instalments that the contracting administration is obligated to pay throughout the contractual period¹⁴.

Some view partnership contracts as long-term relationships between state administrative entities and the private sector, in which the private sector provides services or implements projects that state agencies were originally responsible for executing. This is achieved without undermining the government's role in enhancing and overseeing public services and projects, but rather through a new system of contracting and service delivery¹⁵.

In this context, the public-private partnership system concerns the various forms of interaction and cooperation between the public and private sectors in utilising their human, financial, administrative, organisational, technological and intellectual capacities, based on partnership, commitment to objectives, freedom of choice, shared responsibility and accountability¹⁶. The aim is to achieve economic and social goals that benefit the greatest number of individuals in society and have a long-term impact on its aspirations. This enables society to effectively keep pace with contemporary developments and achieve a better competitive position¹⁷.

We believe that partnership contracts are agreements through which a public law entity commissions a private law entity to undertake a comprehensive task related to financing investments in the necessary works and equipment for public facilities, as well as managing, operating and maintaining them throughout the contractual period, depending on the nature of the investment or financing methods. In exchange, the contracting administration is obligated to pay financial amounts in instalments throughout the period. These contracts bring the public and private sectors together to achieve a specific objective, as defined by the legislator. This involves the private contractor establishing and maintaining one of the infrastructure projects, in exchange for financial compensation. This compensation is often in the form of rent, linked to the nature of the investment and the constructions undertaken by the contractor, as well as the care they exercise in completing them as agreed¹⁸.

2.1 Subtopic 2: Definition of Public-Private Partnership Contracts in the Preliminary Project and Comparative Law

First: Definition of public-private partnership contracts in the Algerian preliminary project

Article One of this project defines PPP contracts as follows: 'Written long-term contracts whereby a public contracting party commissions a private party to undertake a comprehensive task within its area of competence, relating to the total or partial financing, design, construction, rehabilitation, expansion, renewal, operation and maintenance of physical and intangible infrastructure projects, with the aim of ensuring the operation of the public facility.' One criticism of this definition is the use of the term 'party' instead of 'person', unlike in other comparative legislation. 'Person' is a more legally appropriate term than 'party' because it refers to the legal status of a natural or legal person. However, the project does specify what is meant by 'public' and 'private' parties. Furthermore, although the project aims to develop infrastructure and public services, the definition does not mention service development, as referenced in the provided justifications¹⁹.

Second: Definition of Public-Private Partnership Contracts in Comparative Law

The Egyptian legislator defines public-private partnership contracts as those whereby a public law entity entrusts a project company with financing, constructing and equipping infrastructure projects and public facilities, as well as providing services or financing for these facilities. The project company is also committed to maintaining what is created or developed, and to providing the necessary services and facilities to ensure that the project is suitable for use in production, and that services are provided regularly and consistently throughout the contractual period.

By contrast, the French legislator defines partnership contracts as administrative contracts in Article One of Republican Order No. (244–0224), issued on 6 June 2024 and amended by Law No. (622–0222), issued on 2 July 2022 and further amended by Law No. (064–0224), issued on 6 February 2024. These contracts involve the state or a public institution entrusting another party with a function during the investment or consumption period, or for the purpose of financing recovery. The purpose is to

undertake comprehensive tasks related to the construction, conversion, maintenance, preservation, exploitation or management of works, equipment or intangible assets necessary for the public facility, as well as the partial or full financing of these assets, except for complete capital contributions. The subject must be based on all or some of these works or intangible assets, such as providing services that contribute to the execution of work undertaken by a public entity in the public facility²⁰.

In South Africa, the law defines them as contracts between a public entity, such as a municipal institution, and a private entity, whereby the latter undertakes to provide essential financial, technical, and operational resources for designing, financing, building, and operating a project.

The Canadian Council for Partnerships defines partnership contracts as 'a shared risk between the public and private sectors, relying on the expertise of each party and clearly defining what is best for public needs through an appropriate distribution of resources, risks and incentives'²¹.

The World Bank considers PPP contracts to be 'medium to long-term agreements made between the public and private sectors to provide services within the scope of public sector responsibilities, whereby the private sector provides these services under a clear agreement on partnership objectives for creating public infrastructure and/or facilities'. Typically, partnerships do not include service or turnkey contracts, which are classified as public projects or the privatisation of services, where the public sector has a specific role. In some legal systems, particularly those following the Napoleonic Code tradition, a distinction is made between public contracts, such as concessions, in which the private party provides services directly to the public and ultimately bears user risk, and partnership contracts, in which the private party provides significant infrastructure to a public entity, such as BOT contracts for water treatment networks or hospitals²².

Partnership contracts between the public and private sectors are also referred to as Build-Operate-Transfer (BOT) contracts. According to the United Nations Commission on International Trade Law (UNCITRAL), these contracts are a form of project financing whereby the administration grants a private company, known as the project company, a concession for a set period to implement a specific project. The project company then builds, operates and manages the project for several years, recouping construction costs and generating profits from its commercial exploitation. At the end of the concession period, ownership of the project transfers to the administration²³.

Second Topic: Controls or Presumed Conditions for Concluding Public-Private Partnership Contracts

As partnership contracts represent a new category of administrative contracts in French and Egyptian law, the legislator in both countries has introduced controls to ensure they align with their intended purpose. Thus, the legislator has stipulated various criteria or conditions for the legality of these contracts. Beyond the conditions stipulated in the contractual document, there are other presumed conditions that must be met prior to drafting the document. These include the administration's commitment to conducting studies and evaluations of the subject of the contract through specialised entities, in order to verify the existence of certain conditions that must be met in order to resort to this type of contract.

The controls and presumed conditions for concluding public-private partnership contracts, particularly the preliminary studies and competitive negotiations preceding the selection of the contractor and the signing of the contracts, are based on European Directive No. CE/2004/81, issued by the European Parliament and Council on 20 March 2004, concerning the coordination of procedures for concluding public works, supplies and services contracts. Considering the subject of partnership contracts, the French legislator views the application of this directive as relevant due to the similarity between public works contracts under European law and partnership contracts under French law. This approach upholds the principle of legal certainty and prevents potential legal issues regarding French law at the European level.

It is important to note that our study of the controls for concluding partnership contracts will primarily rely on the legal principles established by the French and Egyptian legislators for these contracts. This will involve studying European law and the influence of French law on its rules concerning this

category of contracts, as well as English law²⁴. In light of the above, this section will examine the presumed conditions for concluding public-private partnership contracts.

Subtopic One: Preliminary Evaluation

The preliminary evaluation and its assumptions are presumed to be a legal condition for the competent administrative authority to be able to conclude one of the partnership contracts. Failure to meet this condition or any of its assumptions, which are considered essential legal conditions for resorting to such contracts, can affect the validity of the contract²⁵.

The justification for signing various contracts and these conditions originates in French law from two sources. The first is Constitutional Council Decision No. 2003462-DC, dated 20 June 2022, which affirmed the constitutionality of the partnership contract system when the public interest requirements are met. These include cases of urgency aimed at remedying harmful delays and necessities based on technical or economic features related to specific equipment or services. The second source is European Directive No. 81/CE, issued on 20 March 2022, which regulates procedures for concluding public works contracts and defines the conditions that must be met to conclude such contracts. The French legislator adopted these conditions in the order regulating partnership contracts and subsequent amendments²⁶.

In light of the project's distinctive features, it is essential that the evaluation shows the advantages of concluding partnership contracts, whether regarding the requirements of the public facility, the burdens assigned to the administrative authority, or the inadequacies and noticeable difficulties in similar projects being implemented. These advantages must surpass those provided by other public contracts. Therefore, the criterion of instalment or segmented payment is not sufficient by itself to provide an advantage for concluding public-private partnership contracts. This evaluation is conducted with the assistance of an expert institution appointed from among those established by decree²⁷.

Egyptian law notes that the legislator's treatment of the preliminary evaluation condition is less clear than in French law. However, by reviewing several provisions of the Law Regulating Private Sector Participation in Infrastructure Projects and Public Utilities, it is possible to identify texts that imply the legislator's intention to require a preliminary evaluation for any proposed project implemented under a partnership contract, given the complex nature of infrastructure projects and public services that are the subject of such contracts. The evaluation or comparative analysis phase allows the reasons that led the administrative authority to initiate procedures for concluding partnership contracts to be identified and demonstrated, thus proving its responsiveness to the goal of public interest. In other words, such a preliminary evaluation enables a comparative analysis of the economic, legal and financial aspects, as well as the fundamental benefits, of the contracts concerning the requested service. This involves comparing the benefits of the project if implemented by the administration itself versus the benefits of implementing it through partnership contracts. It also involves considering whether resorting to another contractual form, such as public works contracts or public service delegation contracts, would serve the public interest. However, this evaluation and its outcomes do not imply approval of the content of the subsequent competitive negotiations²⁸.

Subtopic Two: The Complex Nature of the Project

If the administrative authority cannot conclude partnership contracts without proving that the subject of the contracts is complex, then we are discussing a legal obligation (*obligation juridique*) originating from the aforementioned Constitutional Council decision. Through the preliminary evaluation, the administration can determine the legal, economic and financial aspects of the project, as well as its feasibility, whether it be implemented by the administration itself or through partnership contracts. It can also decide which type of contract is best for implementing the project, choosing from public works contracts, public service delegation and partnership contracts²⁹.

Understanding the complex nature of a project proposed for implementation through partnership contracts is an objective condition that is not related to the subjective or personal perception of the competent authority. Rather than defining or evaluating the proposed project, the competent authority

must demonstrate its complex nature, which prevents an understanding of its legal, economic and financial aspects based on objective criteria derived from a thorough study of the project file.

In other words, the project's complexity can manifest in various practical ways that hinder the public legal entity from achieving a full understanding of the technical, financial, economic and legal aspects, which makes it difficult to conclude contracts in line with its objectives. In this context, the complexity may arise from the circumstances of the project's implementation under the partnership system, particularly for projects involving advanced technology for which there are few previous applications, making a full evaluation difficult. It may also stem from the diversity of the project's components, which require extensive studies in various areas that could hinder an overall understanding of the project.

If resorting to partnership contracts is conditional upon the project being complex, the French legislator is opening the door for the administrative authority to engage in conditional competitive negotiations for complex contracts, either because the competent authority cannot determine the technical means required by the administration in advance when wishing to conclude contracts, or because it cannot compile a complete project file from financial or legal perspectives³⁰.

Subtopic Three: The urgent nature of the project

The regulatory order governing partnership contracts in French law does not define or specify the meaning of 'urgency' as a condition justifying the conclusion of partnership contracts. This is because the legislator does not want to be constrained by assumptions that may not align with different situations. However, this condition has been defined in decisions by the Constitutional Council and the Council of State. According to some scholars, the condition of urgency may be present in cases resulting from the shortcomings of the competent authority, based on Constitutional Council Decision No. 460-DC 2002 dated 20 August 2020 concerning the Law on the Guidance and Organisation of Internal Security. In this decision, the Constitutional Judge established an exceptional system for partnership contracts based on reasons of public interest linked to the necessity of facilitating, accelerating and constructing buildings for the benefit of national police personnel. It is therefore argued that the condition of urgency may be present when the administration seeks to address negative impacts that harm public interest, even if the necessities justifying the commencement of construction operations for such buildings resulted from shortcomings in the housing or real estate policy of the relevant minister.

From an objective perspective, the condition of urgency refers to the urgency that addresses serious consequences for public interest arising from harmful delays. Simple or ordinary urgency is sufficient to resort to partnership contracts; understanding urgency in terms of the severity of its consequences would prevent the administrative authority from concluding partnership contracts unless one of the buildings or properties was severely deteriorated or on the verge of collapse³¹.

This situation compromises the efficiency of the public facility, which could affect its regular operation. Therefore, urgency should not be understood formally or literally, as this could result in partnership contracts for infrastructure projects not being concluded, despite the conditions for their conclusion being met³².

Regardless of how the concept of urgency is understood in the context of concluding public works contracts under French and European law, it does not carry the same meaning or value in the context of partnership contracts. This is because it is considered a necessary condition for resorting to this category of contracts, thus making it a condition of their existence. The absence or insufficient presence of urgency constitutes grounds for invalidating the signing of contracts. In contrast, urgency is not a condition for the existence of public works contracts, but rather a condition for resorting to expedited procedures for concluding contracts in cases specified by law.

The urgent need for water desalination facilities in Algeria, established through partnership contracts, is justified by the scarcity of potable water in some areas due to drought. This has led to a shift towards seawater desalination, particularly given Algeria's 2,222-kilometre-long coastal strip. Since 2022, the state has adopted a series of programmes and projects for the water resources sector, with the aim of increasing reserves to 2.2 billion cubic metres by the end of 2025. In the second five-year period,

investments ranging from \$2 billion to \$7 billion were launched to develop the sector and ensure a supply of drinking water. A programme to build two seawater desalination plants with a capacity of 2.0 million cubic metres was initiated, with the first of these plants being constructed in Arzew and Algiers in 2020. Thus, the urgency condition is a fundamental requirement for concluding partnership contracts between the public and private sectors, distinguishing this contractual form from other similar arrangements in the construction and establishment of infrastructure and public services³³.

Subtopic 4: Competitive Negotiation (Dialogue)

French legislation stipulates that the preliminary evaluation must be followed by negotiation, conducted by the administration with each contracting candidate. This enables the administration to select the most suitable project and allows the negotiator to demonstrate the benefits of awarding the project to them. Following this, the results are compared with the preliminary evaluation to determine the financial and economic aspects, while excluding those that do not contribute to the project's optimal implementation. This process can lead to significant difficulties, which may cause the administration to shy away from concluding partnership contracts. This indicates a fundamental difference between the preliminary evaluation phase and the competitive negotiation phase: the latter excludes prior judgement based on evaluation in favour of negotiation. This condition is not present in other contracts concluded for the benefit of the administration for the sake of public interest, with the exception of partnership contracts. This is its main distinguishing feature compared to public facility concession contracts and public service delegation contracts³⁴.

The preliminary law issued by the Algerian government emphasises the necessity of resorting to competitive dialogue if it proves difficult to determine the technical and financial means and solutions required to meet its needs. Article 6 of the project defines this as 'a procedure that enables the public contracting party, based on a functional programme and preliminary qualification, to initiate competitions with candidates to determine the solution'. During the discussions, each candidate is heard under conditions of complete equality and confidentiality. However, this condition is exceptional in public-private partnership contracts under the Algerian system, whereas in the Latin system it is fundamental and controlling, as evidenced by the urgency condition and the complex nature of this type of contract.

Section Two: Legal Qualification of Public-Private Partnership Contracts

The legal qualification of a contract involves attributing it to a specific legal system, which determines the nature of the rights and obligations arising from the contract, the applicable law, and the judicial system that will hear any disputes arising from the contract. In order to understand the true legal qualification of public-private partnership (PPP) contracts and relate them to a legal system that aligns with their economic and subjective nature, it is necessary to examine these issues through research and analysis in light of legal provisions, scholarly interpretations and judicial applications. However, this research topic necessitates addressing an important point: the criteria for distinguishing partnership contracts between the public and private sectors in light of modern transformations. Based on the above, this section will be divided into two subtopics as follows:

1.2 Subtopic One: Criteria for Distinguishing Partnership Contracts in Light of Economic Transformations (The Economic Framework).

When exercising its competencies, the administration resorts to taking certain actions through unilateral will, such as administrative decisions. However, it may be more appropriate for the administration to fulfil its obligations through means other than unilateral actions, such as contracts.

From the outset, it should be noted that not all contracts concluded by the administration are administrative contracts. Some may be ordinary contracts, subject to private law provisions and governed by civil law. Others may be public law contracts, which fall under the jurisdiction of the administrative judiciary. The administrative judiciary hears disputes relating to these contracts and applies public law principles to them. Therefore, it is necessary to distinguish between public and private law contracts concluded by the administration. This distinction is particularly significant in

countries with a dual judiciary system, such as France, Egypt and Algeria, as it affects the jurisdiction that hears disputes arising from these contracts, as well as the applicable law — whether public (administrative) or private (civil or commercial). The substantive and procedural rules governing administrative contracts also differ from those governing ordinary contracts concluded by the administration.

From the above, it is clear that there are certain conditions to distinguish PPP contracts as administrative contracts from civil contracts, notably that the administration is a party to them, which is determined through two main criteria:

1. (The Organic Criterion): The contract must contain exceptional conditions and be connected to a public facility (the Objective Criterion). If either of these conditions is not met, the contract is not considered administrative. However, under the French system, it is sufficient for one of the legal persons to be a party to the contract, provided that the contract is connected to a public facility or contains exceptional conditions.

This raises the question: if we accept that the administration being a party to the contract is the primary factor in distinguishing administrative contracts, could the absence of an administrative contract remove the administrative status of a public legal entity, transforming it into a private law entity? Would this mean that the contract would lose one of the essential elements that give it administrative status, thus turning it into a civil contract that is subject to private law rules and giving ordinary courts jurisdiction over disputes relating to it?

The positions of administrative courts in Egypt and France differ in answering this question. While the Egyptian administrative judiciary determines the nature of the contract based on the status of the parties at the time the lawsuit is filed, the French judiciary determines the nature of the contract based on the moment it is concluded, not when the dispute arises. We will therefore present the perspectives of the French and Egyptian judiciaries on the consequences of the loss of administrative status for the public legal person and its transformation into a private law entity for the legal nature of the contract³⁵. However, as one of the presumed criteria, the organic criterion raises certain possibilities, which we present as follows:

If the parties to the contract are public legal persons, a rule regarding this assumption states that a contract between two public legal persons is an administrative contract. This implies a legal presumption that a contract involving two legal persons is an administrative contract. This was clarified by the French Court of Conflicts in its ruling in the *Union des Assurances de Paris* case, dated 20 March 2024 and commonly referred to as the UAP case. After the Government Commissioner began his report by noting the differing approaches to qualifying contracts between two public entities compared to those between a public entity and a private entity, he proceeded to establish a presumption that contracts between public legal persons are administrative by nature, as they typically arise from the meeting of the wills of two public administrations. However, he quickly added that this presumption can be refuted and does not apply in cases where relationships arise from private law³⁶.

This exception was established in a ruling issued by the French Court of Conflicts on 8 July 1963 concerning a contract between the private sector companies Esterel Côte d'Azur and Peyrot for the construction of a highway (AutoRoute). The Court of Conflicts recognised the jurisdiction of the administrative judiciary to resolve the dispute between the mixed-economy company and one of its contractors³⁷. Scholars have relied on three considerations to interpret this ruling, which are as follows:

1. The construction of the road is a public works project.

This is naturally the responsibility of the state and is usually carried out through direct administration; therefore, it comes under the jurisdiction of the administrative judiciary. Even if the mixed-economy company is not acting as an agent for the state, it still operates on its behalf³⁸.

2. If a private person acts on behalf of a public person:

If a private individual enters into a contract on behalf of an administrative authority, the contract may be considered administrative in nature. The French Court of Conflicts upheld this in a ruling regarding a contract concluded by a mixed-economy company, which was obligated to prepare and pave the villages of Mas and Anthony by contracting a private enterprise to assist with these works. The court

deemed the contract to be administrative, as the mixed-economy company acted on behalf of the aforementioned villages.

Similarly, the French Council of State ruled that a contract concluded with a mixed company and the Russel institution with the aim of establishing public roads was an administrative contract. This was based on the fact that, according to the terms of the contract, the administrative authority was obliged to provide this company with the necessary support for public roads. Upon completion of these roads, the administrative authority replaced the executing company with regard to all liability claims, in accordance with Articles 640-662 of the French Civil Code. Thus, the company did not contract for itself or in its capacity as the concessionaire, but on behalf of the regional units that were to receive these roads³⁹.

Consequently, a contract entered into between two private entities is not considered an administrative contract, even if one of those entities is a public benefit organisation. Some would argue that two essential elements must be present: the first is organic, representing the authority or organisation exercising the activity; the second is objective, meaning the service or activity aimed at satisfying public needs, deemed necessary by the public authority to be fulfilled by itself or under its responsibility. If a project includes these two elements, it acquires the nature of a public facility and is subject to administrative law.

The organic element has long been the distinctive factor in defining public facilities, where the concept is determined by an entity or organisation that forms part of the state's administrative organisation and engages in activities aimed at achieving public benefit for the community. Therefore, an organisation that forms part of the state's administrative apparatus is the distinguishing factor in defining public facilities⁴⁰. However, following World War II, this element has diminished significantly in its role due to the spread of socialist systems and increased state intervention in various aspects of economic and social life. This has led to the emergence of new types of public facility, namely industrial and commercial public facilities, which are not considered part of the state's administrative apparatus. Consequently, public facilities must be viewed in terms of the nature of the activity and its aim of public benefit and meeting public needs.

In my view, this trend has been confirmed by the expansion of economic activity in various countries since the adoption of a free-market philosophy, which has maximised the role of the individual without diminishing the role of the state. This is evident in the delegation of the management of public facilities to nationals, whether individuals or foreigners, under the supervision and oversight of the state, with the aim of meeting the public's basic needs.

We favour the objective interpretation as it aligns with the policy of transitioning from a directed economy to a free economy, maximising the role of the individual. Countries are moving towards economic liberalisation, which signifies fundamental changes in economic relations, productive structures, forms of ownership, market characteristics, distribution patterns, investment rates, regulation and performance methods, all of which are used to ensure economic efficiency and proper resource allocation. Public interest is no longer solely the responsibility of the administration; certain private legal entities and ordinary individuals can also engage in activities that benefit the public, thus constituting public facilities⁴¹.

Secondly, the criterion of exceptional conditions included in public-private partnership contracts.

Definition of exceptional conditions: scholars and the judiciary have stated that these are the conditions that grant the parties to the contract rights or impose obligations that differ in nature from those contained in contracts concluded within the scope of private civil or commercial law. Alternatively, they may grant one of the contractors rights or impose obligations that differ from those that a party contracting under civil and commercial laws might agree to⁴². Examples of unusual conditions in legal theory and practice include:

A. Conditions involving the exercise of public authority privileges:

This is realised in two ways:

1. The administration retains the right to exercise public authority privileges before the contractor, such as the right to enforce collection. This places the administration in a stronger position than the contractor. Additionally, the administration has the right to modify the contract's terms relating to the operation and organisation of the public facility in accordance with the public interest, without the principle of acquired rights or the principle that contracts are the law of the contracting parties being invoked to contest this. The administrative authority can terminate the contract, confiscate the security deposit and impose other penalties under the pretext of supervisory and directive authority over the execution of administrative contracts.

2. The second aspect involves granting the contractor special administrative privileges against third parties.

Although public authority privileges are originally established for the administration based on considerations of public interest, it is this same interest that justifies the administration delegating some of these privileges to the contractor against third parties. This is considered one of the exceptional conditions of private law, thus characterising the contract as administrative. Examples include the contractor collecting fees from public facility beneficiaries, representing monetary compensation for services provided; exercising police powers; and expropriating land for necessary public facility infrastructure, benefiting from easement rights as outlined in the concession contract.

Public works contracts grant the contractor special advantages, such as the authority to temporarily seize properties.

B. Conditions that can only be interpreted or executed in light of administrative law theories:

These are similar to conditions that grant the contractor the right to obtain compensation for damages resulting from changes to the economics of the contract, such as the theory of financial equilibrium in administrative contracts. Additionally, conditions relating to the review of agreed prices in light of potential fluctuations during the execution of the contract can be interpreted in light of the theory of unforeseen circumstances in administrative contracts.

C. Reference to the specifications document:

The administration prepares the specifications document before concluding the administrative contract. These conditions become an integral part of the contract. If the two contracting parties refer to these documents and they contain exceptional conditions, this gives these contracts an administrative character⁴³.

D. Conditions for the administration to terminate the contract unilaterally:

This condition is unusual when contracting with the administration, and applies if the contractor ceases operations for an extended period; if the government requires the quarry land, or part of it, for public benefit; or if the contractor violates operational conditions⁴⁴.

E. Legislative stability condition:

This involves freezing the national law of the contracting state at the point the contract was concluded, thereby preventing the state from amending or changing its national laws in a way that could affect the existing contractual relationship between itself and its contractor⁴⁵.

Subtopic Two: The Algerian legislator's stance on this matter.

First: Conferring a special nature on public-private partnership contracts concluded under Ordinance 21-23 concerning investment development.

Whether public-private partnership contracts are classified as administrative or private law contracts depends on the nature of the contract and its terms. The contract that the state enters into with a foreign investor or project company is not uniform and does not fall under a single legal system. Depending on the terms of the contract, it may be an administrative contract or a private law contract. This difference arises because most proponents of public-private partnership contracts being classified

as public law contracts are public law scholars, while those asserting that these contracts fall under private law are civil and private law scholars.

In reality, these contracts combine both contractual and regulatory elements, as both the administration and the contractor subject the contract to their absolute will, applying the principle of “the contract is the law of the contracting parties”⁴⁶. Even the ancillary agreements included in the agreement are closely related and are dependent on the main contract between the administration and the project company.

As for the other contracts that the administration concludes in order to execute this contract — which may include works, concession, supply or financing-related contracts, depending on the circumstances — they do not affect the nature of partnership contracts involving conflicting interests of the parties. This disparity means the contracting administrative authority enjoys powers and privileges that render the administration and its contracting party unequal in terms of rights and obligations. However, it cannot be said that the interests of the contracting party with the administration are not protected; if this were the case, the administration would lose the individuals it contracted with. Therefore, partnership contracts include regulatory clauses related to the organisation and operation of the public facility, particularly with regard to the facility itself and its relationship with beneficiaries. Consequently, these clauses cannot be modified unilaterally, whereas contractual clauses can be modified unilaterally without consulting the contracting party. These are the exceptional conditions in contracts where the administration is a party, as discussed in the first subtopic when addressing the criteria.

A) The stance of Algerian legislation on public-private partnership contracts concluded under the provisions of Ordinance 20-22 dated the first of Jumada al-Thani, year 0402, corresponding to 2 August, year 0220, amended and supplemented by Ordinance No. 27-22 dated 2 July, 0227.

The first article of this ordinance indicates that it defines the system applicable to national and foreign investments carried out in economic activities that produce goods and services, as well as investments made within the framework of granting concessions and/or licenses. These investments are carried out with complete freedom, in accordance with legislation and regulations relating to regulated activities and the environment. By law, they benefit from the protections and guarantees stipulated in applicable legislation. These investments also receive tax, quasi-tax and customs incentives as set out in public law, along with the advantages granted by this ordinance. Special benefits are also granted under Article 2 of this ordinance for investments of particular importance to the national economy, especially those utilising technologies that preserve the environment, protect natural resources, save energy and lead to sustainable development. This is evident in investments related to seawater desalination structures or the extraction of salts and minerals from saline water.

Following these investments, a negotiated agreement must be concluded in accordance with the conditions set out in Article 00 bis of the same ordinance, after approval has been obtained from the National Investment Council (CNI) on behalf of the state, and between the investor and the contracting party. Due to its special importance for the national economy and the strategic nature of the water supply sector and the technologies used to protect natural resources, this agreement is published in the official gazette. To this end, the company ‘Ionics’ was selected through a partnership tender to establish a seawater desalination plant in collaboration with the Algerian Energy Company (EAC), which is participating in the project. The project company, named ‘Hamma Water Desalination’, is owned by the Algerian Energy Company (22%) and General Electric Ionics Hamma Holding Ltd (62%).

It is noteworthy that this agreement, which is a contract binding two different parties—the Algerian administration on one side and the foreign contracting party on the other—contains a legislative stability clause as a protection for the contracting party. Given that the interests of both parties differ, the host state seeks to achieve public interest while the foreign investor pursues its own objectives and interests. Since both parties belong to different legal systems and legal statuses, one of the most important characteristics of these contracts is that they are of a special nature. This nature is not defined by being public law or private law contracts, but rather it targets the specificity of its subject matter and its connection to infrastructure, which is crucial for the national economy. This means that these

contracts are no longer solely in the interest of the parties at the time the contract is signed, regardless of whether these contracts contain elements of administrative contracts.

2.2 The Algerian legislator's stance through the draft law on public-private partnership contracts:

The draft law concerning public-private partnership contracts has refrained from determining the legal nature of these contracts. Recently, however, the Algerian government programme decided to establish a legal framework for this category of contracts, allowing the private sector's management capacities to be utilised to ensure the effective and timely provision of services to the required standard. These contracts have been established in response to the current situation of resource scarcity, which requires a qualitative shift in financing infrastructure projects through mechanisms that alleviate pressure on the state budget.

This reason is clearly among the key motivations adopted by various countries, including Turkey, France, Tunisia, Sudan and Jordan, to reduce the financial burden on public budgets while enabling the private sector to compete and ensure the effectiveness of services and the establishment of infrastructure that meets global quality standards.

It has also been decided to establish a committee under the Prime Minister or Head of Government titled 'National Partnership Committee between the Public and Private Sectors

Conclusion

The final decade of the twentieth century saw a new global trend emerge, backed by the World Bank and the International Monetary Fund. This trend focused on the importance of specialisation policies, reducing the state's role in the economy and encouraging private sector participation in infrastructure projects. One of the modern mechanisms that countries have adopted to establish public projects funded by the private sector is the public-private partnership system. Based on a contract between two parties, one from the public sector and one from the private sector, this system aims to create a service project that benefits all citizens. Due to the state's involvement as a contracting party, there has been some debate about how these contracts should be legally classified. Through this study, we concluded that partnership contracts are administrative contracts because we applied the elements of administrative contracts to partnership contracts. It became clear that these elements align with partnership contracts in terms of the means employed and the results achieved. The means employed are public law instruments, and the results are identical to those resulting from the conclusion of administrative contracts.

Recommendations:

- Specialised state bodies should enlist experts to conduct an initial assessment of projects intended for establishment under the partnership system. This assessment should verify the project's feasibility, risks, costs, significance to the public interest, the stages it will go through and its potential completion under the partnership system. It should also outline the conditions that can be included in the contract document to protect the public interest and the beneficiaries' interests without neglecting the private interests of the contractor in the private sector. These contracts must be prepared by a select group of specialised scholars and law professors to ensure that the contract guarantees the state a flow of investments while preventing depletion of its economic resources that could expose it to losses during execution of the contract.

References:

Books:

- S. A. Mahmoud, Arbitration in Partnership Contracts, Dar Al-Nahda Al-Arabiya, Alexandria, Egypt, 2002.

- Ahmed Moharram Mohamed Ibrahim, *The Legal Effects of Administrative Oversight on Public Facility Projects Established under the B.O.T System: A Comparative Study**, Assiut University, Egypt, 1999.
- Elena Hassan Zaki, *Law on Competition Protection and Prevention of Monopolisation*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2022.
- Anwar Raslan, *The Mediator in Administrative Law, Volume One, Manzilat Al-Ma'arif*, Alexandria, Egypt, 2003.
- Rajab Mahmoud Tajin, *Public-Private Partnership Contracts (PPP)*, First Edition, Dar Al-Nahda Al-Arabiya, Egypt, 2006.
- Safi Ahmed Qassem, *The Legal Nature of Public-Private Partnership Contracts (PPP)*, First Edition, Dar Al-Nahda Al-Arabiya, Egypt, 2007.

Articles:

- Ahmed Said Mustafa: 'Slow Specialisation is the Solution', article in *Al-Ahram Economic Magazine*, issue no. ...
- Aktham El-Khooli, 'Major Trends in Public Project Law', *State Litigation Management Magazine*, *Al-Ahram Economic Magazine*, Vol. 3, Issue 2, Cairo University Faculty of Law, Egypt, April-June 2024.

Theses and dissertations:

- Ahmed Rashad Mahmoud Salam: 'The Contract for Construction, Management and Transfer of Ownership (BOT) in International Relations', PhD thesis, Ain Shams University, Egypt, 2020.
- Ayman Mohamed Gomaa, 'Effects of Public Works Contracts between Contractors', PhD thesis, Zagazig University, Egypt, 2020.

Foreign Language References:

- C. Landis and F. Leni Ca, 'Chron. Generale de Jurisprudence Administrative Francaise, AJDA, 2006.
- Delaubadère (A.) and Gaudemet (Y.): *Treatise on General Administrative Law*, Volume 1, 16th edition, L.G.D.J.
- Legislative recommendations, document no. A/CN.9/458/Add.7, 19 March.
- Licherelf, 'Evolution of the Organic Criterion of Administrative Contracts', *R.F.D.A.*, 2002.
- PH. Foillard, 'Manual: Administrative Law, ED/Paradigme, 2005–2006.
- Public-Private Partnerships (PPP) in the Field of Culture, May 2005.
- Report of the Society of Directors of Montreal Museums.

Internet sites:

- <http://www.bcci.bh.com/doc/oct/5.ppt>
- <http://www.microsoft.com/middleast/arabic/glf/article/.d>
- <http://www.mof.gov.4g/arabic>
- <http://www.museesmontreal.com>
- <http://www.univ-nancy.fr/colloques/metamorphose>
- <https://www.echoroukonline.com>
- http://www.org/site/c/sdammm/file_db/SDMM-ppp-2.pdf

Footnotes:

- ¹- New information about the National Programme for Public–Private Partnerships, issued by the Central Unit for Public–Private Partnerships at the Ministry of Finance, June 2024, p. 6.
- ²- Same reference, p. 4.
- ³- G. Vedel et P. Delvolvé, *Droit Administratif*, PUF, 12th ed., Paris, 1992, T. 2, p. 792. Droit Administratif, 12th edition, PUF, Paris, 1992, T. 2, p. 792.
- ⁴- Rajab Mahmoud Tajin, Public-Private Partnership Contracts (PPP), Dar Al-Nahda Al-Arabiya, 2026 edition, p. 2.
- ⁵- The Concise Dictionary, Arabic Language Academy, 2024 edition, p. 240.
- ⁶- Lubana Mshouh, 'Translation and Intellectual Development: The Administrative Sector as a Model', Damascus University Journal, Vol. 6, Issues 3 and 4, 2000, p. 640.
- ⁷- The Concise Dictionary, previous reference, p. 240.
- ⁸- See Article One of Ordinance 6 July 2024, which governs this type of contract in France.
- ⁹- Mohamed Tawfiq Al-Dakroui published a study on public-private partnerships with a focus on the Egyptian experience on the Central Unit for Partnerships website.
- ¹⁰- Definition of the Central Unit for Partnerships for partnership contracts (same reference).
- ¹¹- See Article One of Ordinance 6 July 2024, which governs partnership contracts in France.
- ¹²- Refer to Sabti Shahrzad's master's thesis, 'Partnership Agreements under Investment Law', p. 67.
- ¹³- Same reference, p. 67.
- ¹⁴- For all details about public-private partnerships, see the website: <https://www.echoroukonline.com/>.
- ¹⁵- Hamada Abdulrazak Hamadiya, PPP Contracts, Dar Al-Jamia Al-Jadida, 2024 edition, p. 2.
- ¹⁶- Hamada Abdulrazak, same reference, p. 2.
- ¹⁷- Same reference, p. 4.
- ¹⁸- Same reference, p. 4.
- ¹⁹- Safi Ahmed Qassem, The Legal Nature of Public-Private Partnership Contracts (PPP), Dar Al-Nahda Al-Arabiya, 2017 edition, p. 60.
- ²⁰- Rajab Mahmoud Tajin, previous reference, p. 26.
- ²¹- Same reference, p. 26.
- ²²- Same reference, p. 22.
- ²³- Same reference, p. 24.
- ²⁴- Safi Ahmed Qassem, previous reference, p. 62.
- ²⁵- Same reference, p. 63.
- ²⁶- Rajab Mahmoud Tajin (same reference, p. 64).
- ²⁷- Same reference, p. 64.
- ²⁸- Same reference, p. 64.
- ²⁹- Safi Ahmed Qassem, previous reference, p. 67.
- ³⁰- Safi Ahmed Qassem, previous reference, p. 27.
- ³¹- Previous reference, p. 42.
- ³²- Previous reference, p. 20.
- ³³- Safi Ahmed Qassem (previous reference, p. 24).
- ³⁴- Hamada Abdulrazak, previous reference, p. 5.
- ³⁵- Safi Ahmed Qassem (previous reference, p. 24).
- ³⁶- Ordinance 20-22, dated 2 August 2020, concerning investment development.
- ³⁷- Hamada Abdulrazak, previous reference, p. 7.
- ³⁸- Ordinance 20-22, dated 2 August 2020, concerning investment development.
- ³⁹- See Sabti Shahrzad, previous reference, p. 40.
- ⁴⁰- Previous reference, p. 45.
- ⁴¹- Hamada Abdulrazak, previous reference, p. 10.
- ⁴²- Safi Ahmed Qassem (previous reference, p. 200).
- ⁴³- Previous reference, p. 202.
- ⁴⁴- Previous reference, p. 202.
- ⁴⁵- Previous reference, p. 202.
- ⁴⁶- Previous reference, p. 204.