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Civil Liability Arising from Imposing Sanctions on International Trade Against Iran

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Today, one of the most critical factors for attracting investment, especially foreign investment, is protecting investors and safeguarding their rights in international trade. Disregard for ownership and investors' rights in international trade, and concerns over their violation in various forms such as expropriation, nationalization, confiscation, and seizure of property, has consistently been a significant challenge in the realm of international commercial law. This article, by elucidating the position of safeguarding investment rights and international trade, aims to explore how this right can be protected. A key objective of this study is to examine the commonalities and differences between Iranian and international law to identify potential weaknesses or strengths in this area. The findings of this research, derived from library studies and utilizing a descriptive-analytical method, reveal that the private ownership rights of foreign investors can be fully respected under Islamic and Iranian law. One of the critical issues examined in this legal domain is the possibility of considering international human rights as part of the governing law and, consequently, recognizing human rights obligations for both parties in the investment relationship. In this context, Iranian law, regarding strategies for safeguarding the aforementioned rights, benefits from Islamic teachings and aligns itself with international legal standards. Thus, the violation of private ownership rights of foreign investors creates liability for the host state.

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1. Introduction

The persistence of sanctions and the insistence of some countries on maintaining or intensifying them pose serious and irreparable risks to the future of international relations, state sovereignty in the context of free trade, banking and financial activities, as well as the rights of individuals and human rights concepts. Given the scope, diversity, and breadth of these sanctions, such actions can be perceived as lacking good faith and as threatening. It is worth noting that although sanctions are often perceived as an accepted reality under international law and as an exercise of sovereignty and the will of sanctioning states, the nature, extent, and impacts of these sanctions—political, economic, and human rights-related—have consistently been subjects of debate and controversy among legal scholars.

On the other hand, it should be noted that the obligation to compensate the injured party is not a continuation or substitute for the original obligation of the contracting party but rather a secondary liability that arises due to the breach of the obligor. Its attribution to the contract stems from the fact that the basis of the obligor's fault is the breach of a contractual obligation owed to the other party. Civil liability is also applicable in commercial contracts and is widely used. Countries are compelled to establish relations with others to meet their needs, and daily, more opportunities and facilities are provided to citizens for the development of international relations, predominantly in trade. Imports and exports have become one of the primary concerns of governments.

In the context of international trade, it is crucial to explore when civil liability shifts to tort liability and how this responsibility applies in international trade, emphasizing its significant role in commerce. With the expansion of international law, states are obligated to adhere to the principles and norms of international law in structuring their relations. Regarding economic sanctions, which are often political tools in international relations, their legal analysis and alignment with international law remain contentious issues. Although there is a growing inclination to limit economic sanctions based on their relative legitimacy—especially sanctions imposed by the United Nations Security Council—a deeper examination of international law and the right to development underscores the illegitimacy of economic sanctions from an international legal perspective.

In the current circumstances, sanctions represent a significant threat to Iran, jeopardizing the financial and trade freedoms of individuals and entities on both sides and depriving businesses and citizens of numerous opportunities. Within international law, the question of whether sanctions impose international responsibility on the sanctioning state(s) has been largely negated due to the principle of state sovereignty. However, regarding modern international sanctions, it must be acknowledged that the evolving nature of their imposition merits further scrutiny. The application of targeted sanctions in the international economic system highlights civil liability arising from such measures, which can be considered from two perspectives: first, the civil liability of the individual whose actions led to the sanctions; second, the responsibility for the impact of trade sanctions on Iran's international trade.

Examining the civil liability of private or foreign companies active in critical industries such as oil condensates and gas products requires an analysis of civil liability arising from sanctions on Iran's international trade. Decades of economic sanctions targeting Iran have weakened the country's national power by exerting pressure on its economy. The severity of sanctions, particularly on non-oil exports, has exacerbated the challenges, and international trade laws have failed to adequately address the civil liability issues faced by Iranian traders. For instance, every 1% increase in the sanctions index intensity results in a decrease in non-oil exports. Therefore, sanctions have had a significantly negative impact on the country's non-oil exports. Additionally, factors such as real gross domestic product, trade openness, and real exchange rates have positively influenced non-oil exports, while the terms of trade (the ratio of export to import price indices) have had a negative impact.

Today, foreign investment is among the most commonly used forms of investment. Attracting investment and engaging foreign investors—whether individuals or entities—within the framework of the international trade system draws the attention of economists, legal experts, and lawmakers. Foreign investors are consistently influenced by the legal environments of host countries, and existing legal frameworks can have both positive and negative effects. Consequently, in international trade, this issue is a specialized focus for legal scholars due to its legal imperatives. Historically, foreign investment has been a vital factor in economic development, prosperity, and job creation in all countries. The attraction of foreign financial resources in various forms has been a top priority for many nations and a prerequisite for achieving their developmental goals. Among different methods of foreign financing, direct foreign investment is one of the most effective (Asgari, 2012). Despite its drawbacks, the positive effects of foreign direct investment—such as access to new export markets, enhanced competitiveness, transfer of technical and managerial expertise, and the establishment of economic security—are undeniable.

In the context of Iran's international trade, the importance of commerce and its stagnation due to sanctions is undeniable. For instance, Iran's vast oil and gas sector, technological dependence on modern exploration and production methods, and the country's critical need for foreign exchange earnings from oil and gas exports have made this sector a prime target for effective sanctions by the United States and the European Union. It is evident that U.S. and European sanctions have had significant negative economic effects on Iran's international trade, both in oil and non-oil sectors.

In addressing the civil liability arising from sanctions on Iran's international trade, it is necessary to first examine the concepts of harm and damages within civil liability law. Subsequently, the discussion must include who bears the responsibility for compensating Iranian traders for damages incurred in international trade due to sanctions, the role of other states in providing redress, and whether specific individuals or states can be legally held accountable for compensation.

This study aims to analyze the civil liability arising from sanctions imposed on Iran's international trade.

2. Foreign Investment

The concept of foreign investment is generally defined based on the provisions of bilateral or multilateral investment treaties. For instance, in bilateral treaties entered into by Iran, European and American model treaties are followed, encompassing broad and protective definitions. For example, Paragraph (1) of Article (1) of the Agreement on Promotion and Reciprocal Protection of Investments between the Government of the Islamic Republic of Iran and the Government of the Federal Republic of Germany employs an expansive and protective definition of investment. According to this provision, foreign investment is defined as any type of asset utilized, directly or indirectly, by investors of one contracting party in the territory of the other contracting party, in accordance with the laws and regulations of the latter (Insafi Azar, 2018).

Effective legal facilitation in investment has a direct relationship with economic growth and development. The positive role of foreign investment in economic growth and development cannot be easily denied. A cursory review of neighboring countries reveals that foreign investment typically leads to significant economic development. Despite a 64% increase in investment in 2016, due to various obstacles and limitations, foreign direct investment in Iran has not yet reached a desirable level compared to neighboring countries and remains far below the country's capacity and potential. Various barriers, including political-security, social, economic, cultural, and particularly legal challenges, hinder foreign investment.

Multilateral investment treaties generally recognize ICSID jurisdiction and provide a definition of investment. For instance, the North American Free Trade Agreement (NAFTA) in Article (1139) and the Energy Charter Treaty in Article (6) define foreign investment (Asgari, 2012). Even for the recognition of jurisdiction by major arbitration centers such as ICSID, the economic activity at the core of the dispute must qualify as an investment for the center to address the case (Insafi Azar, 2018).

According to Article (1) of Iran's Foreign Investment Promotion and Protection Act: "Foreign investment refers to the utilization of foreign capital in a new or existing economic enterprise after obtaining an investment license" (Behbahani et al., 2020).

3. The Necessity of Investment and Respect for Investment Rights

Foreign investment by governments and large multinational corporations to foster economic development, increase employment, support free markets, and prevent monopolies often faces skepticism from some legal and economic analysts in host countries. Risks such as expropriation of foreign investors' assets, support for domestic industries and commerce, nationalization of major industries, and deprivation of ownership rights for foreign shareholders have not been entirely eliminated. Certain conventions and bilateral or multilateral agreements have mitigated these risks. Iran has also engaged in numerous treaties of amity with other nations, many aimed at fostering balanced political relations and friendly cooperation. Some treaties have taken significant steps in addressing the commercial and economic relationships between the parties, protecting the rights of nationals and their financial interests, and addressing expropriation and compensation issues. However, international relations have yet to fully meet the expectations of foreign investors.

In most of these agreements, property rights of the contracting party's investors are guaranteed, and nationalization, expropriation, or deprivation of ownership is prohibited unless such actions are necessary or in the public interest, in accordance with the law, without discrimination, and accompanied by prompt, adequate, and effective compensation. The depreciated value of assets due to expropriation or related announcements is not considered in evaluating confiscated property; instead, compensation is based on the actual value of the expropriated assets prior to the declaration or announcement of potential expropriation. Occasionally, expropriation occurs through actions such as restrictions on currency inflows and outflows, imposition of heavy tariffs, or measures affecting domestic industries like dumping. These actions necessitate the introduction of anti-dumping laws, preferential tariffs, and quotas that disrupt internal regulations and create uncertainty in markets, destabilizing foreign trade. Such conditions lead to significant gains for some traders while bankrupting others. These challenges create substantial legal and commercial tensions in international trade, often beyond the sole capacity of legal professionals to resolve.

4. Evolution of Investor Rights Protection

While legal scholars and legislators in developed countries have paid special attention to this issue since the 19th century, particularly during the formation of modern commercial laws, economists began to seriously explore the importance of protecting shareholder rights only in the mid-1990s. Over the past two decades, economists have emphasized the role of shareholder protection in expanding stock markets and have sought to quantify laws protecting shareholders through specific indices.

Investor protection is a central goal of the European Union's directives on investment services and adequate capital for equitable, clear, sufficient, and integrated financial markets. Recognizing that mere regulation and oversight are insufficient, especially in cases of fraud, the European Parliament and Council adopted a specific directive for investor protection, known as the Investor Compensation Scheme Directive.

Comprehensive research by La Porta and colleagues during 1997–1998 revealed that capital markets in civil law countries, except for Italy and Sweden, were less developed than those in common law countries, where investor protection laws are stronger.

Jensen and Meckling (1976) argued that the return on investment projects to investors should not be considered guaranteed, as company managers might use resources for their benefit. They emphasized the role of contracts in ensuring financial claims for investors, shaping agreements to protect investor rights.

By the late 20th and early 21st centuries, financial development concepts underwent revisions, with economists recognizing that focusing solely on interest rate liberalization was insufficient for financial sector growth. Institutions emerged as key determinants of financial development. Laws governing money and capital markets gradually entered economic analyses. It was also observed that countries with more developed banking sectors tended to have more expansive stock markets.

In Iranian law, minority shareholder protection is a relatively new subject, prompted by the growing activities of joint-stock companies. The 1968 legal bill addressed this need to some extent, establishing limited provisions to protect minority shareholders.

In the early years of the Islamic Revolution, when banks were nationalized and Islamized, small investors placed their capital at high risk in what became known as speculative companies. The lack of legal protection for investors led to widespread abuse and public distrust in the general market. At that time, there were no coherent capital markets safeguarded by relevant laws to prevent resource waste. As financial markets became increasingly complex due to the rapid circulation of information, the necessity for updated and appropriate laws grew (Shiroui, 2014).

5. Investment Security and Public Trust

Investment relies on its fundamental principles to function effectively. Without constitutional laws and regulations protecting citizens' rights, an accessible judicial system, a police force ensuring safety, and, most importantly, domestic and international trade laws facilitating commerce, investment will struggle to find its place, and financial provisioning will not occur. National security is essential and vital, provided it is accompanied by personal and social security. Social security without commercial freedom is akin to enforcing personal security within the confines of a prison. Failure to make necessary efforts to achieve commercial freedom and security will result in outcomes similar to past failures, potentially setting a country back by 100 or 200 years and endangering its existing capital.

If a country's government supports transparency, participatory production, realism, global outlooks, and sustainable development, ensuring that its citizens feel no fear over their investments, technology, capital, or ownership, the country can integrate into the global community. Such an environment promotes trade and substantiates discussions on sustainable development.

6. The Role of Economic Powers in International Trade

Economic power can destabilize the security of nations. When citizens lack a sense of security, investments fail to materialize, investors feel uneasy, national currency loses its value, and the priority of citizens' rights is ignored, inflation rates soar, investors flee, and economic stagnation ensues. Banks, whose primary function is financial provisioning, may resort to asset seizures and confiscations, undermining domestic investors to the point where no one dares to contemplate investment. This leads to a nation being plagued with the highest rates of inflation and predatory usury, a scenario unacceptable in any civilized society. Economically influential nations have the power to exacerbate these issues.

A country with a robust economy, extensive trade, and diverse commercial options dominates global political, cultural, and social discourse. Such countries leverage economic, cultural, social, and sanction pressures, enforcing their directives without resorting to warfare. Economy, commonly equated with money, is one of the most critical and pivotal levers of power that fundamentally shapes global trade. Leaders of economically dominant nations can elevate or degrade other countries, isolating or crediting them through simple economic maneuvers and targeted sanctions. No forward-thinking politician or legal scholar should overlook this crucial point.

7. Security, Freedom, and Health as Pillars of Trade

Health and security, along with the freedom to live, are two foundational elements of any healthy society. The physical well-being of individuals forms a healthy society, and the security of individuals ensures societal security. When a country takes a hostile stance against the global community, it endangers its own security and that of humanity. The belief in the superiority of one’s own ideology, whether religious or ideological, marks the beginning of oppression against the country’s citizens and the global population. Such oppression leads to conflicts with oppressors, resulting in resistance and retaliation. If the cost-benefit analysis of actions within a country is disregarded, the damages will remain domestic. Similarly, internationally, the failure to assess cost-benefit implications results in widespread losses.

In trade and both domestic and foreign investments, oppression is inherently undesirable, regardless of its scale. Ignorance in commerce and cultural superstition is even worse than oppression, as it not only leads societies to ruin but also opens the door to broader injustices. Unfortunately, some nations have transitioned from oppression to ignorance in their trade practices and transactional principles. While progress may be achieved amidst oppression and adversity, it is impossible to achieve it alongside ignorance, especially the so-called "sacred ignorance."

In today’s world, trade requires a stable environment; any turbulence drives traders away. Occasionally, turmoil, war, and conflict in one region activate arms factories in the West and East, creating jobs and stability in other parts of the world. However, third-world policymakers (a small minority) who rule unjustly for life either intentionally or ignorantly follow the agenda of arms manufacturers, erroneously deeming it beneficial for their people’s worldly and spiritual well-being. Consequently, all accumulated wealth in these nations is funneled toward arms manufacturers, burdening these countries with debt for even their raw material production for decades to come.

8. Economic Inequalities Among Nations

The economic conditions of countries vary significantly and are sometimes strikingly disparate. Events in one part of the world influence others to varying degrees. Instability and tension negatively impact international trade relations. Beneficial and productive exchanges flourish under the banner of peace and goodwill. Mutual benefit and the principle of reciprocal exchange foster development. Occasionally, granting concessions to weaker nations can prove advantageous. In such cases, the granting nation compensates for its concessions through increased returns on investments, which may ultimately benefit the granting nation as well.

9. The Razor of Sanctions at the Throat of Economic Rivals

Sanctions occasionally affect government contracts. However, their impacts are minimized when foreign investment exists in the sanctioned country. Significant economic relations with other nations' allies can deter military conflict and act as a substantial barrier against economic sanctions and blockades. The security of joint industries and their associated benefits is thereby preserved. Peaceful relations among international legal entities heavily depend on their economic exchanges.

Political and social factors drive the implementation of state and United Nations sanctions against certain nations. These sanctions profoundly affect international trade and inevitably require attention within the framework of international commercial law. Conflicts between the interests of governments, nations, or major powers sometimes necessitate strategies to counterbalance the opposing side. War is not always the solution to safeguard national interests. Problems solvable by negotiation should not escalate into destructive wars. Economic sanctions sometimes resolve international disputes, rendering warfare unnecessary.

Thus, international economic sanctions form an undeniable chapter in the study of international trade law, leaving a profound impact on global commerce (Darabpour & Khazrlou, 2022).

10. Factors Leading to the Collapse of Trade and Civilizations

Corruption (whether economic, political, or administrative), the inefficiency of outdated managers, lack of investment in productive or commercial activities, and severe social inequality caused by these factors collectively ignite the downfall of civilizations. Some nations are plagued by all four issues, any one of which alone could dismantle a country's civilization, even if it does not immediately topple an authoritarian regime. Hostility, resentment, and antagonism by governments towards others also negatively impact investments, sometimes entirely undermining them. Those who destroy civilizations, alienate people, or oppress them are closer to death than to life; they prioritize people for the sake of the law rather than laws for the benefit of people.

A country without tourism is deprived of a significant portion of the global economy and isolated from the world. Such countries epitomize the notion of "losers in this world and the hereafter," as their "sacred ignorance" deprives them of all worldly blessings. They sacrifice science, religion, and morality in favor of low-cost, accountability-averse ceremonies. Groundless beliefs and the propagation of myths (disseminated to ignorant populations centuries ago) as models for humanity's future represent the greatest injustice in history, destroying civilizations and robbing humanity of peace.

11. Rationality and Collective Wisdom as Keys to Success in Trade

Laws and regulations, when divorced from collective wisdom, are ineffective. Legislative management is the management of management itself, without which trade cannot thrive. Falling into patterns of "foolish living" is a significant barrier to living "rationally." Rational living alone is insufficient; trade must also follow customary and reasonable norms. Global and societal customs—both written and unwritten social contracts—offer rational solutions to people, especially traders. Ignoring fundamental commercial issues does not resolve them. The concept of interest-free banking in some self-proclaimed models exemplifies this neglect.

Flawed laws, coupled with an unhealthy economy and inefficient, corrupt authorities, complete the cycle of commercial failure. If ideologies—no matter how correct—regarding an afterlife (focusing on rewards after death rather than worldly order) are added to this mix, the resulting mindset prioritizes prolonged, thoughtless conflict over rational thinking, compromise, and peaceful coexistence. Imagining that such attitudes satisfy divine will (often a guise for rulers' interests) instead of serving societal needs eradicates domestic trade. Naturally, foreign trade in such scenarios becomes entirely meaningless and unsustainable (Kiani Mojahid & Bagban, 2020).

12. The Impact of Bilateral and Multilateral Treaties on Investment Law

Investment agreements play a pivotal role in shaping various aspects of foreign investment. Numerous bilateral and multilateral agreements worldwide aim to facilitate investment, with one of their key features being the obligation to allow investors to freely and easily transfer the proceeds of their investments out of host countries in the form of currency transfers.

Iran, too, has taken significant steps to align its legal framework for foreign investments with international developments and to create a favorable investment environment. Over the past two decades, it has signed bilateral and multilateral investment agreements with various nations, including developed countries, acceded to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2001, and joined the Multilateral Investment Guarantee Agency (MIGA) in 2004 (Sultan Zadeh, 2014).

All international investment agreements provide legal protections for foreign investments and ensure the free flow of capital. The prevailing practice and custom in international investment law aim to attract investors to host countries by adjusting financial and currency policies to ensure investors' rights and expectations. These adjustments facilitate the transfer of foreign investment proceeds while preserving the host country's economic and financial stability. Accordingly, countries have modified their regulations to achieve these objectives, reducing strict rules and eliminating barriers. Many Asian and European countries have introduced new policies to encourage investments, including simplifying foreign exchange regulations.

Iranian law, influenced by these international trends, has also adjusted its policies to attract foreign investments. The Foreign Investment Promotion and Protection Act of 2002, its implementing regulations, and other related provisions have significantly simplified the conditions and processes for currency transfers associated with foreign investments compared to past policies.

However, Iran's legislative policy aims to safeguard its foreign exchange regulations. To prevent harm to these rules under the pretext of foreign investments, any currency not generated through exports or originating from abroad is subject to exchange regulations upon exiting the country. Conversely, foreign investment proceeds from exports, as defined by the Investment Board, are exempt from restrictive export regulations and foreign exchange rules, such as pledges to repatriate export proceeds, under existing or future governmental regulations (Kalantari, 2017).

Currency exchange rate fluctuations have negatively impacted foreign direct investment in Iran. The dominance of a multi-rate currency system over the economy in recent decades has led to phenomena such as rent-seeking, currency resource wastage, and dependence of economic sectors on foreign exchange, adversely affecting foreign investments. Reforming the country's currency system could play a significant role in attracting foreign investments.

Although key reforms were initiated in 2002, including implementing a unified currency rate, it must be noted that due to the unfavorable history of this variable, even minor shocks can have significant adverse effects on foreign investments (Behbahani et al., 2020).

13. Combating Abuse of Rights in Commercial Companies in Iran under the Principle of No Harm (Lā Ḍarar)

Although the theory of abuse of rights, as recognized in countries like France, is not explicitly established in Iranian law, the principle of *Lā Ḍarar*, which is reflected in Iranian law, including the Constitution, can effectively fulfill the same function in addressing the abuse of rights in commercial companies. Based on this principle, commercial law provides mechanisms to prevent majority shareholders from abusing their rights. These mechanisms can be categorized into judicial and non-judicial approaches.

13.1. Judicial Approaches

The main judicial remedies include filing civil or criminal liability lawsuits, requesting the dissolution of a company through the court, petitioning for the dismissal of directors or the CEO through the court, requesting the appointment of an auditor through the court, requesting the reduction of company capital, and seeking the annulment of decisions through judicial means. Other measures include minority shareholders participating in cumulative voting, requesting the board of directors to convene general meetings, imposing restrictions on general meetings, imposing restrictions on directors and the CEO, prohibiting certain transactions such as those with the company, and imposing restrictions on auditors or inspectors.

13.2. Non-Judicial Approaches

The primary non-judicial measures aim to prevent the abuse of rights by majority shareholders in commercial companies under Iranian law. Regardless of the various interpretations of the *Lā Ḍarar* principle and its application, the concept of *Lā Ḍarar* is generally broader than the concept of abuse of rights. While not fully developed as a theory in Iranian law, its general concept and conditions are articulated in certain legal provisions, such as Article 40 of the Constitution and Article 132 of the Civil Code.

- **Mandatory Share Purchase Offers to Protect Minority Shareholders**: In many cases, changes in control blocks of shares influence shareholders' preferences regarding stock retention. To ensure minority shareholders' right to exit without penalties or financial loss, many countries require new controlling shareholders to offer to purchase the shares of other shareholders at a price determined by relevant regulations. This rule, referred to as an "anti-takeover measure," helps safeguard the rights of minority shareholders.
- **Institutional Investors as External Monitoring Mechanisms**: In corporate governance literature, institutional investors are recognized as effective external mechanisms for monitoring companies. In countries where major shareholders dominate the ownership structure of most companies, agency problems stemming from the separation of ownership and management are less prevalent. Institutional investors, particularly foreign institutional investors, play a crucial role in enhancing corporate governance systems. Incentive policies or the transfer of a percentage of minority shares to institutional investors can improve corporate governance.
- **Establishing Shareholders' Associations for Minority Shareholders**: One effective strategy to protect the rights of minority shareholders is to establish associations or unions with clear objectives. These organizations, operating in accordance with relevant laws and regulations and in coordination with capital market oversight bodies, can educate minority shareholders and enforce more effective oversight over companies. They can also assist in pursuing and ensuring the rights of minority shareholders. To achieve this, it is necessary to implement measures to prevent potential abuses and disruptions in the market system.
- **Increasing Awareness of Shareholders' Rights**: One of the key factors contributing to the violation of minority shareholders' rights is their lack of awareness about their rights. Initiatives such as providing necessary education, promoting a culture of shareholder participation, reducing the costs of capital market training programs, introducing capital market courses into undergraduate curricula for accounting, economics, and management majors (given the high number of students in these fields and their widespread presence across the country), offering essential training for board members, facilitating the filing of lawsuits, and reducing the costs of litigation and legal follow-ups are important measures to support and protect minority shareholders' rights.

14. Additional Supportive Measures and Legal Reform Proposals

- **Article 167 of the Amended Commercial Code:**
  Article 167 states: "The extraordinary general meeting that approves a capital increase through the sale of new shares may revoke the preemptive rights of shareholders for subscribing to all or part of the new shares." This provision easily violates the preemptive rights of minority shareholders, granting majority shareholders the ability to disregard such rights and increase the number of shareholders. Amending this article to protect minority shareholders' rights is necessary.
- **Article 144 of the Amended Commercial Code:** According to Article 144, the annual general meeting elects one or more auditors. Articles 148 and 149 emphasize the auditor's unique role in protecting shareholders' rights and preventing managerial misconduct. Measures should be taken to allow minority shareholders to participate in the selection process. However, Article 88 specifies that decisions in general meetings, including those regarding auditors, require a relative majority of attendees, limiting minority shareholders' exclusive influence. A possible solution is for the Iranian Stock Exchange to draft guidelines allowing minority shareholders to propose auditor candidates, enabling them to participate in selecting influential company members.

- **Establishing Specialized Commercial Courts:** One of the primary weaknesses of Iran's legal system in protecting minority shareholders is the absence of specialized commercial courts. According to Iran's Code of Civil Procedure, general civil courts hear all legal disputes unless specific cases are assigned to specialized courts by law. Commercial disputes fall under the jurisdiction of general courts. In recent years, a draft of the Commercial Procedure Code was presented to Parliament, mandating the establishment of commercial courts. In November 2020, a specialized judicial complex for commercial disputes was established in Tehran, addressing this issue to some extent. Cases involving arbitration are also handled in this complex, provided the parties are commercial entities.
- **Article 129 of the Amended Commercial Code:** This article prohibits certain transactions between board members and the company unless approved by the board and the general meeting. The board must notify the company auditor and prepare a report for the general meeting. The CEO, as the board's executive arm, should also prepare a detailed report on all company transactions. Before the general meeting votes, the auditor must submit a report explicitly stating their opinion. Otherwise, the general meeting's decisions regarding transactions under Article 129 should not be considered valid.
- **Article 99 of the Amended Commercial Code:** Under Article 99, any shareholder must obtain an entry pass to attend a general meeting. However, the law does not specify the process or contents of the entry pass, nor does it clarify the identification of proxies attending on behalf of others. These ambiguities increase the likelihood of abuse and infringement on minority shareholders' rights.
- **Definition of "Widely Circulated Newspaper":** Several provisions (e.g., Articles 74 and 97 of the Amended Commercial Code) reference the term "widely circulated newspaper" for publishing official notices. However, the law does not define this term. A 1979 advisory opinion stated that "widely circulated newspapers" have no legal definition or specific criteria and are conventionally understood as high-circulation newspapers. To protect minority shareholders' rights, a clear definition is necessary to prevent the majority from selecting inaccessible newspapers for publishing meeting announcements. The Iranian Stock Exchange should address this ambiguity through specific guidelines for listed companies.
- **Fairness in General Meetings:** According to Article 90 of the Amended Commercial Code, profit distribution among shareholders requires approval from the general meeting, with a mandatory distribution of at least 10% of annual profits. If the majority shareholder votes against profit distribution, minority shareholders may only rely on this minimum provision, which undermines their rights. Decisions on critical matters are often dominated by majority shareholders. Auditors, fully aware of the company's business and financial status, should prepare a report on profit distribution before the general meeting makes any decisions. The stock exchange could mandate this procedure for listed companies through regulatory guidelines.
- **Ineffective Mechanism for Electing General Meeting Boards:** To protect minority shareholders' rights, at least one member of the general meeting board should be elected by minority shareholders. According to Article 101 of the Amended Commercial Code, unless otherwise specified in the articles of association, the chairperson of the general meeting board is the same as the company's board chairperson. Minority shareholders could nominate one of the observers or the secretary of the meeting.
- **Treasury Stocks and Violations of Shareholder Rights:** Treasury stock refers to a company repurchasing its issued shares. However, Article 198 of the Amended Commercial Code prohibits this practice, as companies and their management possess insider information, allowing them to buy shares at low prices and sell them at high prices,

causing harm to sellers and buyers. Accounting standards also do not classify treasury stock as an asset, and profits from its sale should not be distributed among shareholders. As a result, many countries prohibit treasury stock transactions. Moreover, treasury stocks lack voting rights, dividend entitlements, and preemptive rights.

- **Regulations on Related Party Transactions:** The World Bank's *Doing Business* report evaluates the protection of minority investors based on related-party transaction regulations. Such transactions risk prioritizing the interests of the CEO or controlling shareholders over minority shareholders. Articles 129, 130, and 131 of the Amended Commercial Code address these transactions and impose restrictions. However, given the growth of public joint-stock companies and their role in economic development, revising these decades-old provisions is essential. Additionally, companies often fail to fully disclose related-party transactions, as required by accounting standards.
- **Corporate Governance Principles:** The 1968 Commercial Code did not address corporate governance principles in their modern sense. In recent years, the Iranian Securities and Exchange Organization and the Central Bank have implemented governance principles through regulations and guidelines. To enhance investor protection, prevent violations, and organize a transparent and fair securities market, it is essential to adopt a corporate governance framework for listed companies.
- **Role of the General Meeting in Protecting Shareholders:** The general meeting, as the highest decision-making body, often disregards minority shareholders' rights in approving financial statements, related-party transactions, electing auditors and board members, and profit distribution. Measures such as virtual meetings and electronic voting could empower minority shareholders. The OECD has encouraged its member states to modernize shareholder participation and reduce the costs of communication, voting, and collective action through technology.
- **Mandatory Registration with the Securities and Exchange Organization:** According to Article 27 of the Securities Market Law, public joint-stock companies with equity below a certain threshold are exempt from registering with the Securities and Exchange Organization. This exemption leads to inadequate oversight of governance, financial transparency, and minority shareholder rights. All public companies should register with the organization, with less stringent regulations applied to those below certain thresholds, ensuring minimal oversight.
- **Strengthening Auditor Accountability (Article 151):** Article 151 of the Amended Commercial Code requires auditors to report any violations or irregularities by directors to the first general meeting and notify judicial authorities if a crime is detected. Auditors should take this duty more seriously to safeguard shareholder interests.

15. Conclusion

The laws governing commercial contracts are determined by the legal frameworks of individual countries, and these laws may vary from one country to another. No contract should violate the laws of the relevant countries; otherwise, the commercial contract will be deemed null and void. Every international foreign investment contract entails obligations and responsibilities for both parties—the foreign investor and the host country. Fulfilling these obligations and responsibilities is essential for the validity of an international commercial contract. Moreover, adherence to these commitments ensures the protection of the investor's rights throughout the contract period. Depending on the type of contract, these commitments may include ensuring the project's desirability and efficiency during its operational period and anticipating and accepting project risks.

It is worth noting that the shortcomings of existing commercial laws and regulations in Iran, the lack of acceptance of international trade laws and principles, varying interpretations of certain constitutional principles, and ideological differences are among the obstacles to investment through commercial contracts in the country. Furthermore, factors such as Iran's non-membership in the International Centre for Settlement of Investment Disputes (ICSID), the requirement to resolve disputes between the Iranian government and foreign investors in Iranian courts, and ambiguities in the law regarding arbitration issues contribute to mistrust among foreign investors. These issues negatively impact international transactions and agreements.

Addressing these challenges in international commercial contracts can help establish a balance between the rights of investors and the host country.

Authors' Contributions

Authors contributed equally to this article.

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Transparency Statement

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