

Write-Off of Debts and Assets Under Financial Administration Law No. (6) of 2019

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ABSTRACT

Objective: This research examines the legal authority to write off government debts and fixed assets under Federal Financial Management Law No. (6) of 2019, focusing on the legal framework governing the write-off process, the conditions required for its implementation, and the mechanisms for safeguarding the State's financial rights. The study addresses the concept of writing off debts and fixed assets from legal and accounting perspectives, highlighting its significance in the management of public funds and the settlement of government financial accounts. **Method:** It examines the powers granted to the Minister of Finance to waive government debts, defer payments, or authorize installment arrangements within the limits established by the Council of Ministers. It also analyzes the conditions governing the write-off of government debts when their collection becomes impossible after exhausting the legally prescribed means, including formal notification, attachment, and the sale of the debtor's property. Furthermore, the research discusses the role of the Council of Ministers in approving the write-off of debts and assets exceeding the financial authority granted to the Minister of Finance, while examining the hierarchical distribution of write-off powers under the applicable budget instructions. The study also emphasizes that writing off debts and assets does not preclude the State from pursuing legal action against persons responsible for loss, damage, negligence, or misuse of public property. In this context, it highlights the importance of administrative investigations, financial liability under the Guarantee Law No. (31) of 2015, and criminal accountability as mechanisms for protecting public funds. **Results:** The research concludes that the existing legal framework establishes a distinction between the financial and administrative procedures of writing off and the legal responsibility arising from damage to public assets. **Novelty:** It recommends explicitly regulating write-off authorities and financial limits within the legislation itself, distinguishing between write-offs resulting from ordinary use and those arising from negligence, establishing specialized committees, strengthening administrative training, and restricting the write-off process to the relevant financial year. The study seeks to contribute to clarifying the legal mechanisms governing the write-off of government debts and fixed assets while enhancing the protection of public funds and ensuring compliance with the principles of financial and administrative legality.

INTRODUCTION

Praise be to Allah, Lord of the worlds, and peace and blessings be upon the Seal of the Prophets and Messengers. To proceed, the issue of writing off debts and assets is one of the important subjects falling within the scope of the State's public expenditures, as this process requires the disposal of fixed assets and debts that have been settled or utilized in the service of citizens, whether through their use to ensure the regular and continuous operation of public utilities or to alleviate financial constraints affecting legal and natural persons.

Since the process of writing off debts and assets is an administrative and legal process that requires a series of procedures in terms of documenting them and removing

them from the State's official records in a manner that ensures consideration of the circumstances of persons with respect to debts, or their depreciation as a result of proper use over a relatively long period of time.

Furthermore, this process is subject to legal conditions established by the Federal Financial Management Law No. (6) of 2019, which remains in force with its numerous provisions. However, our research is concerned only with the authority to write off debts and fixed assets as stipulated in this Law.

In order to examine these details, with their advantages and disadvantages, it was necessary for us to investigate the subject by discussing it in the first section, in which we addressed the concept of writing off debts and fixed assets under the applicable Financial Management Law. In the second section, we discuss the conditions that must be met for writing off fixed assets and government debts. The third section is devoted to safeguarding the rights of the State in respect of written-off debts. We then conclude our research with a conclusion in which we present the conclusions and recommendations we have reached.

The Concept of Writing Off Debts and Fixed Assets under the Applicable Financial Management Law

Before embarking on any research, the researcher must examine the nature of the subject and the fundamental definitions encompassed by the research. Accordingly, it is necessary to address, in the first subsection, the definition of writing off, and in the second subsection, the definition of government debts. The third subsection will address the definition of fixed assets.

Definition of Writing Off

Arabic linguistic dictionaries indicate that *shatb* (writing off) means: "shataba ismuhu min al-la'ihah" (he struck his name off the list), meaning that he deleted it and annulled its existence therein. In administrative terminology, *shatb* refers to recording expenditures in registers for the purpose of deducting them from the total amount approved in the budget.

The plural is *shutūb*, derived from the verb *shataba*. The term "writing off in the budget" refers to recording the total expenditures in the registers in order to deduct them from the total amount approved in the budget. The verb *shataba* also means to delete or remove something. Thus, *shataba al-mawdu'* means that he cancelled and deleted the subject. Similarly, *shataba al-kātib al-kalimah* means that the writer erased the word, retracting it. *Shataba al-qāḍī al-da'wā* means that the judge removed the case from the case docket without issuing a judgment therein for a legal reason.

Writing off is also defined as a term referring, in the legal field, to the cancellation of a professional practitioner's membership from the register of the relevant professional association as a form of punishment for unethical or criminal conduct. It is often used to denote the disbarment of a lawyer from the bar association, thereby revoking their legal license or authorization to practice law. The procedures vary according to each jurisdiction.

It is noteworthy that writing off in the legal field has been addressed primarily in relation to removing a lawyer's name from the register of lawyers as a consequence of unethical or criminal conduct. However, with regard to fixed assets and debts, most books have addressed the concept as self-evident without examining the concept of writing off or the meanings associated with it, whether administrative or legal. Accordingly, writing off may be defined as the removal of fixed assets and debts from the official records maintained by government departments, either due to their damage or loss, or for other reasons where the State determines that legal or accounting grounds require their removal or cancellation.

Definition of Government Debts

The applicable Financial Management Law does not address the definition of government debts. Discussing any subject requires defining it from legislative, jurisprudential, and judicial perspectives in order to ensure a comprehensive understanding of the subject and to make its detailed examination sufficiently clear for researchers. However, when we began our research, we attempted to address the concept of government debts and encountered the obstacle that none of the laws or researchers had specifically addressed their definition. Instead, we found that the Government Debt Collection Law referred to a set of matters in its first article and stated that the Law:

“Applies to the collection of amounts, interest, additions, and fines in relation to the following amounts: taxes and fees; amounts constituting government revenue obligations; amounts of advances granted by official and semi-official departments; amounts due from the sale, lease, transfer of ownership of government property, or the utilization thereof.

Amounts for services endorsed by the Government. Amounts disbursed by the Government for transporting Iraqis to their countries.

Amounts awarded by judicial decisions in favor of official and semi-official departments and the socialist sector, as well as inclusion decisions issued by the Minister of Finance or by entities authorized to issue them.

Equivalent compensation for the utilization of beaches, islands, lands, and real estate owned by the State, as assessed by the competent committees and accompanied by the approval of the Minister of Finance or his authorized representative.

A – Compensation for partition, *hikr*, leases, long-term leases, and *'aqr*.

B – Compensation for jointly held shares with third parties and real estate shares resulting from valuations communicated to the debtor after the expiry of the prescribed period and in the absence of objection by the party concerned.

Amounts due to official and semi-official departments and the socialist sector arising from the breach by their contracting parties of their contracts, where the contract stipulates that such amounts shall be collected pursuant to this Law.

Other amounts stipulated by any law as being subject to collection by the Government pursuant to this Law.”

It is evident from the above provision that it enumerates what constitutes government debts without providing a definition thereof. It mentions details that require specialized studies to clarify their nature and establish their definition and particulars.

From the jurisprudential perspective, upon reviewing the available literature, we found that most jurists and scholars have addressed this subject within specialized research topics without providing a definition of government debts. This may, in fact, have many advantages, as attempting to establish a comprehensive and exhaustive definition of the concept of government debt may involve numerous difficulties, given the challenges of precisely determining its scope and nature.

In any case, government debts are monetary amounts owed to the State by persons, whether natural or legal persons, arising from financial obligations such as taxes, fees, or other dues, or arising from debts previously established by the State in favor of the persons liable, where the State was the party that provided them with such funds and retains a preferential right over these debts.

Definition of Fixed Assets

Fixed assets are defined as “assets owned by a company for the purpose of using or retaining them to support the production process, rather than for the purpose of resale.”

Others define them as “everything owned by the State in terms of assets, property, and furniture to facilitate the smooth operation of State facilities, characterized by a long useful life.”

They have also been defined as “economic resources from which future benefits are expected. They are called fixed because they are expected to serve for more than one financial period, and because they are difficult to convert into cash quickly. They are of two types: tangible fixed assets and intangible fixed assets. Tangible fixed assets are assets that have a physical existence, meaning that they can be seen and touched, such as furniture, buildings, and vehicles. Intangible fixed assets, on the other hand, are assets that cannot be seen, but have an actual existence within an entity, reflected in the company’s records and accounts, from which future returns are expected, such as goodwill, patent rights, franchise rights, and trademarks.”

It is noteworthy that these definitions address the subject from an accounting perspective without paying attention to the legal aspect. What can be established from these definitions is that fixed assets encompass everything having a tangible physical or intangible existence that makes the management of the State and its production operations easier and more efficient to use, and that is subject to legal protection concerning the safeguarding of public funds against embezzlement, destruction, damage, and all forms of protection prescribed by constitutional, civil, or criminal law.

Conditions Required for Writing Off Fixed Assets and Government Debts

When discussing the writing off of fixed assets and government debts from a legal perspective, it is necessary to clarify that there are conditions that must be followed to determine the mechanism required by law and instructions for carrying out the writing-off process smoothly and in a legally sound manner without impediments. Accordingly, certain conditions must be fulfilled to complete the writing-off process, which will be addressed successively in the following three subsections:

- The Powers Granted to the Minister of Finance.
- The State's Inability to Collect Government Debts.
- Referring the Matter to the Council of Ministers.

The Powers Granted to the Minister of Finance

The Financial Management Law specifies a set of powers granted to the Minister of Finance concerning the handling of debts and fixed assets. Paragraph (2) of Article (46) of the aforementioned Law provides that: "The Minister of Finance may waive the Government's right to collect an amount due for payment, or allow its payment in installments, or defer its payment within the limits established by the Council of Ministers."

Upon examining this provision, it becomes clear that the Law grants the Minister the authority to waive legally established government debts. Such a waiver constitutes an extinguishment of the debts and consequently terminates the State's right to make any future claims in this regard. Certain decisions have previously ruled on the writing off of debts incurred by a martyr as of the date of his martyrdom, with the exception of debts and interest owed by him to government banks.

It is also noteworthy that the Law grants the Minister of Finance the authority to defer the payment of amounts owed by debtors and to allow such amounts to be paid in installments in a manner that does not place an undue burden on them when making such payments, taking into consideration their economic and living circumstances. This is provided for in paragraph (2) of Article (46) of the applicable Financial Management Law, in addition to a number of decisions issued by the Iraqi Council of Ministers and the Ministry of Finance. The Minister of Finance is also required to notify the Council of Ministers of every amount that is written off, deferred, or paid in installments, in accordance with the law.

The State's Inability to Collect Government Debts

Paragraph (1) of Article (46) of the Financial Management Law No. (6) of 2019 provides that: "The Minister of Finance may write off the debts of centrally funded departments where it is established that their collection is impossible after exhausting the legal means, within the limits established by the Council of Ministers."

It is noted that this provision addresses a very important point concerning the writing off of debts, namely, the State's inability to collect debts owed to centrally funded departments after exhausting the legal means and within the limits established by the Council of Ministers. It is established that the collection of government debts begins with a formal notice. Article (3) of the Government Debt Collection Law No. (56) of 1977

provides that: “If the debtor fails to pay any of the amounts referred to in Article (1) by the specified due date, the official authorized to apply this Law shall notify the debtor of the obligation to settle the debt within ten days commencing from the day following the date of service of the notice.”

The formal notice is a legal means issued by notaries or by persons authorized to exercise this power. The notice constitutes a warning measure intended to emphasize to persons the necessity of fulfilling their legal obligations. Thus, if a person owes the State an amount arising from a loan or a guarantee and fails to pay the amount due, the concerned department is required to serve a notice upon him before initiating legal proceedings.

After the State has exhausted this measure, the institution resorts to attaching the debtor’s property. The enforcement officer, or an employee of his directorate authorized by him, executes the decision to attach the debtor’s movable property. Execution may take place in the absence of the applicant for attachment or the person whose property has been attached. The attachment decision shall be executed in the presence of the *mukhtar* of the locality, if available, or two witnesses who have no connection or kinship with the employee carrying out the attachment and with neither of the parties. The employee shall prepare a record specifying the nature, types, quantity, and value of the attached property, with the assistance of an expert where available and necessary, and shall indicate the place where the property is kept and the manner in which it is safeguarded. The employee and those present shall sign the record, which shall then be submitted to the enforcement officer. If the attached property is of considerable value, it shall be transferred to the directorate and deposited in the designated place for safekeeping of deposits. Otherwise, it shall be preserved according to its nature, whether by sealing the place where it is located, transferring it to a suitable place, depositing it with a custodian, or appointing a guard over it, in return for a fee determined by the enforcement officer and approved by the enforcement judge. There are numerous conditions and procedures that must be followed for the purpose of attaching the debtor’s property.

If the debtor’s movable or immovable property has been attached, and the debt has not been paid within the legally prescribed period, and neither the debtor nor his legal representative submits a written request for a settlement of the debt acceptable to the creditor department within three days from the date of notification of the attachment, the official authorized to apply the Law may order the sale of the attached movable property in accordance with the provisions of the Enforcement Law. The sale of attached property in respect of which a claim of ownership has been brought shall be postponed, pursuant to Article (7) of the Law, until the competent court issues a decision thereon. Furthermore, only such portion of the debtor’s attached property as is sufficient to satisfy the debt, interest, and expenses shall be sold, and any remaining property shall be returned to the debtor or his legal representative pursuant to a record prepared in three copies and signed by those present.

At this point, after the legally prescribed means have been exhausted, if the Government considers that there is a greater interest than that represented by the debt, and the authorized Minister is convinced of the existence of such an interest, he may, pursuant to the Financial Management Law No. (6) of 2019, legally write off the debts owed to centrally funded institutions, provided that the impossibility of collecting such debts has been established and that the process remains within the parameters established by the Council of Ministers. This means that such conviction should arise only after the details of the matter have been presented to the Council of Ministers to determine that the debts are irrecoverable and cannot be collected through legal means.

From this perspective, it appears that the purpose of writing off debts is to settle the State's final accounts and prevent such debts from continuing to be carried forward into subsequent budgets. Rather, for the purpose of closing and settling these accounts, it is legally and accounting-wise necessary to complete the procedures for writing off irrecoverable debts.

Referring the Matter to the Council of Ministers

It is legally and constitutionally established that the Council of Ministers is the official body responsible for preparing the General Budget Law and the legal provisions contained therein. Since the General Budget Law constitutes the framework governing expenditures, and since debts and fixed assets represent expenditures in one year that are expected to become revenues in a subsequent year, every matter relating to them falls within the jurisdiction of the Iraqi Council of Ministers.

Accordingly, any matter concerning writing off, whether relating to debts or assets, requires obtaining the approval of the Council of Ministers. Therefore, some decisions fall within the authority of the Minister, while others fall within the authority of the Council of Ministers.

Paragraph (Ninth) of Article (46) of the applicable Financial Management Law provides that: "The Council of Ministers shall have the authority to write off debts and assets belonging to public companies and self-financing departments where their value exceeds the authority of the Minister of Finance."

It is noteworthy from this provision that there are financial limits governing the authority of the Minister of Finance to write off debts and assets as established by the Financial Management Law. In other words, the Law distinguishes between a certain limit within which the Minister may exercise legal authority and amounts that the Minister must submit to the Council of Ministers in order to obtain the requisite approvals for writing off debts and fixed assets. Paragraph (Tenth) of the Financial Management Law No. (6) of 2019 also provides that: "Financial authorities for writing off shall be determined by a decision of the Council of Ministers." Upon referring to the Instructions for Implementing the General Budget for 2019, it is noted that these Instructions divided the authorities into three categories, as follows:

1. **Authority of the Competent Minister:** The Instructions established that the competent Minister, the head of an entity not affiliated with a ministry, or the

Governor has the authority to write off lost, damaged, and destroyed assets for any reason, including ordinary use, if their book value is up to (100) million Iraqi dinars in each case (the total value of assets included in a single decision).

2. **Amounts exceeding (100) million dinars up to (300) million dinars:** The authority in this case belongs to the Minister of Finance. This means that any amount exceeding (100) million dinars must be submitted by the competent Minister to the Minister of Finance for approval.
3. **Amounts exceeding (300) million dinars:** The authority in this case belongs to the Council of Ministers, based on a recommendation from the Minister of Finance. This means that the competent Minister must submit the matter, together with all its details, to the Minister of Finance, who is then responsible for submitting a recommendation to the Council of Ministers to approve the write-off of amounts exceeding (300) million dinars.

It is also noted that the 2019 Budget Instructions provided for the continued application of these Instructions to the 2020 Budget, except for matters subsequently stipulated in the expenditure authority circular issued by the Ministry of Finance.

Safeguarding the State's Rights in Irrecoverable Debts

Paragraph (Seventh) of Article (46) of the Financial Management Law stipulates that: "The writing-off shall not prevent the adoption of legal means to secure the rights of the Treasury against the person responsible for the loss or damage."

It is clear from this provision that, even where the State decides to write off assets and debts, it does not refrain from legally pursuing the person responsible for the loss or damage and taking the appropriate measures against him. The writing-off of debts does not mean that the employee responsible for the damage or loss is exonerated. Rather, the matter entails legal consequences relating to the protection of public funds against negligent employees or other persons responsible for causing damage to public property. The State may therefore pursue the negligent person criminally in respect of crimes involving the destruction of or damage to public funds.

Accordingly, the writing-off of assets should not be understood as bringing the matter to an end from a legal perspective. Rather, the matter must be followed up to clarify the mechanism and circumstances that led to the writing-off of the assets. If the assets were written off for reasons related to depreciation resulting from ordinary daily use, there is no objection to such writing-off. However, if the writing-off resulted from the misuse of powers, the appropriate legal measures must be taken in this regard.[1]

This means that, in order to safeguard the State's rights with respect to fixed assets and debts, every institution must take the legal measures prescribed under the laws that guarantee the State's rights, including the Penal Code and the Guarantee Law.[2] This must be undertaken while observing the legal provisions set forth in these two laws: the former establishes the penalties to be imposed on those responsible for violations involving public funds, while the latter establishes the procedures to be followed by departments to ensure that the person responsible pays the public funds wasted as a

result of his negligence, within the framework of the rules governing the formation of committees, the mechanism for holding meetings, the authority competent to approve recommendations, and other relevant matters.[3]

Based on all the foregoing, it can be concluded that the Iraqi legislator was justified in adopting this provision, as a distinction must be made between the writing-off of assets resulting from ordinary use and the writing-off of assets resulting from the negligence or dereliction of an employee, which requires taking legal measures against the person responsible in order to safeguard the State's rights and prevent corrupt persons from exploiting the legal provisions governing the writing-off of assets to legitimize their theft. Therefore, it is necessary for official departments to safeguard the State's rights by pursuing negligent, derelict, and corrupt persons before writing off assets from the State's official records. Once the State's right to hold those responsible accountable, whether physically or financially, has been secured, the assets may then be written off with legal assurance.

which stated that the Instructions No. (2) of 2005 authorized the competent Minister to write off assets that were lost, damaged, or destroyed for any reason, but contained no provision referring to stolen assets.

It is worth noting that Circular No. 1560 dated 4/2/2009 addressed cases involving the theft of salaries but did not address cases involving the theft of machinery. Accordingly, the necessary legal measures should be taken by initiating a complaint concerning the theft of vehicles, in accordance with the previous practices applicable to cases of theft.

Despite the legal treatment of this matter, the aforementioned department overlooked a matter of considerable importance, namely, that an administrative investigation should be conducted in this regard and that the matter should be referred to the Guarantee Committee established pursuant to the provisions of Law No. (31) of 2015, in order to determine the person who should be held liable for the value of the stolen machinery, in addition to initiating the criminal complaint. This was confirmed by Ministry of Finance Circular No. 15366 dated 9/8/2016, which expressly referred to the approval of the General Secretariat of the Council of Ministers to write off assets lost as a result of theft, while emphasizing the necessity of taking the required legal measures concerning the theft of assets before carrying out the writing-off process and in accordance with the authorities established in the Circular.

The Guarantee Law stipulates that "the employee or person charged with a public service shall be liable for the value of the damage incurred by the public treasury as a result of his negligence, dereliction, or violation of laws, decisions, regulations, and instructions" (Article 1). It also provides for investigative procedures through a decision of the competent Minister, the head of an entity not affiliated with a ministry, or the Governor, or any person authorized by them, to form an investigative committee consisting of a chairperson and two members with relevant expertise and specialization, provided that at least one of them holds a bachelor's degree in law. The investigation

shall be conducted in writing by recording the statements of the employee and witnesses. The committee shall issue its recommendations either to hold the employee financially liable or not, determine the person responsible for causing the damage, assess the seriousness of the act committed, and determine the amount of the guarantee. The Minister or the relevant authority shall then issue a decision based on the recommendations of the committee. The Prime Minister shall be deemed the competent Minister with respect to Ministers and heads of entities not affiliated with a ministry (Article 2).

Article 3 provides that all investigation and approval procedures must be completed within a period not exceeding [90] days from the date on which the damage occurred. The amount of the guarantee shall be paid in a single installment, and the Minister or relevant authority may approve payment in installments for a period not exceeding [5] years against a personal guarantee or a real-estate guarantee (Article 4). The Law also provides that the person held financially liable may challenge the guarantee decision before the Administrative Court of Justice. As a prerequisite for challenging the guarantee decision, the person must submit a grievance against it to the authority that issued it within [30] days from the date of notification thereof. The Minister or relevant authority shall decide on the grievance within [30] days from the date of submission. If no decision is made on the grievance despite the expiry of the prescribed period, the grievance shall be deemed rejected. The challenge shall then be submitted to the Administrative Court of Justice within [30] days from the date on which the person is actually or legally notified of the rejection of the grievance (Article 6). The Law further provides that the provisions of the Government Debt Collection Law No. (56) of 1977 shall apply to the person held financially liable if he refuses to pay the guaranteed amount or fails to pay any installment due from him within [30] days from its due date. In such a case, the installment arrangement shall be deemed cancelled, and all remaining installments shall become immediately due and payable in full (Article 7).

CONCLUSION

Fundamental Finding: Writing off is the process of eliminating assets and debts held by government departments and removing them from their records in a legal and accounting manner, in a way that ensures the proper use of such assets and guarantees their disposal in a manner that allows them to be treated, at one time, as expenditures and, at another, as revenues, represented by the expenditure incurred in acquiring them and the revenue generated from their disposal and removal from the State's assets. The State carries out the writing-off process as a result of the normal depreciation of furniture and other assets. In some cases, writing off may be necessitated by the State's inability to collect its debts. The legislator has established a hierarchical distribution of powers, beginning with the competent minister as the first level. **Implication:** Researchers should not overlook the State's criminal right to hold accountable those responsible for the loss of public funds as a result of their negligence or failure to exercise due care, nor should

they overlook the State's financial right under the Guarantee Law to recover State funds from employees and workers in the government sector. There must be an explicit legal distinction between writing off resulting from normal use and writing off resulting from negligence or failure to exercise due care, the latter of which requires criminal and financial accountability. **Limitation:** In this regard, it is evident that the law has not specified the amounts within which the competent minister, the Minister of Finance, or even the Council of Ministers may exercise their authority. Maintaining such amounts solely within instructions may expose them to continuous changes, thereby creating uncertainty regarding the applicable limits. Through our review of the sources available to us, we observed weaknesses in the specialized committees concerned with this matter, as well as a lack of developmental training courses that could facilitate this process. **Future Research:** We recommend that the law explicitly define the powers and authorities relating to writing off within the legislation itself, rather than relying on instructions issued by the Council of Ministers. The writing-off process should be restricted to a specific period, such that matters relating to writing off may not extend beyond the financial year during which the writing-off is intended to take place. Specialized central committees should be established for writing off assets within each institution, with each committee being linked to a central ministerial committee responsible for reviewing cases and determining the procedures that must be followed before completing the writing-off process. Accordingly, we hope that government institutions will develop the administrative capabilities of their employees with regard to the writing-off of assets. We hope that the Council of Ministers will reduce cases involving the writing off, installment payment, or deferral of government debts, given the negative effects that such practices may have on the general budget.

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