Measured Application of the Legal Principles Governing Commercial Instruments to Bank Guarantees: A Model of Controlled Independence, Documentary Unconditionality, and Conditional Transferability under Iranian Law

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Abstract

Bank guarantees, as commercial instruments serving as mechanisms for securing payment and the proper performance of obligations, play a vital role in the system of commercial transactions. The purpose of this article is to assess the possibility and limits of applying the legal principles governing commercial instruments—namely, independence, unconditionality, and transferability—to bank guarantees and to propose a coherent model for the Iranian legal system. The study employs a descriptive-analytical method with a comparative approach and draws upon library-based sources, domestic legislation, the Uniform Rules for Demand Guarantees (URDG 758), and the UNCITRAL Convention on Independent Guarantees and Stand-by Letters of Credit. The findings indicate that the absence of specific statutory provisions addressing the legal principles governing commercial instruments in Iranian commercial law, together with legislative silence regarding independent guarantees, has rendered the legal status of this instrument uncertain in practice. The principle of independence represents the most significant point of convergence between demand guarantees and commercial instruments; however, it must necessarily be qualified by the exceptions of manifest fraud and abuse of rights. The principle of unconditionality may be applied in the form of "documentary unconditionality," meaning that payment is dependent solely on the facial conformity of the demand with the terms of the guarantee. Transferability, however, due to the personal and credit-assessed nature of the guarantee, can be accepted only on a conditional basis. It follows that the application of these principles is neither absolute nor excluded, but rather measured and selective. The central thesis of this article is that the use of bank guarantees should be structured so as to minimize risk and to apply those principles that, while preserving the guarantee function of the instrument, enhance its reliability, creditworthiness, and maximum functional effectiveness.

Keywords: Bank guarantee; legal principles governing commercial instruments; principle of independence; principle of unconditionality; transferability

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1. Introduction

A bank guarantee is an instrument under which a bank, at the applicant's request, undertakes vis-à-vis the beneficiary to pay a specified amount upon demand or upon fulfillment of the conditions stipulated in the instrument; through this function, it has become one of the pillars of security in domestic and international transactions (Kashani, 1995). The use of this instrument in construction contracts, public tenders, exports, and infrastructure projects is so widespread that, without it, the conclusion of many large-scale transactions would either be impossible or excessively costly. From this perspective, a bank guarantee performs a function very similar to that of classical commercial instruments, namely bills of exchange, promissory notes, and cheques, which, by virtue of principles such as independence of obligation, certainty of payment, and negotiability, have become substitutes for money and instruments of credit (Eskini, 2014). Nevertheless, a guarantee is primarily issued to secure proper performance of obligations and compensate for loss arising from breach of the underlying contract, rather than to discharge a debt or settle an account, and this difference in purpose makes the question of whether the legal principles governing commercial instruments may be extended to bank guarantees particularly significant (Shahbazinia, 2004). In international rules, particularly the International Chamber of Commerce Uniform Rules for Demand Guarantees, the independence of the guarantor's undertaking is expressly recognized (Affaki & Goode, 2011); however, under domestic law, this institution continues to occupy an intermediate position between civil-law suretyship, an independent banking undertaking, and a commercial instrument, and its legal nature remains disputed. In the present article, the legal principles governing commercial instruments are examined as the analytical foundation of the study.

The principal problem addressed in this research arises from the fact that the Commercial Code enacted in 1932 regulates only bills of exchange, promissory notes, and cheques (Articles 223–319 of the Commercial Code) and contains no specific statutory provisions either for bank guarantees or for the principles governing commercial instruments themselves. Thus, the principles of independence and non-opposability of defenses have largely been developed by legal doctrine and judicial practice rather than by express statutory text (Joneidi & Shariatinassab, 2013). The consequence of this legislative silence is that, in practice, the bank guarantee has become a legally unstable instrument: courts sometimes analyze it within the framework of civil-law suretyship and subject it to Article 698 of the Civil Code, thereby necessarily entering into the underlying relationship, while at other times they regard it as an independent and primary undertaking under which the bank must pay upon mere demand, without examining the dispute between the parties (Mafi & Farzangan, 2016). This duality is also evident in relation to the principle of unconditionality, because suspension in civil-law suretyship is invalid under Article 699 of the Civil Code, whereas a bank guarantee is inherently dependent on a demand by the beneficiary or the occurrence of a future condition, a feature that has led some scholars to question its validity (Sobhaninia & Kariminia, 2019). As regards transferability, although bills of exchange and promissory notes may be transferred through endorsement under Article 245 of the Commercial Code, a guarantee is issued in reliance on the identity of the beneficiary and that beneficiary's underlying relationship, and unrestricted transfer is therefore inconsistent with its security function (Shahbazinia, 2007). From a comparative perspective, the practice of leading legal systems shows that even where independence is recognized, the scope of the fraud and abuse exceptions remains controversial (Enonchong, 2011). Accordingly, the central issue is the extent to which, and the adjustments with which, the legal principles governing commercial instruments may be applied to bank guarantees.

The necessity of this research lies in the decisive role that bank guarantees play in public, construction, and international contracts and in the fact that any ambiguity in the rules governing them directly leads to an increase in litigation, conflicting interim injunctions, prolonged proceedings, and reduced confidence among domestic and foreign beneficiaries. Clarifying the limits within which the legal principles governing commercial instruments may be applied to this instrument can provide both legislators and judges with a clear criterion for balancing payment security against the prevention of wrongful demands.

From a theoretical perspective, three principal approaches may be identified in analyzing the nature of bank guarantees and their relationship with commercial instruments. The first is the traditional or accessory approach, which conceptualizes a guarantee within the framework of suretyship under the Civil Code and emphasizes the accessory nature of the guarantor's obligation and the requirement that a pre-existing debt must exist (Articles 684 and 691 of the Civil Code); this approach necessarily results in rejection of both independence and unconditionality, and its acceptance would, in practice, eliminate the economic function of the bank guarantee (Ziaei & Moeinifar, 2013). The second is the independence approach, under which

a bank guarantee is regarded as a primary, independent, and innominate undertaking whose validity is grounded in the principle of freedom of contract under Article 10 of the Civil Code and whose parties are the bank and the beneficiary; international rules and a substantial part of Iranian legal doctrine have adopted this view (Bertrams, 2013). The third is the functional or comparative approach, which, without denying the substantive differences between a guarantee and a commercial instrument, maintains that the functional similarity between these two institutions in generating trust and accelerating transactions permits certain legal principles governing commercial instruments to be applied, with appropriate modification, to guarantees as well (Mafi & Abdolsamadi, 2015). Alongside these approaches, the theory of legal certainty and the prohibition of abuse of rights under Article 40 of the Constitution represent two normative poles between which any proposed model must strike a balance: the former emphasizes certainty and predictability of payment, whereas the latter prevents independence from becoming an instrument for fraudulent demand (Mafi & Fallah, 2014). The present article adopts the third approach as the basis of its analysis.

The novelty of the present article lies in the fact that, unlike previous studies, which have examined the principles of independence, unconditionality, and transfer separately or have considered them solely from the perspective of the legal nature of guarantees, this study evaluates all three principles within a single framework based on the criterion of "risk minimization and functional maximization" and formulates a modified legal thesis for each principle: controlled independence, documentary unconditionality, and conditional transferability.

The principal objective of this article is to explain the possibility and limits of applying the legal principles governing commercial instruments to bank guarantees and to propose a coherent model for the Iranian legal system. The main research question is: "To what extent, and in what manner, can the legal principles governing commercial instruments—independence, unconditionality, and transferability—be applied to bank guarantees?" The principal hypothesis is that, although specific commercial instruments and bank guarantees differ in their legislative rationale and economic function, the fundamental principles governing commercial instruments may, in view of the credit-based nature of guarantees and the requirements of security in commercial transactions, be applied selectively and in a modified manner, taking into account the specific characteristics of bank guarantees.

2. Theoretical Foundations and Literature Review

A commercial instrument, in the broad sense, is any written instrument created in the course of commercial relations and used to evidence or enforce a financial right; in the narrow sense, however, the term refers only to bills of exchange, promissory notes, and cheques, which embody an undertaking to pay a specified sum of money, are transferable by endorsement, and enjoy advantages such as the joint and several liability of signatories under Article 249 of the Commercial Code and the availability of prejudgment attachment without the deposit of security for potential loss (Kaviani, 2024). The fundamental attributes of a commercial instrument in the narrow sense may be summarized under four headings: representation of monetary value, abstractness or independence of the instrument-based obligation from the underlying relationship, unconditionality and certainty of the obligation, and easy and rapid transferability. Abstractness means that, after issuance, the obligation arising from the instrument becomes detached from the cause and underlying relationship that led to its issuance, and defenses arising from that relationship may not be asserted against a holder in good faith; this principle has not been expressly codified in Iranian law, and judicial practice has not applied it consistently (Joneidi & Shariatinassab, 2013). The principle of unconditionality means that the obligation embodied in the instrument is not suspended or made conditional upon an external event and that the holder may demand payment without having to prove fulfillment of any condition; this feature has transformed commercial instruments into reliable mechanisms for performing monetary obligations (Esfandiari & Seyfi Zeynab, 2020). Transferability enables the instrument to circulate and to be used as a credit mechanism and, together with its capacity to serve as collateral, strengthens its financing function (Ebrahimi Torkaman & Pouragha, 2019). The significance of this distinction lies in the fact that, although a bank guarantee may qualify as a commercial instrument in the broad sense, whether it enjoys the characteristics and statutory advantages of specific commercial instruments requires an independent analysis, and the provisions of the Commercial Code cannot automatically be applied to it.

In banking law terminology, a bank guarantee is an instrument under which the bank undertakes to pay a specified sum, within the validity period of the instrument, upon demand by the beneficiary or upon presentation of the stipulated documents. It may take various forms, including bid guarantees, performance guarantees, advance-payment guarantees, retention-money guarantees, and customs guarantees, and in public contracts it constitutes one of the recognized forms of security under the Regulation on Guarantees for Government Transactions approved by the Council of Ministers in 2015 (Soltani, 2011). In terms of payment conditions, guarantees are divided into demand guarantees and conditional guarantees. In the former, a written demand by the beneficiary, or a demand accompanied by a statement of breach under Article 15 of the Uniform Rules for Demand Guarantees, is sufficient for payment, whereas in the latter, payment depends on presentation of a judgment, an expert certificate, or proof of breach of the underlying contract (Masoudi, 2012). Regarding the legal nature of bank guarantees, Iranian doctrine is divided among theories characterizing them as suretyship, a stipulation in favor of a third party, a private contract under Article 10 of the Civil Code, or a unilateral banking undertaking. The prevailing view, particularly in relation to demand guarantees, considers the guarantee to be an independent and primary undertaking that does not correspond to civil-law suretyship because it neither transfers the debtor's liability nor has an accessory character (Alizadeh, 2022). In Islamic jurisprudence, attempts have also been made to justify bank guarantees through the concepts of cumulative liability or an undertaking to pay under Article 723 of the Civil Code; such an analysis legitimizes the bank's obligation without subordinating it to the underlying relationship (Sobhaninia & Kariminia, 2019). At the international level, the independent guarantee, alongside the standby letter of credit, constitutes a self-contained institution governed by International Chamber of Commerce rules or by the 1995 UNCITRAL Convention on Independent Guarantees and Stand-by Letters of Credit (Horowitz, 2010).

The three principles central to this article also have specific technical meanings in legal doctrine. In the context of a guarantee, the principle of independence means that the guarantor's undertaking is separate from the underlying contract between the applicant and the beneficiary and also from the contract between the applicant and the bank, and that the guarantor may not invoke defenses arising from those relationships (Article 5 of the Uniform Rules for Demand Guarantees and Article 3 of the UNCITRAL Convention); this principle is the functional counterpart of abstractness in commercial instruments, with the difference that, in guarantees, it operates directly in the relationship between the two principal parties—the guarantor and the beneficiary—rather than merely against a subsequent holder (Shahbazinia, 2004). In this article, the principle of unconditionality means the certainty and non-suspensive character of the guarantor's obligation vis-à-vis the underlying relationship; that is, payment depends only on conditions specified in the text of the guarantee that are capable of documentary verification and not on proof of actual breach of the underlying contract. This understanding is consistent with the documentary nature of the guarantee, under which the bank deals only with documents and not with goods or services (Mafi & Fallah, 2013). Transferability in the context of guarantees is used in two distinct senses: transfer of the right to demand payment, whereby a new beneficiary replaces the original beneficiary, and assignment of proceeds, whereby only the right to receive money payable under the guarantee is transferred to another person. International rules permit the former only where transferability is expressly stated in the guarantee, while the latter is permitted under less restrictive conditions (Article 33 of the Uniform Rules for Demand Guarantees and Articles 9 and 10 of the UNCITRAL Convention) (Affaki & Goode, 2011). As will be demonstrated, distinguishing these two concepts is the key to reconciling the personal nature of the guarantee with the need for its credit-related circulation (Shahbazinia, 2007).

3. Research Background

Numerous domestic and foreign studies have examined bank guarantees and the characteristics of commercial instruments. The most important related studies are reviewed below in reverse chronological order in order to clarify their similarities to and differences from the present article and to identify the position of this study's contribution within the existing literature.

Farahanipanah and Mafi (2026), in a study entitled "A Comparative Study of Standby Letters of Credit and Guarantee Contracts under the Iranian Civil Code," argued that the bank's undertaking under a standby letter of credit is a primary obligation independent of the underlying contract and, unlike civil-law suretyship, does not depend on proof of actual breach of the principal debt (Farahanipanah & Mafi, 2026). Mafi and Fallah Khariki (2024), in "Analysis of the Fundamental Principles Governing Demand Guarantees in International Trade Law with Reference to the Commercial Bill," demonstrated

that the principles of independence and strict compliance under Iranian law are grounded in freedom of contract and that the relevant provisions of the Commercial Bill require amendment (Mafi & Fallah Khariki, 2024). Jamali, Afras, and Afras (2024), in "Legal Feasibility of Applying the Principles of Commercial Instruments to Bank Guarantees and Their Global Sociocultural Consequences," maintained that these principles enhance the efficiency of guarantees, although inconsistency between domestic laws and global standards prevents their full utilization (Jamali et al., 2024). Alizadeh (2022), in "Bank Guarantees and Documentary Credits in International Trade Payments from the Perspective of Islamic Jurisprudence and Iranian Law," concluded that these instruments cannot be fully explained through traditional nominate contracts (Alizadeh, 2022). Khameh and Feyzi Chekab (2020), in "The Principle of Independence and the Documentary Nature of Independent Guarantees: Comparing the New Commercial Code Bill with URDG 758 and the UNCITRAL Convention," argued that the new Commercial Code Bill is incomplete when compared with the Uniform Rules and the UNCITRAL Convention (Khameh & Feyzi Chekab, 2020). Mafi and Farzangan (2016), in "Unconditional Payment of Bank Guarantees in Light of Their Independence from the Underlying Contract," showed that, in cases of fraudulent demand, an interim injunction restraining payment may be issued (Mafi & Farzangan, 2016). The distinguishing feature of the present article is that none of these studies evaluates the three principles of independence, unconditionality, and transfer within a single analytical model.

Kelly-Louw (2022), in "Beneficiary Fraud and Demand Guarantees," argued that, in South African and English law, the fraud exception applies only where the fraud is attributable to the beneficiary, whereas U.S. law does not impose such an attribution requirement (Kelly-Louw, 2022). Lupton and Kelly-Louw (2020), in "Emergence of Illegality in the Underlying Contract as an Exception to the Independence Principle of Demand Guarantees," demonstrated that courts have gradually begun to recognize illegality of the underlying relationship as an independent exception to the independence principle, although its scope remains uncertain (Lupton & Kelly-Louw, 2020). Chipashvili (2014), in "Georgian Legal Science about Bank Guarantee," concluded that adoption of uniform international rules is a prerequisite for integrating the banking systems of transition economies into the global market (Chipashvili, 2014). Bertrams (2013), in *Bank Guarantees in International Trade*, argued that independence and documentary character are the two pillars of the functioning of guarantees and that only manifest fraud should be capable of preventing payment (Bertrams, 2013). Davidson (2012), in "Unconscionability in Letters of Credit and Demand Guarantee Transactions," showed that some legal systems have moved beyond fraud toward unconscionability as an additional basis for restraining demand (Davidson, 2012). Enonchong (2011), in *The Independence Principle of Letters of Credit and Demand Guarantees*, concluded that independence is a relative principle and that its exceptions must remain narrow and predictable (Enonchong, 2011). Fedotov (2008), in "Abuse, Unconscionability and Demand Guarantees: New Exception to Independence?," argued that abuse of rights may constitute a new exception to independence (Fedotov, 2008). The difference between these studies and the present article is that they focus on exceptions to independence and do not address the relationship between guarantees and the legal principles governing commercial instruments under Iranian law.

The review of prior studies indicates that domestic research has mainly focused on the legal nature of guarantees, the principle of independence, and deficiencies in the Commercial Bill, whereas foreign scholarship has concentrated primarily on the scope of exceptions to independence, particularly fraud, illegality, and unconscionability. None of these studies has evaluated bank guarantees through the complete set of legal principles governing commercial instruments under a single evaluative criterion. The novelty of the present article lies in taking these principles as its analytical foundation, proposing a modified formulation for each, and integrating them into a coherent thesis—namely, minimizing risk and maximizing the functionality of bank guarantees—which can serve both legislative reform and the harmonization of judicial practice.

4. Research Method

In terms of purpose, this research is fundamental-applied, and in methodological terms it is descriptive-analytical with a comparative approach. The data were collected through library research and systematic note-taking from specialized books on commercial and banking law, domestic and foreign scholarly articles, Iranian statutory law, particularly the Commercial Code, Civil Code, and Constitution, the Commercial Code Bill, and international instruments, including the Uniform Rules for Demand Guarantees (URDG 758) and the UNCITRAL Convention on Independent Guarantees and Stand-by Letters of Credit.

In the descriptive section, the concepts and characteristics of commercial instruments and guarantees are explained, while in the analytical section each of the three principles is assessed in relation to the legal nature of the guarantee through qualitative content analysis and legal reasoning. In the comparative section, solutions adopted in English, U.S., French, and South African law are compared with Iranian law, and the findings are ultimately synthesized in the form of a proposed model and analytical tables.

5. Findings

5.1. The Position of Bank Guarantees in Relation to Commercial Instruments and the Consequences of Legislative Silence

The first step in assessing whether the legal principles governing commercial instruments may be applied to bank guarantees is to determine the status of this instrument within the Iranian legal system. The Commercial Code enacted in 1932 confines specific commercial instruments to bills of exchange, promissory notes, and cheques and prescribes particular formal requirements and legal effects for each of them (Articles 223, 307, and 310 of the Commercial Code). Accordingly, despite its credit function, a bank guarantee is not a commercial instrument in the narrow sense and does not enjoy statutory privileges associated with such instruments, including the joint and several liability of signatories (Eskini, 2014). Nevertheless, denial of its status as a specific commercial instrument does not mean that the relevant principles cannot be extended to it, because the legal principles governing commercial instruments, before being statutory rules, are rules derived from the practical necessities of commerce and have also developed through international banking custom. In terms of its role in generating confidence and substituting for cash collateral, a bank guarantee closely resembles a commercial instrument, and beneficiaries in practice treat it as the equivalent of cash, a conception reflected in international practice through the expression “as good as cash” (Bertrams, 2013). On the other hand, unlike a bill of exchange or promissory note, a guarantee is not created to pay a debt or transfer credit, but to secure performance of another obligation and compensate for potential loss resulting from its breach; consequently, the bank’s undertaking has a secondary economic purpose and becomes potentially operative only upon breach of the underlying obligation (Soltani, 2011). This duality between functional similarity and difference in ultimate purpose is the principal reason for disagreement over the extent to which commercial-instrument principles may be extended to guarantees.

The direct consequence of this position is legislative silence. Under Iranian law, neither the Commercial Code nor the Law on Usury-Free Banking Operations contains independent provisions governing the legal nature, characteristics, and effects of independent bank guarantees, and regulation of this institution has largely been left to Central Bank directives, adopted within the framework of its supervisory powers under Article 14 of the Monetary and Banking Act enacted in 1972, as well as to the wording of individual guarantees (Mafi & Farzangan, 2016). Banking regulations, although specifying issuance requirements, types, and duration of guarantees, do not provide statutory answers to fundamental questions concerning the independence of the bank’s undertaking, exceptions to that independence, the effect of conditionality, or transferability. The Commercial Code Bill, by devoting a chapter to independent guarantees in Articles 836–866, has attempted to fill this gap, but it has not yet been enacted and some of its provisions are not fully aligned with international rules (Mafi & Fallah Khariki, 2024). In this environment, the absence of specific statutory provisions on the legal principles governing commercial instruments in Iranian commercial legislation has contributed to practical instability in the treatment of guarantees, because, in the absence of express legislation, courts are compelled to resort to general contract rules and traditional suretyship doctrine, which are not designed around independence and documentary unconditionality. This problem is clearly reflected in inconsistent judicial decisions regarding the availability of interim injunctions restraining payment and whether an applicant may prevent payment by alleging that no breach of the underlying contract occurred (Khameh & Feyzi Chekab, 2020).

The starting point for applying these principles to guarantees is freedom of contract. Article 10 of the Civil Code permits parties to enter into contracts outside the framework of nominate contracts, provided that they do not contravene mandatory law; on this basis, the bank and beneficiary may create an independent, unconditional, and even transferable undertaking that is not subject to the rules of civil-law suretyship (Mafi & Fallah Khariki, 2024). This solution is consistent with the international approach because the Uniform Rules for Demand Guarantees apply only where the guarantee expressly incorporates them under Article 1 of the Rules (Affaki & Goode, 2011). Reliance solely on freedom of contract, however, has

two shortcomings. First, party autonomy cannot confer upon guarantees procedural and substantive privileges that legislation reserves for specific commercial instruments. Second, where the guarantee is silent, the court must interpret its nature, and in that interpretive process the deeply rooted tendency in Iranian legal culture to characterize guarantees as civil-law suretyship may weaken the relevant principles (Kashani, 1995). Accordingly, freedom of contract is a necessary but insufficient condition for the application of these principles, and stabilization of the legal position of guarantees requires legislative support.

Comparative analysis demonstrates that legal systems that have filled this gap through legislation enjoy greater stability. In French law, since 2006 the independent guarantee (*garantie autonome*) has been defined in Article 2321 of the Civil Code, which provides that the guarantor may not rely on defenses arising from the guaranteed obligation except in cases of abuse or manifest fraud by the beneficiary (Bertrams, 2013). Under U.S. law, standby letters of credit are governed by Article 5 of the Uniform Commercial Code, which expressly regulates both independence and the fraud and forgery exception, particularly in Section 5-109 (Enonchong, 2011). In English law, although no specific statute governs this field, judicial practice has recognized the independence of guarantees by analogy with documentary credits since *Edward Owen Engineering Ltd v Barclays Bank International Ltd* (1978), permitting restraint of payment only where fraud is manifest and known to the bank (Horowitz, 2010). The important point emerging from these legal systems is that independence is established as the rule and fraud as a narrow exception, with the relationship between the two defined in a predictable manner; because of the absence of express legislation, such predictability has not yet been achieved in Iranian law (Jamali et al., 2024).

In the authors' view, analysis of the legal position of bank guarantees shows that the principal problem in Iranian law lies not in the nature of the guarantee itself, but in the absence of a statutory foundation for the principles governing it. Functionally, the guarantee is a commercial instrument, while formally it is a private contractual undertaking; until these two dimensions are connected through a legislative rule, courts will continue to oscillate between payment certainty and contractual justice. Accordingly, applying the legal principles governing commercial instruments serves as a means of filling this gap rather than imposing an alien legal form.

5.2. The Principle of Independence in Bank Guarantees: From Rule to Exception

The principle of independence constitutes the most important point of convergence between bank guarantees and commercial instruments. Just as abstractness separates an instrument-based obligation from its underlying relationship, the principle of independence separates the bank's undertaking from the contract between the applicant and the beneficiary. There is, however, an important difference. In commercial instruments, abstractness primarily operates in favor of a holder in good faith and against personal defenses available to prior signatories, whereas in guarantees, independence operates directly in the relationship between the guarantor and the beneficiary, who may itself be the party in breach of the underlying contract (Mafi & Abdolsamadi, 2015). This difference significantly increases the risk of abuse in the context of guarantees, and for this reason any analysis of independence is incomplete without consideration of its exceptions. This section first examines the basis and scope of independence and then considers the exceptions of fraud and abuse of rights.

5.2.1. Basis and Scope of the Principle of Independence

The principle of independence is expressly recognized in international rules. Under Article 5 of the Uniform Rules for Demand Guarantees, a guarantee is by its nature independent of the underlying relationship and of the application for issuance, and the guarantor is neither concerned with nor bound by that relationship even if reference to it is included in the guarantee (Affaki & Goode, 2011). Article 3 of the UNCITRAL Convention likewise treats an undertaking as independent where it does not depend on the existence or validity of the underlying relationship or any other obligation and is not subject to a condition not stated in the undertaking itself. Under Iranian law, the basis of this principle may be found in Article 10 of the Civil Code and the principle of binding force of contracts under Article 219 of the Civil Code, because the bank has voluntarily assumed an independent undertaking and is bound to perform it (Mafi & Farzangan, 2016). The logical consequence of this principle is that the bank may not invoke defenses such as absence of breach of the underlying contract, full performance by the applicant, set-off, or disagreement over the amount of loss. A clear example is a performance guarantee issued by a contractor in favor of

a public employer. If the employer demands payment under the guarantee, the bank may not refuse payment on the ground that the contractor alleges that the employer delayed payment of certified progress claims. Analysis of this example demonstrates that independence transfers the dispute from the payment stage to subsequent substantive proceedings between the applicant and beneficiary, replacing suspension of payment pending resolution of the dispute with the rule "pay first, litigate later."

The scope of independence depends on the type of guarantee. In demand guarantees, where payment depends only on a written demand or on a demand accompanied by a statement of breach, independence operates in its fullest form, and such guarantees therefore display the greatest similarity to commercial instruments (Bertrams, 2013). By contrast, in conditional guarantees, where payment depends on proof of breach of the underlying contract or presentation of a court judgment, the underlying relationship indirectly enters the sphere of the guarantee and independence is reduced to a largely formal concept because the bank must take that relationship into account when determining whether the payment condition has been fulfilled (Masoudi, 2012). Iranian doctrine has therefore warned that, where payment conditions are drafted in a manner that requires the bank to adjudicate facts relating to the underlying contract, the instrument loses its independent character and approaches an accessory guarantee (Kashani, 1995). An example is a guarantee stating that payment shall be made "in the event of the contractor's failure to perform its contractual obligations" without identifying a document by which such failure is to be established. Analysis of this example shows that the problem lies not in independence itself but in ambiguous drafting of the payment condition. If the condition is framed in documentary terms—for example, "upon presentation of a certificate issued by the consulting engineer confirming default"—independence is preserved because the bank deals only with the specified document.

The approach of Iranian courts to independence is inconsistent because of legislative silence. Some decisions have treated the guarantee as an independent undertaking and have refused to entertain applications seeking to restrain payment merely on the basis that the underlying contract was allegedly not breached; other decisions have analyzed the guarantee as suretyship and have considered examination of the underlying relationship necessary (Joneidi & Shariatinassab, 2013). Such inconsistency is incompatible with fair-procedure requirements and legal certainty, because a beneficiary, particularly a foreign beneficiary, cannot predict whether the instrument it holds is effectively equivalent to cash or merely a contestable claim. Comparison with international practice indicates that even in the context of standby letters of credit—the institution most closely related to bank guarantees—the bank's undertaking is regarded as primary and independent, and only facial compliance of documents is examined (Farahanipanah & Mafi, 2026). A practical example is a guarantee issued by an Iranian bank in favor of a foreign buyer under an export contract. If a domestic court, at the exporter's request, restrains payment because of a dispute concerning the quality of the goods, the foreign beneficiary may proceed against its correspondent bank, while the Iranian bank remains liable under the counter-guarantee. This example demonstrates that breach of the independence principle at the domestic level does not necessarily protect the applicant and may instead damage the credibility of the national banking system in international transactions.

5.2.2. The Exception of Manifest Fraud and Abuse of Rights

Independence is not an absolute principle. At least one exception is recognized in all leading legal systems: beneficiary fraud. The rationale is that fraud vitiates the operation of legal mechanisms, and the legal order cannot permit its own instruments to facilitate a manifestly fraudulent demand (Enonchong, 2011). The UNCITRAL Convention is the only international instrument that expressly regulates this exception; Article 19 identifies situations such as lack of authenticity of a document, manifest absence of a basis for demand, and non-occurrence of the contingency against which the guarantee was issued, while Article 20 provides for the possibility of interim relief. By contrast, the Uniform Rules for Demand Guarantees are silent on fraud and leave the matter to the applicable law (Affaki & Goode, 2011). Under Iranian law, the basis of this exception may be found in the prohibition of abuse of rights and the no-harm principle reflected in Article 40 of the Constitution, as well as in public policy under Article 975 of the Civil Code (Mafi & Fallah, 2014). An example is a demand under an advance-payment guarantee by an employer that has itself signed the final payment certificate confirming that the advance payment has been fully amortized. In such a case, the demand not only manifestly lacks a factual basis but also contradicts a

document issued by the beneficiary itself. Consequently, restraining payment does not violate independence but prevents abuse of that principle.

The most difficult issue in this context concerns the standard and degree of proof required to establish fraud. English practice treats fraud as a bar to payment only where it is manifest and known to the bank and does not regard a mere allegation by the applicant as sufficient (Horowitz, 2010). Recent scholarship indicates that, under English and South African law, the fraud must be attributable to the beneficiary or its agent, and fraud by a third party, even where a document is forged, does not necessarily prevent payment, whereas U.S. law does not require such attribution in cases involving forgery or fraudulent documents (Kelly-Louw, 2022). Beyond fraud, some courts have shown willingness to recognize illegality of the underlying contract as a further exception; in *Mattress House v Investec*, for example, the South African High Court indicated its openness to such an exception (Lupton & Kelly-Louw, 2020). French law, through the criterion of "manifest abuse" in Article 2321 of the Civil Code, adopts a standard somewhat broader than fraud. An example relevant to Iranian law is an applicant seeking an interim injunction merely on the ground that it was not at fault in performing the underlying contract. If the court issues an injunction based solely on the possibility of harm and without clear evidence of fraud, the independence principle is effectively neutralized. This example demonstrates that Iranian law requires a standard of "clear and immediate evidence" so that the exception does not become the rule.

The implication of this analysis is the need to formulate a model of "controlled independence": independence should be recognized as the rule, while exceptions should be confined to manifest fraud and abuse of rights, with the burden of proof placed on the applicant and supported by immediate and documented evidence. This formulation is consistent with the approach of the Commercial Code Bill, Article 837 of which refers to the independence of the guarantee from the underlying contract (Mafi & Farzangan, 2016). At the international level, legal doctrine likewise emphasizes that exceptions to independence must remain narrow, precise, and predictable in order to preserve the function of the guarantee as a cash-substitute instrument (Bertrams, 2013). A practical example is a bid guarantee where the successful bidder, after announcement of the result, refuses to enter into the contract and the procuring entity demands payment. In such a case, the bidder's allegation that the contractual terms were unfair does not constitute beneficiary fraud and therefore cannot prevent payment. However, if it is established that the procuring entity never communicated the contract to the successful bidder and made the demand with knowledge of that fact, the manifest absence of a basis for demand may be established. This example shows that controlled independence serves neither the beneficiary nor the applicant exclusively, but rather the legal security of the entire transactional system (Khameh & Feyzi Chekab, 2020).

5.3. The Principle of Unconditionality and the Documentary Nature of the Bank's Undertaking: From Prohibited Suspension to Documentary Unconditionality

In commercial instruments, the principle of unconditionality means that the obligation embodied in the instrument is not suspended upon an external event and that the holder may demand payment without having to prove fulfillment of a condition. Transferring this principle to bank guarantees encounters an apparent obstacle: a guarantee is inherently dependent on a demand by the beneficiary and on the possibility of breach of the underlying contract and may therefore appear to involve a conditional obligation. If a guarantee is analyzed as civil-law suretyship, such conditionality conflicts with Article 699 of the Civil Code, which invalidates suspension in suretyship, and with Article 691, which invalidates a guarantee of a debt whose legal cause has not yet arisen (Ziaei & Moeinifar, 2013). Nevertheless, Article 699 itself provides that an undertaking to pay may be made conditional, and Article 723 of the Civil Code likewise recognizes the possibility of a conditional undertaking to pay another person's debt within a binding contract; accordingly, legal doctrine has resolved this difficulty by characterizing the bank guarantee as an undertaking to pay rather than as a transfer of liability (Sobhaninia & Kariminia, 2019).

Removing the validity objection, however, does not itself establish unconditionality. The principal question concerns the degree to which the bank's undertaking becomes certain and non-contestable once a demand is made. In this respect, the documentary nature of the guarantee plays a central role. Under the Uniform Rules for Demand Guarantees, the guarantor must examine the demand solely on the basis of the documents presented and determine whether they appear on their face to comply with the guarantee under Article 19, and it must decide on compliance within five business days following presentation under

Article 20 (Affaki & Goode, 2011). These rules transform the conditionality of the bank's undertaking from dependence on the "fact" of breach of the underlying contract into dependence on the "document" constituting the demand, thereby rendering the bank's obligation unconditional vis-à-vis the underlying relationship. The present article refers to this condition as "documentary unconditionality": an obligation dependent only on documentary conditions stated in the guarantee and released from any condition requiring determination of facts external to the instrument (Mafi & Fallah, 2013).

Documentary unconditionality is closely connected with the principle of strict compliance. In documentary credits, documents must strictly comply with the terms of the credit, and the bank is not entitled to interpret them on the basis of fairness or the parties' intentions. This principle has also been extended to demand guarantees, although the Uniform Rules adopt a standard of "facial compliance" rather than literal identity (Mafi & Fallah Khariki, 2024). The significance of this standard lies in the fact that it relieves the bank of the need to adjudicate contractual disputes while requiring the beneficiary to formulate its demand precisely in accordance with the terms of the instrument. The following table illustrates how the bank's undertaking is analyzed under three different approaches to conditionality.

To clarify the differences among existing approaches to conditionality and unconditionality in guarantees, Table 1 compares civil-law suretyship, an undertaking to pay, and documentary unconditionality in terms of legal basis, the subject matter of the bank's examination, and their practical consequences, thereby indicating which approach is most compatible with the function of a bank guarantee.

Table 1. Comparison of Approaches to Conditionality and Unconditionality in the Bank's Undertaking

Approach	Legal Basis	Subject of the Bank's Examination	Practical Consequences	Source
Civil-law suretyship (transfer of liability)	Articles 684, 691, 698, and 699 of the Civil Code	Existence and breach of the principal debt	Invalidity or accessory character of the undertaking, inquiry into the underlying relationship, prolonged proceedings	(Ziaei & Moeinifar, 2013)
Undertaking to pay	Final clause of Article 699, Article 723, and Article 10 of the Civil Code	Fulfillment of the suspensive condition	Removal of the validity objection, but uncertainty regarding the criterion for determining fulfillment	(Sobhaninia & Kariminia, 2019)
Documentary unconditionality	Article 10 of the Civil Code; Articles 5, 15, 19, and 20 of the Uniform Rules for Demand Guarantees	Facial compliance of the demand and documents with the guarantee	Certainty of payment, exemption of the bank from adjudication, efficient allocation of risk	(Affaki & Goode, 2011)

Table 1 demonstrates that the three approaches are, in reality, three different answers to a single question: upon what is the bank's undertaking dependent? The civil-law suretyship approach makes the bank's obligation dependent on the existence and breach of the principal debt and is therefore incompatible with both independence and unconditionality; its acceptance compels courts to examine the substance of the underlying contract and deprives the guarantee of its function as a substitute for cash. The undertaking-to-pay approach takes an important step toward resolving the validity objection, because it relies on the final clause of Article 699 and Article 723 of the Civil Code to recognize conditionality as lawful. However, this approach does not provide a criterion for determining whether the condition has been fulfilled, and if the condition refers back to facts relating to the underlying contract, the same problem as under the first approach recurs. The documentary-unconditionality approach, by substituting "documents" for "facts," preserves the legitimacy of conditionality while also ensuring certainty of payment. Accordingly, the third approach does not reject the second but completes it and may provide a common foundation for judicial practice and legislative reform.

Economic analysis also supports documentary unconditionality. The cost of investigating the factual circumstances of the underlying contract is extremely high for a bank, which lacks both the technical expertise and complete access to the parties' information, and if banks are required to undertake such inquiries, they will either refuse to issue guarantees or increase their fees (Enonchong, 2011). By contrast, documentary examination involves limited and predictable costs and allocates risk efficiently among the parties: the beneficiary is protected against the risk of non-payment, the applicant is protected through the fraud exception and subsequent recourse, and the bank assumes only the applicant's credit risk (Masoudi, 2012).

In conditional guarantees, documentary unconditionality is achieved only where the payment condition is formulated in documentary terms. If payment is made contingent on presentation of a final court judgment or arbitral award, the bank's obligation remains documentary in character because the bank merely verifies the existence of the specified document. By

contrast, if payment is contingent on "proof of the applicant's fault" without identification of a particular document, the bank's obligation becomes dependent on a fact external to the instrument and documentary unconditionality disappears (Kashani, 1995). Accordingly, the drafting of guarantees, particularly in public contracts governed by the Regulation on Guarantees for Government Transactions, is a decisive factor in determining whether documentary unconditionality is achieved. Table 2 presents the principal forms of payment conditions and their effects on the unconditionality of the bank's undertaking.

Because realization of documentary unconditionality depends on how the payment condition is drafted, Table 2 categorizes common forms of payment conditions in domestic and international guarantees and identifies the effect of each on the unconditionality of the bank's undertaking and the level of risk borne by the parties.

Table 2. Types of Payment Conditions and Their Effects on the Unconditionality of the Bank's Undertaking

Formulation of Payment Condition	Status of Unconditionality	Predominant Risk	Source
Simple written demand by the beneficiary	Full unconditionality	Wrongful demand risk for the applicant	(Bertrams, 2013)
Demand accompanied by a statement of breach under Article 15 of the Uniform Rules	Documentary unconditionality	Wrongful demand with partial control	(Affaki & Goode, 2011)
Presentation of a certificate by a specified third party, such as a consulting engineer or inspector	Documentary unconditionality	Dependence on the independence of the third party	(Masoudi, 2012)
Presentation of a final court judgment or arbitral award	Documentary unconditionality with delay	Delay in recovery for the beneficiary	(Kashani, 1995)
"In the event of the applicant's default" without specification of documentary evidence	Dependent on factual determination; lacks documentary unconditionality	Interpretive disputes and bank involvement in the underlying relationship	(Mafi & Fallah, 2013)

Table 2 demonstrates that unconditionality is not a binary attribute but rather a spectrum extending from complete unconditionality in a simple-demand guarantee to the absence of documentary unconditionality in an ambiguously conditioned guarantee. The essential point is that the three intermediate formulations—a demand accompanied by a statement of breach, a certificate by a specified third party, and a final judgment—each preserve documentary unconditionality while offering differing degrees of protection to the applicant. The parties may therefore regulate the risk of wrongful demand by choosing an appropriate formulation without sacrificing payment certainty. By contrast, the fifth formulation, which is common in Iranian banking practice, benefits neither the beneficiary nor the applicant because it transforms the bank into an adjudicator of the underlying dispute and ultimately drives both parties into litigation. This analysis indicates that one of the most effective reforms would be to require documentary formulation of payment conditions in standard banking forms and guarantee regulations.

Ultimately, documentary unconditionality has a complementary relationship with the principle of independence. Independence removes the underlying relationship from the scope of the guarantee, while documentary unconditionality provides the operational mechanism for that exclusion by determining precisely what the bank must examine. Without documentary unconditionality, independence is reduced to a general slogan, and without independence, documentary unconditionality loses its meaning (Farahanipanah & Mafi, 2026).

In the authors' view, the principle of unconditionality in a guarantee is realized not by denying the existence of conditionality, but by shifting the subject matter of the condition. The bank's undertaking may be conditional, provided that the condition is documentary rather than factual. This shift resolves the theoretical tension between jurisprudential doctrine and commercial law while simultaneously providing an operational criterion for the judiciary.

5.4. Transferability and Pledging of Guarantees: From Free Circulation to Conditional Transferability

Transferability is the principle least compatible with the legal nature of a bank guarantee. In commercial instruments, transfer takes place through endorsement or delivery under Article 245 of the Commercial Code, and a new holder in good faith is protected against defenses arising from prior relationships; this feature transforms the commercial instrument into a mechanism for circulation of credit (Amini & Miri, 2016). A bank guarantee, however, is issued in reliance on the identity of a particular beneficiary and that beneficiary's specified contractual relationship with the applicant. The bank evaluates the applicant's credit risk in relation to a specific beneficiary, and the applicant accepts the risk of demand with knowledge of the beneficiary's

identity. Unrestricted transfer of the guarantee disturbs this balance because the right to demand payment may be transferred to a person having no connection with the underlying contract (Shahbazinia, 2007). For this reason, the Uniform Rules for Demand Guarantees permit transfer of the right to demand payment only where the guarantee expressly states that it is "transferable," and such transfer must be complete and accompanied by transfer of the beneficiary's rights in the underlying relationship under Article 33 of the Rules; the UNCITRAL Convention similarly makes transfer of the right to demand payment dependent on authorization contained in the undertaking under Article 9 (Affaki & Goode, 2011). Three examples clarify this analysis. First, a main contractor may receive a performance guarantee from a subcontractor and later seek to transfer it after the project has been assigned to a successor contractor; in this situation, transfer of the right to demand payment together with transfer of the underlying contract is consistent with the logic of the guarantee and requires only the bank's consent and an express transferability clause. Second, a beneficiary may attempt to sell the guarantee to a third party without transferring the underlying contract; such a transfer is inconsistent with the guarantee's security function and should be prohibited. Third, an exporter holding an advance-payment guarantee issued by a foreign purchaser may wish to assign the potential proceeds of that guarantee to the bank providing its working-capital financing; this constitutes an assignment of proceeds rather than a transfer of the right to demand payment.

The distinction between transfer of the right to demand payment and assignment of proceeds is the key to reconciling transferability with the nature of a guarantee. In an assignment of proceeds, the original beneficiary remains the only person entitled to make a demand, and the assignee merely acquires the right to receive the money if payment occurs. Accordingly, the risk of wrongful demand does not increase, and the personal nature of the guarantee is preserved (Bertrams, 2013). The UNCITRAL Convention permits assignment of proceeds, subject to certain conditions, even where the undertaking itself does not authorize transfer under Article 10. Under Iranian law, assignment of proceeds may be structured as an assignment of a contingent receivable or as an agency arrangement for receipt of funds on the basis of Article 10 of the Civil Code, and the pledge of rights arising from a guarantee may likewise be structured as security over the beneficiary's receivable from the financing bank (Shahbazinia, 2007). This solution is also consistent with the treatment of commercial instruments as collateral. Under Iranian and Egyptian law, pledging commercial instruments through a pledge endorsement or delivery has been recognized (Ebrahimi Torkaman & Pouragha, 2019). On this basis, a model of "conditional transferability" is proposed: first, transfer of the right to demand payment should be permitted only where expressly authorized by the guarantee, consented to by the bank, and accompanied by transfer of the underlying contract; second, assignment of proceeds and pledging should be permitted upon notice to the bank and without requiring its consent; third, a good-faith transferee should be protected against personal defenses that the applicant may have against the transferor. The analytical example of this model is the exporter described above: by assigning the proceeds of the guarantee to its financing bank, the exporter gains liquidity, the issuing bank does not face an unknown beneficiary, and the security function of the instrument is preserved. This example demonstrates that conditional transferability does not reject the principle of transfer; rather, it applies that principle to the extent compatible with the guarantee function (Amini & Miri, 2016).

5.5. A Model for the Measured Application of the Legal Principles Governing Commercial Instruments to Bank Guarantees

The analysis of the three principles in the preceding sections demonstrates that none is either absolutely applicable or completely excluded; rather, each may be applied to bank guarantees subject to an appropriate modification. The model proposed in this article rests on one principal thesis: in using bank guarantees, risk should be minimized and those principles should be applied that, while preserving the guarantee's security function, enhance its creditworthiness and maximize its practical effectiveness. A guarantee simultaneously performs security and credit functions, and each party faces a distinct category of risk: the applicant faces the risk of wrongful demand, the beneficiary faces the risk of refusal or delay in payment, and the bank faces the risk of becoming involved in disputes arising from the underlying contract (Jamali et al., 2024). Measured application of the principles means accepting independence and documentary unconditionality as general rules while recognizing transferability only on a conditional basis, thereby minimizing these risks. This model is consistent with the experience of leading legal systems, which combine independence with narrow and predictable exceptions (Kelly-Louw,

2022), and also accords with reform proposals in Iranian legal doctrine concerning the Commercial Bill (Mafi & Fallah Khariki, 2024).

Table 3 presents the proposed model in the form of three subsidiary theses and, for each thesis, identifies its legal content, statutory or international basis, and the risk it is designed to control, thereby clarifying the relationship between each principle and the article's principal thesis.

Table 3. Model for the Measured Application of the Legal Principles Governing Commercial Instruments to Bank Guarantees

Subsidiary Thesis	Legal Content	Basis	Risk Controlled	Source
Controlled independence	Independence of the bank's undertaking from the underlying relationship as the rule; exceptions limited to manifest fraud and abuse of rights supported by immediate evidence	Article 10 of the Civil Code; Article 40 of the Constitution; Article 5 of the Uniform Rules; Articles 19 and 20 of the UNCITRAL Convention	Wrongful refusal to pay and fraudulent demand	(Mafi & Farzangan, 2016)
Documentary unconditionality	Payment contingent only on facial compliance of the demand and documents with the guarantee; payment conditions framed in documentary terms	Final clause of Article 699 and Article 723 of the Civil Code; Articles 15, 19, and 20 of the Uniform Rules	Delay in payment and bank involvement in the underlying relationship	(Affaki & Goode, 2011)
Conditional transferability	Transfer of the right to demand payment only with an express clause and bank consent; assignment of proceeds and pledging upon notice to the bank	Article 10 of the Civil Code; Article 33 of the Uniform Rules; Articles 9 and 10 of the UNCITRAL Convention	Transfer of rights to an unknown beneficiary and underutilization of the guarantee's credit function	(Shahbazinia, 2007)

Table 3 demonstrates that the three subsidiary theses are not three independent rules but three dimensions of a single logic. In each case, the relevant legal principle governing commercial instruments is preserved, but its scope is restricted to the extent necessary to avoid conflict with the security function of the guarantee. Under controlled independence, the rule of independence is retained so that the beneficiary may rely on payment certainty, while the fraud and abuse-of-rights exceptions, subject to a standard of immediate evidence, protect the applicant against manifestly wrongful demand. Under documentary unconditionality, conditionality of the bank's undertaking is recognized, but the subject matter of the condition is shifted from facts to documents so that the bank is relieved from adjudicating contractual disputes (Enonchong, 2011). Under conditional transferability, circulation of credit becomes possible, but the distinction between transfer of the right to demand payment and assignment of proceeds preserves the allocation of risk among the parties. The common feature of all three theses is that they allocate each risk to the party best positioned to manage it.

From an implementation perspective, this model can be applied at two levels. At the legislative level, Articles may be added to the Commercial Code, or the chapter on independent guarantees in the Commercial Code Bill may be enacted, expressly incorporating all three theses and thereby filling the gap created by the absence of statutory provisions on the legal principles governing commercial instruments (Khameh & Feyzi Chekab, 2020). At the contractual and supervisory level, the Central Bank may revise standard guarantee forms so as to require foreign-currency guarantees to be governed by the Uniform Rules and to require payment conditions to be drafted in documentary terms. The experience of legal systems that have recognized illegality of the underlying contract as an exception shows that every additional exception, if accepted without a clear standard, may weaken payment certainty (Lupton & Kelly-Louw, 2020); accordingly, the proposed model confines exceptions to manifest fraud and abuse and subjects them to a heavy burden of proof on the applicant.

Finally, the proposed model must be assessed in light of the requirements of the Iranian legal system. The model is consistent with Islamic jurisprudential foundations because it recognizes the permissibility of suspending an undertaking to pay while accepting prohibition of abuse of rights as an exception; it is compatible with general contract law because it grounds validity in party autonomy; and it accords with international rules because its structure is based on the Uniform Rules and the UNCITRAL Convention (Alizadeh, 2022). This threefold compatibility is a prerequisite for acceptance of the model within Iranian law and distinguishes it from proposals that merely import rules from foreign legal systems. Moreover, the model provides a framework for evaluating judicial practice. In each case, a court may ask three questions in sequence: Does the demand facially comply with the terms of the guarantee? Is there immediate evidence of manifest fraud or abuse of rights? Has any transfer of the right to demand payment been made in accordance with the conditions of the instrument? Answers to these

three questions are sufficient to determine whether payment should be made without entering into the merits of the underlying contract (Mafi & Farzangan, 2016).

At the conclusion of the findings, Table 4 synthesizes the entire analysis in relation to the principal research question and, for each principle, identifies its current status under Iranian law, degree of compatibility with bank guarantees, proposed formulation, and analytical conclusion, thereby providing an integrated picture of the article's answer.

Table 4. Analytical Summary of the Applicability of the Legal Principles Governing Commercial Instruments to Bank Guarantees

Principle	Status under Iranian Law	Degree of Compatibility with Bank Guarantees	Proposed Formulation	Analytical Conclusion
Independence	No express statutory provision; based on Article 10 of the Civil Code and legal doctrine; inconsistent judicial practice	High; greatest similarity in demand guarantees	Controlled independence	Applicable as the rule, subject to narrow exceptions for fraud and abuse
Unconditionality	Apparent conflict with Article 699 of the Civil Code; resolvable by characterizing the obligation as an undertaking to pay	Moderate to high, depending on formulation of the condition	Documentary unconditionality	Applicable by shifting the subject of conditionality from facts to documents
Transferability	No specific statutory rule; restrictive banking practice	Low because of the personal nature of the guarantee	Conditional transferability	Applicable only conditionally and by distinguishing the right to demand payment from proceeds
Overall conclusion	Legislative silence and instability in the legal status of guarantees	Selective and relative	Model of measured application	Minimization of risk and maximization of the guarantee's functionality

Table 4 clearly sets out the article's response to the principal research question: the legal principles governing commercial instruments may be applied to bank guarantees, but neither uniformly nor absolutely. The degree of compatibility of each principle with the nature of the guarantee is inversely related to the extent to which that principle depends on circulation of the instrument. Independence, which concerns the bilateral relationship between guarantor and beneficiary, has the highest degree of compatibility; unconditionality, which depends on how the payment condition is verified, has a moderate-to-high degree of compatibility; and transferability, which is fundamentally designed to facilitate circulation of an instrument among multiple persons, has the lowest degree of compatibility. These findings confirm the article's principal hypothesis: the fundamental principles governing commercial instruments may be applied selectively and in modified form, taking into account the specific characteristics of bank guarantees. The final row of the table further shows that the central difficulty lies not in substantive incompatibility, but in legislative silence. The principal solution is therefore statutory recognition of the model of measured application so that the bank guarantee may be transformed from a legally unstable instrument into a reliable mechanism for providing credit support and securing obligations.

6. Discussion and Conclusion

The purpose of this article was to explain the possibility and limits of applying the legal principles governing commercial instruments to bank guarantees and to propose a coherent model for the Iranian legal system. The findings demonstrated that, although a bank guarantee resembles a commercial instrument in terms of its credit function and its capacity to substitute for cash, it is not a commercial instrument in the narrow sense and does not enjoy the statutory privileges applicable to bills of exchange, promissory notes, and cheques. The principal problem in Iranian law in this field is legislative silence: the absence of specific statutory provisions concerning the legal principles governing commercial instruments and the lack of rules governing independent guarantees have rendered the instrument unstable in practice, with courts sometimes analyzing it as civil-law suretyship and sometimes as an independent undertaking. The answer to the principal research question is that the principles of independence, unconditionality, and transferability are neither absolutely applicable nor completely excluded, but may be applied selectively and in a measured manner. The principle of independence has the greatest degree of similarity between demand guarantees and commercial instruments and should be accepted as the general rule; however, because it operates directly in the relationship between the guarantor and beneficiary, unlike in commercial instruments, the risk of abuse is greater and it must therefore be qualified by the exceptions of manifest fraud and abuse of rights. Accordingly, the principal hypothesis of the article is confirmed.

With respect to the principle of unconditionality, the article demonstrated that the apparent conflict between the conditional nature of guarantees and the prohibition of suspension in civil-law suretyship can be resolved by characterizing the bank's undertaking as an undertaking to pay and recognizing that such an undertaking may be made conditional. Actual realization of unconditionality, however, requires shifting the subject of conditionality from the factual occurrence of breach to the documentary demand. This concept, described in the article as "documentary unconditionality," is compatible both with the documentary nature of bank guarantees and with the principle of facial compliance and relieves the bank from adjudicating contractual disputes. As regards transferability, the article showed that this principle has the lowest degree of compatibility because of the personal and credit-assessed nature of bank guarantees. Nevertheless, by distinguishing transfer of the right to demand payment from assignment of proceeds and pledging, it is possible to enable credit circulation without disturbing the allocation of risk. The culmination of these analyses is the central thesis of the article: in the use of bank guarantees, risk should be minimized and those principles should be applied that, while preserving the security function of the guarantee, enhance its credit function and maximize its practical effectiveness. This thesis is operationalized through three subsidiary concepts—controlled independence, documentary unconditionality, and conditional transferability—and allocates risk to the party best able to manage it.

On the basis of these results, three general recommendations may be proposed. First, the legislature should, either by adding a provision to commercial legislation or by enacting the chapter on independent guarantees in the Commercial Code Bill, expressly recognize the independence of the bank's undertaking from the underlying contract and confine its exceptions to manifest fraud and abuse of rights, while requiring the applicant to present immediate and documented evidence; this would preserve the credibility of the guarantee while controlling the risk of wrongful demand. Second, payment under demand guarantees should depend exclusively on facial compliance of the demand and presented documents with the terms of the guarantee, while standard banking forms and guarantee regulations governing conditional guarantees should state payment conditions in clear documentary terms; this would remove the bank's obligation from ambiguity and factual suspension and ensure speed and certainty of payment. Third, unlike in the case of commercial instruments, transferability of the guarantee should not be recognized as a general rule. Transfer of the right to demand payment should be permitted only where expressly authorized by the guarantee and consented to by the issuing bank, while assignment of proceeds and pledging should be legally regulated subject to notice to the bank. Implementation of these recommendations would transform the bank guarantee from a legally unstable instrument into a reliable and efficient mechanism within Iran's commercial transaction system, while future research may examine the implications of this model for electronic guarantees and judicial practice.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

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